Agenda of Regular Meeting

The Board of Trustees
McAllen Independent School District

VISION The McAllen Independent School District is a multicultural community in which students are enthusiastically and actively engaged in the learning process. Students demonstrate academic excellence in a safe, nurturing and challenging environment enhanced by technology and the contributions of the total community.

MISSION The mission of the McAllen Independent School District is to educate all students to become lifelong learners and productive citizens in a global society through a program of educational excellence utilizing technology and actively involving parents and the community.

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

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

A Regular Meeting of the Board of Trustees of the McAllen Independent School District will be held Monday, June 13, 2022, beginning at 5:00 PM Dr. Ricardo Chapa Board Room/Administration Building of the McAllen Independent School District, 2000 North 23rd 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. **PUBLIC HEARING TO DISCUSS 2022-2023 BUDGET AND PROPOSED TAX RATE** **9**
   Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent

6. **RECESS TO CLOSED SESSION: Board of Trustees may go into Closed Session pursuant to Section(s) 551.071, 551.072, 551.074, and 551.076 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) Principal for Dr. Rodney D. Cathey Middle School

   D) Assistant Superintendent for District Operations

   E) Pending and/or Potential Litigation

      1. Safety Protocols

   F) Possible Real Estate Acquisition

7. **RECONVENE IN OPEN SESSION**

8. **ACTION ON ITEM(S) IN CLOSED SESSION**

   A) Approval of Human Resources Recommendation(s) for School Year 2022-2023 — 23
   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 — 24
   Item Submitted: Todd Miller, Assistant Superintendent Human Resources

   Presenter: Dr. J. A. Gonzalez, Superintendent

   C) Approval of the Principal for Dr. Rodney D. Cathey Middle School — 25
   Item Submitted: Todd Miller, Assistant Superintendent Human Resources

   Presenter: Dr. J. A. Gonzalez, Superintendent

   D) Approval of the Assistant Superintendent for District Operations — 26
   Item Submitted: Todd Miller, Assistant Superintendent Human Resources

   Presenter: Dr. J. A. Gonzalez, Superintendent

   E) Pending and/or Potential Litigation

      1. Safety Protocols

   F) Possible Real Estate Acquisition

9. **SUPERINTENDENT'S REPORT(S)** - McAllen ISD Hosts Police Training Event!

   Presenter: Dr. J. A. Gonzalez, Superintendent

10. **RECOGNITION(S)**

11. **PROCLAMATION(S)**

12. **DONATION(S)**

   A) Monetary Donation from McAllen High School Class of 1971 to McAllen High School — 27

   Presenter: Dr. J. A. Gonzalez, Superintendent

B) Approval of Monetary Donation from Ben Milam Elementary PTO to Ben Milam Elementary 29

Presenter: Dr. J. A. Gonzalez, Superintendent

13. **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 Intent to Apply for Texas Collaborative for Science Innovation (TxCSI) initiative 31
   Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent
2. Report Regarding School Health Advisory Committee (SHAC) Triannual Assessment of FFA Local Wellness Plan 36
   Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent
3. Report Regarding Intent to Apply for Patrick Leahy Bulletproof Vest Partnership (BVP) 56
   Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent
4. Report Regarding Intent to Apply for Fiscal Year 2022 Community Oriented Policing Services (COPS) Hiring Program 61
   Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent
5. Report Regarding Intent to Apply for Preventing School Violence: Bureau of Justice Assistance (BJA) STOP School Violence Program 68
   Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent
6. Report Regarding Intent to Apply for Fiscal Year 2022 Implementing Crisis Intervention Teams - Community Policing Development (CPD) Solicitation 73
   Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent

7. Report Regarding Intent to Apply for Fiscal Year 2022 School Violence: Prevention Program (SVPP) 77
   Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent

8. Report Regarding Intent to Apply for STOP THE BLEED Grant Kit Program 82
   Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent

9. Report Regarding Interlocal Cooperative Agreement No. 2020-003 State of Texas Cooperative Purchasing Program 87
   Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent

10. Report Regarding Interlocal Cooperative Agreement No. 2020-022 Region One ESC Local Assessment Fees for Special Service Projects 88
    Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

    Presenter: Dr. J. A. Gonzalez, Superintendent

11. Report Regarding Interlocal Cooperative Agreement No. 2020-002 Texas Association of School Board (TASB) Purchasing Cooperative Buyboard 90
    Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

    Presenter: Dr. J. A. Gonzalez, Superintendent

12. Report Regarding Interlocal Cooperative Agreement No. 2020-284 Region IV ESC Cooperative Purchasing Program 91
    Item Submitted: Cynthia Medrano Richards, Assistant Superintendent

    Presenter: Dr. J. A. Gonzalez, Superintendent

14. **CONSENT AGENDA ITEMS**

A) Approval of Request for Proposal No. 2023-1002 Family Treatment Counseling Program 92
   Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

   Presenter: Dr. J. A. Gonzalez, Superintendent

B) Approval of Request for Proposal No. 2021-1005 Professional Development, Site Licenses, Supplemental Materials, and Other Related Products and Services (Round 15) 94
   Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

   Presenter: Dr. J. A. Gonzalez, Superintendent

C) Approval of Interlocal Agreement No. 2023-039 University of Texas at Austin OnRamps Program 96
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

D) Approval of Second Amendment to the Amended and Restated Memorandum of Understanding 2020-274 Easter Seals Rio Grande Valley 116
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

E) Approval of Second Amendment to the Amended and Restated Memorandum of Understanding 2020-278 Rhema's Learning Center, LLC 132
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

F) Approval of Second Amendment to the Amended and Restated Memorandum of Understanding 2021-082 Kids Village Montessori, LLC 148
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

G) Approval of Second Amendment to the Amended Memorandum of Understanding 2020-273 ABC University Educare 164
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

H) Approval of Second Amendment to the Amended and Restated Memorandum of Understanding No. 2020-275 Tony's Playhouse Discovery Center, LLC 180
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

I) Approval of First Amendment to Memorandum of Understanding 2022-093 R. Barrera Group, LLC dba New Horizons Learning Academy 196
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

J) Approval of First Amendment to Memorandum of Understanding 2022-129 Adventureland Academy, LLC 206
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

K) Approval of First Amendment to Memorandum of Understanding 2022-131 Little Paradise Academy, LLC 216

Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

L) Approval of Addendum Two to Contract No. 2018-216 Agreement with Insight Public Sector Inc. for District-Wide eRate Firewall Project through Texas Department of Information Resources (DIR) 226
Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

M) Approval of Competitive Sealed Proposal No. 2023-1007 William B. Travis Middle School Re-Roof and Mechanical Upgrades Re-Bid 228
Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

N) Approval of Competitive Sealed Proposal No. 2022-1047 Homer J. Morris Middle School and Alonzo De Leon Middle School New Surveillance Camera System 297
Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

O) Approval of Competitive Sealed Proposal No. 2023-1006 McAllen Memorial High School Heating, Ventilation, and Air Conditioning ("HVAC") Improvements 366
Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

P) Approval of Competitive Sealed Proposal No. 2023-1008 Construction Manager at Risk Services McAllen High School, Memorial High School and James “Nikki” Rowe High School New Mariachi and Black Box Buildings 435
Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

Q) Approval of Contract No. 2022-194 Park Place Recreation Designs, Inc. 461
Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

R) Approval of Contract No. 2023-056 Noble Texas Builders LLC 477
Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

S) Approval of Contract No. 2023-057 Noble Texas Builders LLC 510
Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

T) Approval of Request for Proposal No. 2023-1004 Branding Rights for McAllen ISD's Game Day Athletic Uniforms 636
Item Submitted: Brian McClenny, Director Athletic Department

Presenter: Dr. J. A. Gonzalez, Superintendent

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

A) **Instructional Services Item(s)** (Dr. Rosalba De Hoyos) **Instructional Leadership Item(s)** (Bridgette Vieh)

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

1. Approval of Compensation Plan for School Year 2022-2023 759
Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

C) **District Operations Item(s)** (Adel Felix)

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

1. Approval of the McAllen Independent School District June Budget Amendment for Fiscal Year Beginning July 1, 2021 and Ending June 30, 2022 763
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

2. Approval and Adoption of the McAllen Independent School District Budget for Fiscal Year Beginning July 1, 2022 and Ending June 30, 2023 772
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

3. Approval of Resolution to Approve the Designated Officer Responsible for Calculating and Reporting the No-New-Revenue Tax Rate and the Voter-Approval Tax Rate 1012
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

4. Approval of Contract No. 2023-045 Walsh Gallegos Trevino Russo & Kyle P.C through RFP/Q 2023-1000 1015
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

5. Approval of Agreement No. 2023-048 Legal Consultation Agreement with O'Hanlon, Demerath & Castillo 1019
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 1022
   a) Board Workshop- March 7, 2022 - 5:30 P.M.
   b) Regular Board Meeting - May 9, 2022 - 5:00 P.M.
   c) Board Workshop - May 9, 2022 - 7:30 P.M. 1023
   d) Special Board Meeting - May 16, 2022 - 5:30 P.M.
   e) Special Board Meeting - May 18, 2022 5:00 P.M.
   f) Board Workshop - May 18, 2022 5:10 P.M.
   g) Regular Board Meeting - May 23, 2022 5:00 P.M.
   h) Board Workshop- May 24, 2022 5:30 P.M.
   i) Special Board Meeting - May 25, 2022 4:30 P.M.
   j) Special Board Meeting - June 3, 2022 6:30 P.M.
   k) Special Board Meeting - June 6, 2022 - 4:00 P.M.
   l) Board Workshop - June 6, 2022 - 5:30 P.M.

16. **SCHEDULE OF FUTURE MEETINGS**

A) Special Board Meeting - Monday, July 25, 2022 - 5:30 P.M. - Dr. Ricardo Chapa Board Room/Administration Building

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

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

19. **ADJOURNMENT**

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.

Pursuant to Texas Government Code 551.127, a member or employee of a governmental body is authorized to participate remotely in a meeting of the governmental body through a videoconference call, as long as a quorum of the governmental body is physically present at the location of the Board Meeting. Any video conference conducted pursuant to this section will comply with the technical requirements of this section.

Pursuant to Texas Government Code 551.129, the Board of Trustees may use a telephone conference call, video conference call, or communications over the internet to conduct a public consultation with its attorney in an open meeting of the governmental body, or, a private consultation with its attorney in closed meeting of the governmental body.

The notice for this meeting was posted in compliance with the Texas Open Meeting Act on June 10, 2022 at 1:00 P.M.
Natalia Goza
on behalf of the Board of Trustees

Public Hearing
June 13, 2022

2022-2023 Budget and Proposed 2022 Tax Rate

Cynthia Medrano-Richards, RTSBA, CPA
9
Assistant Superintendent for Business Operations

Board of Trustees

Debbie Crane Aliseda
Vice President

Conrado Alvarado
Trustee

Sam Saldivar, Jr.
Trustee

Tony Forina
President

10

Marco Suarez
Secretary

Sofia M. Peña
Trustee

Daniel D. Vela
Trustee

Administrative Staff

J. A. Gonzalez, Ed. D.
Superintendent

Bridgette Vieh
Associate Superintendent for Instructional Leadership

Cynthia Medrano Richards, RTSBA, CPA
Assistant Superintendent for Business Operations

Rosalba De Hoyos, Ed. D.
Assistant Superintendent for Instructional Services

Adel Felix, CPA, CFE
Interim Assistant Superintendent for District Operations

Todd Miller
Assistant Superintendent for Human Resources

Iris Luna, RTSBA
Chief Financial Officer

Vision

The McAllen Independent School District is a multicultural community in which students are enthusiastically and actively engaged in the learning process. Students demonstrate academic excellence in a safe, nurturing and challenging environment enhanced by technology and the contributions of the total community.

Mission

The mission of the McAllen Independent School District is to educate all students to become lifelong learners and productive citizens in a global society through a program of educational excellence utilizing technology and actively involving parents and the community.

Public Notice

NOTICE OF PUBLIC MEETING TO DISCUSS BUDGET AND PROPOSED TAX RATE

The MCALLEN ISD will hold a public meeting at 5:00 P.M, June 13, 2022 in Dr. Ricardo Chapa Board Room/ Administration Building, 2000 North 23rd Street, McAllen TX, 78501. **The purpose of this meeting is to discuss the school district's budget that will determine the tax rate that will be adopted. Public participation in the discussion is invited.**

The tax rate that is ultimately adopted at this meeting or at a separate meeting at a later date may not exceed the proposed rate shown below unless the district publishes a revised notice containing the same information and comparisons set out below and holds another public meeting to discuss the revised notice.

Visit Texas.gov/PropertyTaxes to find a link to your local property tax database on which you can easily access information regarding your property taxes, including information about proposed tax rates and scheduled public hearings of each entity that taxes your property.

Maintenance Tax	$1.0197/$100 (proposed rate for maintenance and operations)
School Debt Service Tax Approved by Local Voters	$0.0767/$100 (proposed rate to pay bonded indebtedness)

Comparison of Proposed Budget with Last Year's Budget

The applicable percentage increase or decrease (or difference) in the amount budgeted in the preceding fiscal year and the amount budgeted for the fiscal year that begins during the current tax year is indicated for each of the following expenditure categories.

Maintenance and operations	11.97 % increase
Debt Service	0.11 % increase
Total Expenditures	11.64 % increase

Total Appraised Value and Total Taxable Value

(as calculated under Section 26.04, Tax Code)

	Preceding Tax Year	Current Tax Year
Total appraised value* of all property	$10,097,835,049	$11,155,976,030
Total appraised value* of new property**	$69,146,646	$127,119,847
Total taxable value*** of all property	$8,227,795,767	$8,998,567,793
Total taxable value*** of new property**	$67,672,978	$121,739,696

*Appraised value is the amount shown on the appraisal roll and defined by Section 1.04(8), Tax Code.
** "New property" is defined by Section 26.012(17), Tax Code.
*** "Taxable value" is defined by Section 1.04(10), Tax Code.

Bonded Indebtedness

Total amount of outstanding and unpaid bonded indebtedness* $45,220,000

*Outstanding principal.

Comparison of Proposed Rates with Last Year's Rates

	Maintenance & Operations	Interest & Sinking Fund*	Total	Local Revenue Per Student	State Revenue Per Student
Last Year's Rate	$1.0486	$0.0884	$1.1370	$4,982	$5,972
Rate to Maintain Same Level of Maintenance & Operations Revenue & Pay Debt Service	$1.0509	$0.0776	$1.1285	$5,311	$5,608
Proposed Rate	$1.0197	$0.0767	$1.0964	$4,842	$5,841

*The Interest & Sinking Fund tax revenue is used to pay for bonded indebtedness on construction, equipment, or both. The bonds, and the tax rate necessary to pay those bonds, were approved by the voters of this district.

Comparison of Proposed Levy with Last Year's Levy on Average Residence

	Last Year	This Year
Average Market Value of Residences	$162,746	$198,662
Average Taxable Value of Residences	$137,746	$173,662
Last Year's Rate Versus Proposed Rate per $100 Value	$1.1370	$1.0964
Taxes Due on Average Residence	$1,566.17	$1,904.03
Increase (Decrease) in Taxes		$337.86

Under state law, the dollar amount of school taxes imposed on the residence homestead of a person 65 years of age or older or of the surviving spouse of such a person, if the surviving spouse was 55 years of age or older when the person died, may not be increased above the amount paid in the first year after the person turned 65, regardless of changes in tax rate or property value.

Notice of Voter-Approval Rate: The highest tax rate the district can adopt before requiring voter approval at an election is $1.0964. This election will be automatically held if the district adopts a rate in excess of the voter-approval rate of $1.0964.

Fund Balances

The following estimated balances will remain at the end of the current fiscal year and are not encumbered with or by a corresponding debt obligation, less estimated funds necessary for operating the district before receipt of the first state aid payment.

Maintenance and Operations Fund Balance(s)	$94,286,930
Interest & Sinking Fund Balance(s)	$2,511,869

A school district may not increase the district's maintenance and operations tax rate to create a surplus in maintenance and operations tax revenue for the purpose of paying the district's debt service.

Public Notice was published June 1, 2022.

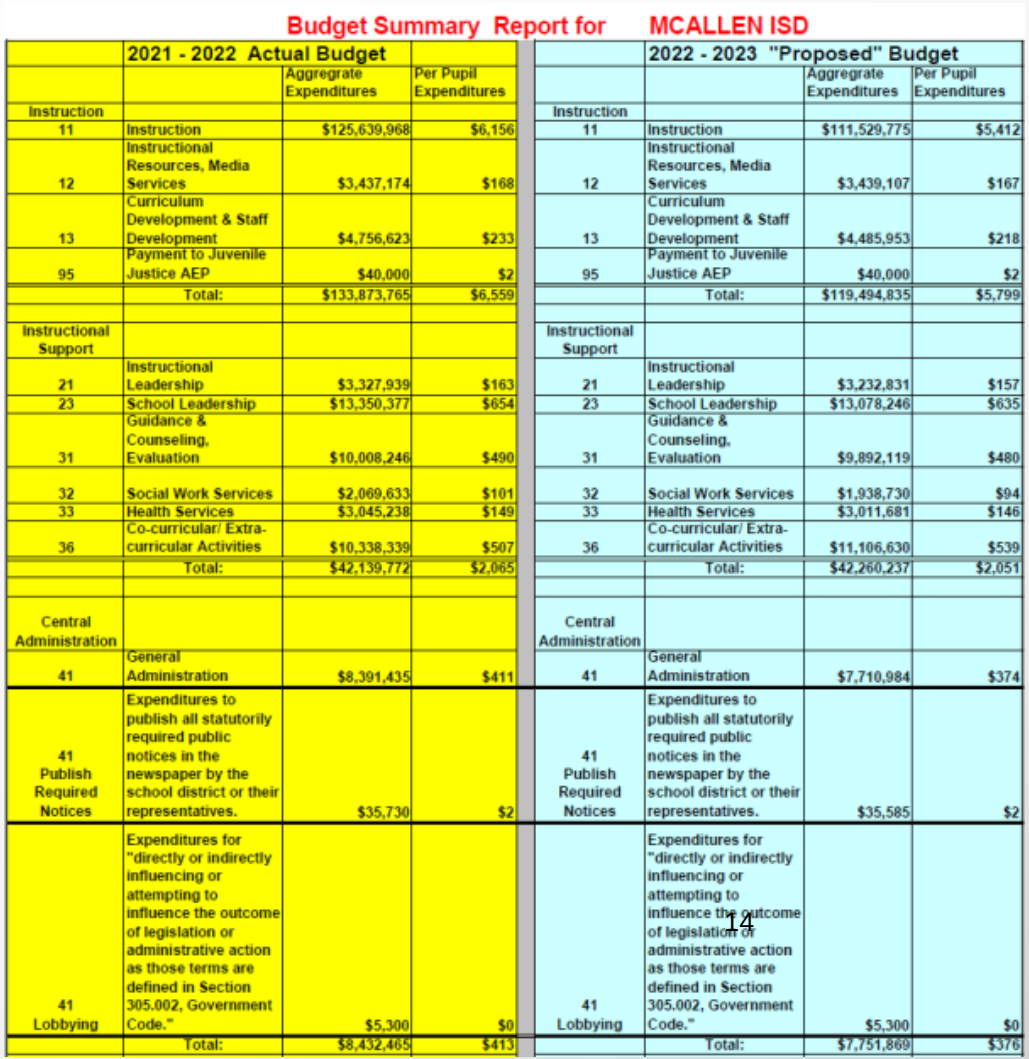
McAllen ISD Tax Rate History

	Budget Year	Tax Year	Maintenance & Operations	Interest & Sinking	Total Tax Rate
	2006-2007	2006	1.3700	0.1080	1.4780
	2007-2008	2007	1.0400	0.1050	1.1450
	2008-2009	2008	1.0400	0.1050	1.1450
	2009-2010	2009	1.0400	0.1250	1.1650
	2010-2011	2010	1.0400	0.1250	1.1650
	2011-2012	2011	1.1650	0.0000	1.1650
	2012-2013	2012	1.0400	0.1250	1.1650
	2013-2014	2013	1.0400	0.1250	1.1650
	2014-2015	2014	1.0400	0.1250	1.1650
	2015-2016	2015	1.0400	0.1150	1.1550
	2016-2017	2016	1.1550	0.0000	1.1550
	2017-2018	2017	1.1550	0.0000	1.1550
	2018-2019	2018	1.1550	0.0000	1.1550
	2019-2020	2019	1.0586	0.0942	1.1528
	2020-2021	2020	1.0450	0.0936	1.1386
	2021-2022	2021	1.0486	0.0884	1.1370
Proposed*	2022-2023	2022	1.0197	0.0767	1.0964

13

*Proposed 2022 Total Tax Rate decreased by $0.0406

Every penny generates approximately $828,966



Budget Summary Report for MCALLEN ISD

	2021 - 2022 Actual Budget				2022 - 2023 "Proposed" Budget			
		Aggregrate Expenditures	Per Pupil Expenditures			Aggregrate Expenditures	Per Pupil Expenditures
Instruction				Instruction			
11	Instruction	$125,639,968	$6,156	11	Instruction	$111,529,775	$5,412
12	Instructional Resources, Media Services	$3,437,174	$168	12	Instructional Resources, Media Services	$3,439,107	$167
13	Curriculum Development & Staff Development	$4,756,623	$233	13	Curriculum Development & Staff Development	$4,485,953	$218
95	Payment to Juvenile Justice AEP	$40,000	$2	95	Payment to Juvenile Justice AEP	$40,000	$2
	Total:	$133,873,765	$6,559		Total:	$119,494,835	$5,799
Instructional Support				Instructional Support			
21	Instructional Leadership	$3,327,939	$163	21	Instructional Leadership	$3,232,831	$157
23	School Leadership	$13,350,377	$654	23	School Leadership	$13,078,246	$635
31	Guidance & Counseling, Evaluation	$10,008,246	$490	31	Guidance & Counseling, Evaluation	$9,892,119	$480
32	Social Work Services	$2,069,633	$101	32	Social Work Services	$1,938,730	$94
33	Health Services	$3,045,238	$149	33	Health Services	$3,011,681	$146
36	Co-curricular/ Extra-curricular Activities	$10,338,339	$507	36	Co-curricular/ Extra-curricular Activities	$11,106,630	$539
	Total:	$42,139,772	$2,065		Total:	$42,260,237	$2,051
Central Administration				Central Administration			
41	General Administration	$8,391,435	$411	41	General Administration	$7,710,984	$374
41 Publish Required Notices	Expenditures to publish all statutorily required public notices in the newspaper by the school district or their representatives.	$35,730	$2	41 Publish Required Notices	Expenditures to publish all statutorily required public notices in the newspaper by the school district or their representatives.	$35,585	$2
41 Lobbying	Expenditures for "directly or indirectly influencing or attempting to influence the outcome of legislation or administrative action as those terms are defined in Section 305.002, Government Code."	$5,300	$0	41 Lobbying	Expenditures for "directly or indirectly influencing or attempting to influence the outcome of legislation or administrative action as those terms are defined in Section 305.002, Government Code."	$5,300	$0
	Total:	$8,432,465	$413		Total:	$7,751,869	$376

14

Budget Summary Report

Published on District Website.

District Operations			
51	Plant Maintenance & Operations	$26,609,681	$1,304
52	Security and Monitoring	$5,562,754	$273
53	Data Processing	$6,428,734	$315
34	Student Transportation	$4,800,442	$235
35	Food Services	$20,377,723	$998
	Total:	$63,779,334	$3,125
Debt Service			
71	Debt Service	$12,823,428	$628
Other			
61	Community Service	$97,327	$5
81	Facilities Acquisition and Construction	$26,899,033	$1,318
91	Contracted Instructional Services Between Public schools	$0	$0
92	Incremental Cost Associated with Chapter 41 School Districts	$0	$0
93	Payments to Fiscal Agents for Shared Service Arrangements	$0	$0
97	Payments to Tax Increment Funds	$0	$0
99	Inter-government charges not Defined in Other codes	$939,270	$46
	Total:	$27,935,630	$1,369

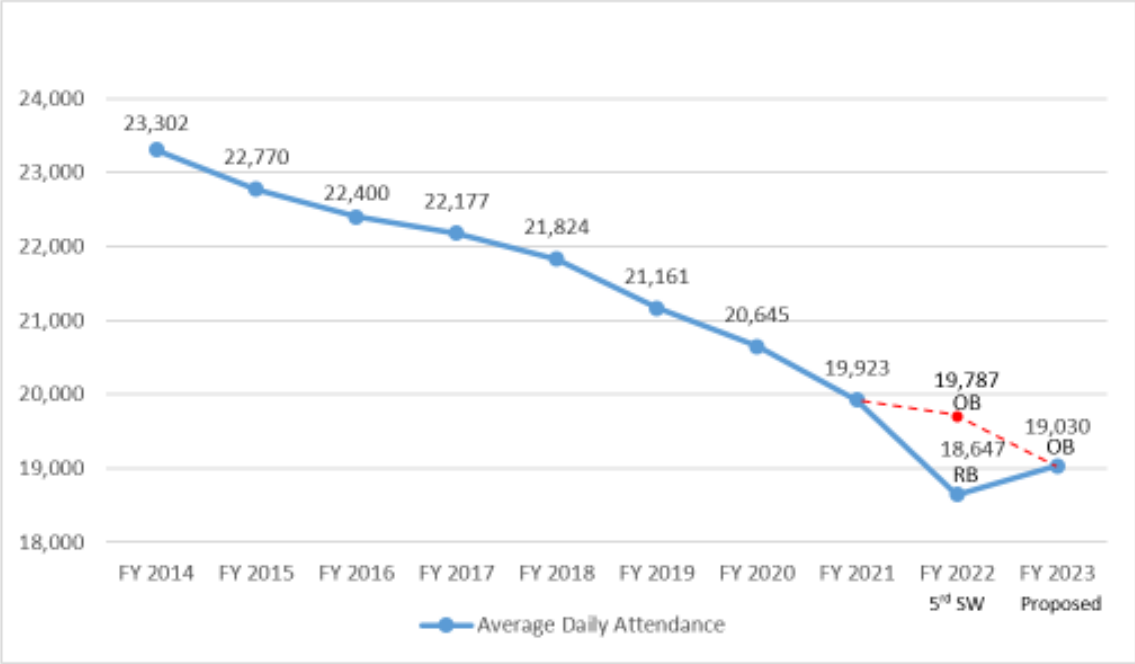
District Operations			
51	Plant Maintenance & Operations	$26,994,858	$1,310
52	Security and Monitoring	$4,787,045	$232
53	Data Processing	$4,866,183	$236
34	Student Transportation	$4,394,173	$213
35	Food Services	$19,375,000	$940
	Total:	$60,417,259	$2,932
Debt Service			
71	Debt Service	$13,078,294	$635
Other			
61	Community Service	$110,373	$5
81	Facilities Acquisition and Construction	$43,302,609	$2,101
91	Contracted Instructional Services Between Public schools	$0	$0
92	Incremental Cost Associated with Chapter 41 School Districts	$0	$0
93	Payments to Fiscal Agents for Shared Service Arrangements	$0	$0
97	Payments to Tax Increment Funds	$0	$0
99	Inter-government charges not Defined in Other codes	$965,919	$47
	Total:	$44,378,901	$2,154

15

Budget Summary Report – Cont.

Published on District Website.

Average Daily Attendance Trend



FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
(532)	(370)	(223)	(353)	(663)	(516)	(722)	(1276)	383
-2.28%	-1.62%	-1.00%	-1.59%	-3.04%	-2.44%	-3.50%	-6.40%	2.05%

16

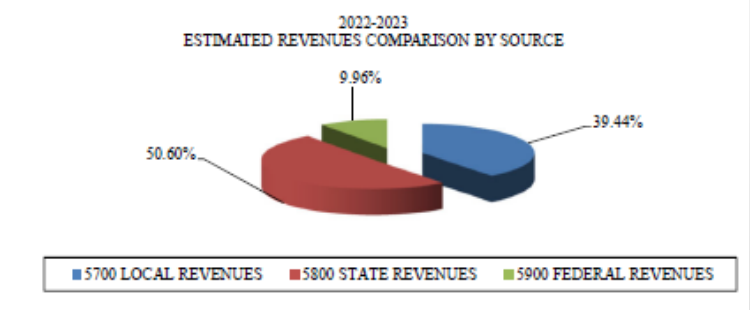
Original ADA Budget

FY 2023
(757)
-4.06%

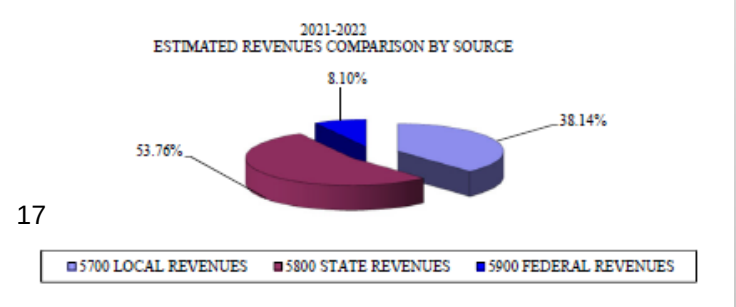
Two Year Budget Comparison of Revenues by Object Code
General, Debt Service and Capital Projects Funds

Revenue Code	Description	Percent of Total	Proposed Budget 2022-2023 07/01/2022	Revenues Per ADA	Percent of Total	Original Budget 2021-2022 07/01/2021	Revenues Per ADA
5700	LOCAL REVENUES	39.44%	$ 95,667,790	$ 5,027	38.14%	$ 94,742,312	$ 4,788
5800	STATE REVENUES	50.60%	122,747,887	6,450	53.76%	133,544,627	6,749
5900	FEDERAL REVENUES	9.96%	24,168,809	1,270	8.10%	20,132,664	1,017
	Total	100.00%	$ 242,584,486	$ 12,747	100.00%	$ 248,419,603	$ 12,554
7900	OTHER RESOURCES		12,500,000	657		-	-
	FUND BALANCE CONTRIBUTIONS						
	194 ESSER II - LOCAL		36,882,064	1938		-	-
	599 DEBT SERVICE FUND		-	-		-	-
	619 MISD MTN-2020		151,676	8		1,408,466	71
	620 MTN-2020		8,305,202	436		12,322,428	623
	697 UTRGV COLLEGIATE ACADEMY		-	-		-	-
	698 MISD CAPITAL PROJECTS		679,303	36		1,746,802	88
	Grand Total		$ 301,102,731	$ 15,822		$ 263,897,299	$ 13,336

Page 136



2022-2023 ADA 19,030



2021-2022 ADA 19,787

		Proposed Budget 2022-2023 07/01/2022	Original Budget 2021-2022 07/01/2021	Difference
GENERAL FUND				
101	FOOD SERVICE	$ 19,375,000	$ 17,265,197	$ 2,109,803
155	COLLEGE CAREER MILITARY READIN	935,906	1,072,555	(136,649)
156	EARLY EDUCATION ALLOTMENT	3,399,985	3,870,262	(470,277)
157	DYSLEXIA	1,025,517	893,904	131,613
158	SCHOOL SAFETY ALLOTMENT	188,753	202,284	(13,531)
162	CAREER TECHNICAL ED	7,902,349	8,306,181	(403,832)
163	ADV LEARNERS/G&T	414,119	721,333	(307,214)
164	BILINGUAL/ESL	2,420,039	2,526,296	(106,257)
173	SPECIAL EDUCATION	17,636,396	16,827,754	808,642
183	ATHLETICS	6,382,369	6,371,286	11,083
184	FINE ARTS	2,313,392	2,284,508	28,884
193	STATE COMPENSATORY	14,038,047	14,311,130	(273,083)
194	ESSER II - LOCAL	36,882,550	0	36,882,550
195	ADVERTISING	47,300	206,250	(158,950)
197	MAINTENANCE TAX NOTES	3,921,396	3,926,152	(4,756)
199	GENERAL FUND	141,048,896	162,652,697	(21,603,801)
		$ 257,932,014	$ 241,437,789	$ 16,494,225
DEBT SERVICE FUND				
599	DEBT SERVICE FUND	$ 6,813,200	$ 6,805,900	$ 7,300
		$ 6,813,200	$ 6,805,900	$ 7,300
CAPITAL PROJECTS FUND				
619	MISD MTN-2020	$ 151,676	$ 1,408,466	$ (1,256,790)
620	MTN-2020	8,305,202	12,322,428	(4,017,226)
697	UTRGV COLLEGIATE ACADEMY	12,500,000	0	12,500,000
698	MISD CAPITAL PROJECTS	1,679,303	1,746,802	(67,499)
		$ 22,636,181	$ 15,477,696	$ 7,158,485
	Sub-Total All Funds	$ 287,381,395	$ 263,721,385	$ 23,660,010
	Other Uses 8xxx	$ 12,500,000	85,000	12,415,000
	Total All Funds	$ 299,881,395	$ 263,806,385	$ 36,075,010

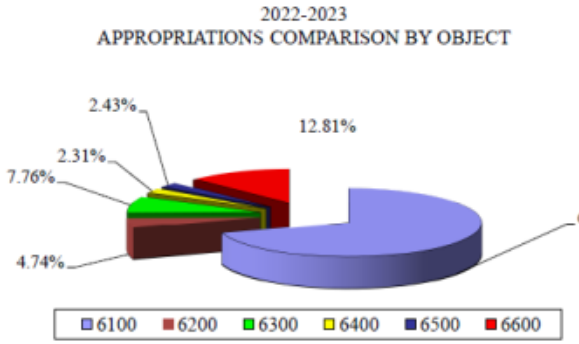
18

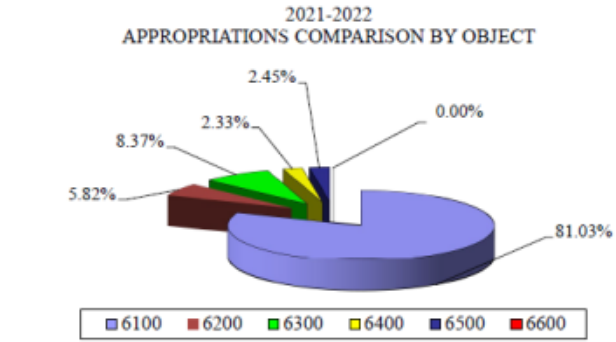
Appropriations – Budget Summary General, Debt Service and Capital Projects Funds

Two Year Budget Comparison of Appropriations by Object Code
General, Debt Service and Capital Projects Funds

MCALLEN INDEPENDENT SCHOOL DISTRICT

Object Code	Description	Percent of Total	Proposed Budget 2022-2023 07/01/2022	Percent of Total	Original Budget 2021-2022 07/01/2021
GENERAL FUND					
6100	PAYROLL COSTS	69.95%	$ 180,423,905	81.03%	$ 195,639,733
6200	PROF & CONTRACTED SERVICES	4.74%	12,220,930	5.82%	14,064,943
6300	SUPPLIES & MATERIALS	7.76%	20,024,736	8.37%	20,212,420
6400	OTHER OPERATING COSTS	2.31%	5,968,259	2.33%	5,615,542
6500	DEBT SERVICE	2.43%	6,265,094	2.45%	5,905,151
6600	CAPITAL OUTLAY	12.81%	33,029,090	0.00%	-
	Total	100.00%	$ 257,932,014	100.00%	$ 241,437,789
DEBT SERVICE FUND					
	599 DEBT SERVICE FUND		6,813,200		6,805,900
CAPITAL PROJECTS FUNDS					
	619 MISD MTN-2020		151,676		1,408,466
	620 MTN-2020		8,305,202		12,322,428
	697 UTRGV COLLEGIATE ACADEMY		12,500,000		-
	698 MISD CAPITAL PROJECTS		1,679,303		1,746,802
OTHER USES 8xxx			12,500,000		85,000
	Grand Total		$ 299,881,395		$ 263,806,385
Payroll Costs - Percent of Total less					
	*Non-Monetary On-Behalf	*80.49%		*80.13%	
	*Fund 194 ESSER II-LOCAL Fund Balance				





19

Appropriations by Function
2022-2023 Accelerated Instruction Funds

	State Compensatory Fund
11 - INSTRUCTION	89,385
12 - INSTRUCTIONAL RES & MEDIA SERV	-
13 - CURR DEV & INSTRUCTIONAL DEV	1,115
23 - SCHOOL LEADERSHIP	100
31 - COUNSEL AND EVALUATION	-
61 - COMMUNITY SERVICES	-
Total Appropriations	90,600

Page 146

2022-2023 Budget Summary
General, Debt Service and Capital Projects Funds

		General Fund	Debt Service Fund	Capital Projects Funds	Total All Funds
5700	LOCAL REVENUES	$ 87,854,590	$ 6,813,200	$ 1,000,000	$ 95,667,790
5800	STATE REVENUES	122,747,887		-	122,747,887
5900	FEDERAL REVENUES	24,168,809	-	-	24,168,809
7900	OTHER RESOURCES			12,500,000	12,500,000
FUND BALANCE CONTRIBUTIONS:					
194	ESSER II - LOCAL	36,882,064			36,882,064
599	DEBT SERVICE FUND	-	-	-	-
619	MISD MTN-2020	-	-	151,676	151,676
620	MTN-2020	-	-	8,305,202	8,305,202
697	UTRGV COLLEGIATE ACADEMY	-	-	-	-
698	MISD CAPITAL PROJECTS	-	-	679,303	679,303
	Total Revenues and Fund Balance	$ 271,653,350	$ 6,813,200	$ 22,636,181	$ 301,102,731

		General Fund	Debt Service Fund	Capital Projects Funds	Total All Funds
11	INSTRUCTION	$ 111,529,775	$ -	$ -	$ 111,529,775
12	INSTRUCTIONAL RES & MEDIA SERV	3,439,107	-	-	3,439,107
13	CURR DEV & INSTRUCTIONAL DEV	4,485,953	-	-	4,485,953
21	INSTRUCTIONAL LEADERSHIP	3,232,831	-	-	3,232,831
23	SCHOOL LEADERSHIP	13,078,246	-	-	13,078,246
31	GUIDANCE COUNSELING AND EVAL	9,892,119	-	-	9,892,119
32	SOCIAL WORK SERVICES	1,938,730	-	-	1,938,730
33	HEALTH SERVICES	3,011,681	-	-	3,011,681
34	STUDENT TRANSPORTATION	4,394,173	-	-	4,394,173
35	FOOD SERVICES	19,375,000	-	-	19,375,000
36	EXTRACURRICULAR ACTIVITIES	11,106,630	-	-	11,106,630
41	GENERAL ADMINISTRATION	7,751,869	-	-	7,751,869
51	FACILITIES MAINT & OPERATIONS	26,638,858	-	356,000	26,994,858
52	SECURITY AND MONITORING SERV	4,787,045	-	-	4,787,045
53	DATA PROCESSING SERVICES	4,866,183	-	-	4,866,183
61	COMMUNITY SERVICES	110,373	-	-	110,373
71	DEBT SERVICE	6,265,094	6,813,200	-	13,078,294
81	FACILITIES ACQ & CONSTRUCTION	21,022,428	-	22,280,181	43,302,609
95	PYMTS TO JUVENILE JUSTICE	40,000	-	-	40,000
99	OTHER INTERGOVT CHARGES	965,919	-	-	965,919
8900	OTHER USES	12,500,000	-	-	12,500,000
	Total Appropriations	$ 270,432,014	$ 6,813,200	$ 22,636,181	$ 299,881,395

Public Hearing Comments

McAllen ISD thanks you for your continued support!

22

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Human Resources Recommendation(s) for School Year 2022-2023

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

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

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

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

LEGAL REVIEW: Not Applicable

BUDGETARY CONSIDERATIONS:

Provided with individuals identified under separate cover.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve Human Resources recommendations for School Year 2022-2023.

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

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

Approved for presentation to the Board of Education:

Superintendent of Schools Jun 7, 2022

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Human Resources Employee Resignation(s) for School Year 2021-2022

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

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

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

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

LEGAL REVIEW: Not Applicable

BUDGETARY CONSIDERATIONS: Not Applicable

RECOMMENDED BOARD ACTION:

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

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

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

Approved for presentation to the Board of Education:

Superintendent of Schools Jun 7, 2022

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of the Principal for Dr. Rodney D. Cathey Middle School

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The position will be vacant as of June 14, 2022 upon retirement of Melvin Benford.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The vacancy notice was posted on May 27, 2022 and interviews were held on June 9, 2022. The interview committee made their recommendation to the Superintendent. Recommendation will be presented under separate cover.

LEGAL REVIEW: Not Applicable

BUDGETARY CONSIDERATIONS: This is a budgeted position.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the Superintendent's recommendation of the Principal for Dr. Rodney D. Cathey Middle School.

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

For further information contact:
Name: Todd Miller
Office: Human Resources (956) 618-6003
eMail: todd.miller@mcallenisd.net

Approved for presentation to the Board of Education:

J. Hinojosa

Superintendent of Schools Jun 7, 2022

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of the Assistant Superintendent for District Operations

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The position was vacant since Arely Benavides resigned effective February 11, 2022.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The vacancy notice was posted on May 12, 2022 and interviews were held on May 26, 2022. The interview committee made their recommendation to the Superintendent. Recommendation will be presented under separate cover.

LEGAL REVIEW: Not Applicable

BUDGETARY CONSIDERATIONS: This is a budgeted position.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the Superintendent's recommendation of the Assistant Superintendent for District Operations.

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

For further information contact:
Name: Todd Miller
Office: Human Resources (956) 618-6003
eMail: todd.miller@mcallenisd.net

Approved for presentation to the Board of Education:

J. Hinojosa

Superintendent of Schools Jun 7, 2022

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Monetary Donation from McAllen High School Class of 1971 to McAllen High School

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

In accordance with Board Policy CDC (Local), the Board may accept a gift on behalf of the District. All gifts shall be given to the District, and at the discretion of the Superintendent, the gift may be used for a specific program or campus. This donation does not meet the threshold that requires board approval; however, provided for donor recognition purposes.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The McAllen High School Class of 1971 has raised funds in the amount of $5,754.90 to apply toward the cost of a flag pole. Facilities Maintenance and Operations will oversee the purchase and installation of the flag pole.

LEGAL REVIEW:
None required.

BUDGETARY CONSIDERATIONS:

The total monetary donation from the McAllen High School Class of 1971 is $5,754.90.

RECOMMENDED BOARD ACTION:

For information purposes only. No board action required.

SUBMITTED BY: _____ **SUPERVISOR:** Adel Felix

For further information contact:
Name: Adel Felix
Office: 956-688-5445
Email: adelita.felix@mcallenisd.net

Approved for presentation to the Board of Education:

J. Hinojosa

Superintendent of Schools

McAllen ISD Donation Form

See consideration guidelines on previous page.

SECTION I:

Solicited ☐ Unsolicited ☑ Does donation alter facilities? Yes

Describe Property (Include mfg./model) or Cash Amount	Serial # (If applicable)	Quantity	Per Unit Value*	Total Amount
$5,754.90				$5,754.90

*Appraised Market Value. *Additional page can be added as needed.*

Please indicate specific purpose or instruction, if any: McAllen High School Flag Pole

Proposed installation method or source donated by: _____

Print Name of Donor: McHi Class of 1971 - Hilda DeShazo

Print Donor's Address, City, State, Zip: 2905 North 43rd Street, McAllen, TX 78501

McHi Class of '71 12.12.9.1258
Donor Signature

Wed. June 8, 2022
Date

SECTION II:

Department	Accepted	Rejected	Dept. Director Signature	Date
Department of Technology	☐	☐		
Department of Digital Learning and Libraries	☐	☐		
Facilities, Maintenance & Operations	☑	☐		
Child Nutrition	☐	☐		
Athletics	☐	☐		
Fine Arts	☐	☐		
Fixed Assets	☐	☐		

Rationale: _____

Special Requirements: _____

SECTION III: Final Acceptance (Required)

Signature of McAllen ISD Administrator/Campus Principal: _____

Department/Campus: District Ops.

Signature of Superintendent or Designee (if applicable): _____

Date: _____

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Monetary Donation from Ben Milam PTO to Ben Milam Elementary School

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

In accordance with Board Policy CDC (Local), the Board may accept a gift on behalf of the District. All gifts shall be given to the District, and at the discretion of the Superintendent, the gift may be used for a specific program or campus.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The Ben Milam PTO has raised funds in the amount of $50,445.96 to apply toward the cost of fence and lighting around the pavilion for aesthetic purposes. Facilities Maintenance and Operations will oversee the purchase and installation of the fence and lighting.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

The total monetary donation from the Ben Milam PTO is $50,445.96.

RECOMMENDED BOARD ACTION:

That the McAllen ISD School Board of Trustees approve the monetary donation of $50,445.96 from the Ben Milam PTO to Ben Milam Elementary School.

SUBMITTED BY: _____ **SUPERVISOR:** Adel Felix

For further information contact:
Name: Adel Felix
Office: 956-688-5445
Email: adelita.felix@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

McAllen ISD Donation Form

See consideration guidelines on previous page.

SECTION I:

Solicited ☐ Unsolicited ☑ Does donation alter facilities? Yes

Describe Property (Include mfg./model) or Cash Amount	Serial # (If applicable)	Quantity	Per Unit Value*	Total Amount
Lighting		15		$12,457
Fence				$37,988.96

*Appraised Market Value. *Additional page can be added as needed.*

Please indicate specific purpose or instruction, if any: Improve the lighting under the pavilion for school events and the new fence will replace the chain-linked fence on the east side of the campus.

Proposed installation method or source donated by: PTO is contracting Metro Electic, Inc. to install.

Print Name of Donor: Sarah Jones, Milam PTO President

Print Donor's Address, City, State, Zip: 1208 W. Iris McAllen, TX 78501

Sarah Jones
Donor Signature

6/8/22
Date

SECTION II:

Department	Accepted	Rejected	Dept. Director Signature	Date
Department of Technology	☐	☐		
Instructional Technology	☐	☐		
Facilities, Maintenance & Operations	☑	☐	[signature]	6-8-22
Child Nutrition	☐	☐		
Athletics	☐	☐		
Fine Arts	☐	☐		
Fixed Assets	☐	☐		

Rationale: _____

Special Requirements: _____

SECTION III: Final Acceptance (Required)

Signature of McAllen ISD Administrator/Campus Principal: _____

Department/Campus: _____

Signature of Superintendent or Designee (if applicable): _____

Date: _____

4

*Any donation made to the District becomes the Sole Property of the District.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Report Regarding Intent to Apply for Texas Collaborative for Science Innovation (TxCSI) Initiative

REFERENCE: Goal 1: Student Achievement / Student Focus; Strategy 3: Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The new TEKS for science curriculum will incorporate major changes to the way we have been teaching, and we want Texas school districts to feel empowered to lead forward into the upcoming changes. Funded by a grant from the Bill & Melinda Gates Foundation, the Texas Collaborative for Science Innovation (TxCSI) is a two-year learning initiative providing participating districts a sequence of cohort learning events, on-the-ground coaching and supports to transform science, teaching, learning, and curriculum.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
To transform science teaching, learning, and curriculum use through cohort learning and on the ground support made possible through a grant from the Bill and Melinda Gates Foundation. Focused on 6-8 grade science instruction and changing science TEKS.

LEGAL REVIEW:

N/A

BUDGETARY CONSIDERATIONS:

None, stipends available for Teachers through grant if awarded.

RECOMMENDED BOARD ACTION:

This item is for information purposes only.

SUBMITTED BY: Laura Williams (Jun 8, 2022 18:52 CDT) **SUPERVISOR:**

For further information contact:
Name: Laura Williams
Office: 956-657-6011
eMail: laura.williams@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

Texas Collaborative for Science Innovation

Report Regarding Intent to Apply for Texas Collaborative for Science Innovation (TxCSI) initiative

Board Meeting

June 13, 2022

Highlights of the Texas Collaborative for Science Innovation (TxCSI):

Key Dates:

- Two-year learning initiative
- Submitted interest form 5/19/22
- Registered for Kick-off meeting June 15 via ZOOM
- Application window June 3 – July 1, 2022
- If selected as core cohort member will attend in-person meeting September 8 & 9

Purpose:
To transform science teaching, learning, and curriculum use through cohort learning and on the ground support made possible through a grant from the Bill and Melinda Gates Foundation.

Focused on 6-8 grade science instruction and changing science TEKS

Select a Science leadership team to be a part of the cohort
Stipends available for Teachers

33

McAllen ISD will engage in the following:

- No-cost professional learning and leadership coaching
- Support for evaluating current, selecting new, and implementing high-quality instructional materials for science
- Support to build capacity to continuously improve instruction aligned to the new science TEKS
- Partnerships with other districts across the state
- Opportunities for additional grants
- Join a statewide movement for improved science curricular materials

Thank you.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Report Regarding Student Health Advisory Council (SHAC)

REFERENCE: Goal 1: Student Achievement/Student Focus; Strategy 6 Future-Ready Students

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

As per EHAA (LEGAL) - A board shall establish a local school health advisory council (SHAC) to assist a district in ensuring that local community values are reflected in the district's health education instruction. [Education Code 28.004(d-1) - see BDF (LEGAL) regarding composition of the SHAC and FFA (LEGAL & LOCAL) regarding federal wellness requirements]

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

This is a periodic report presented to the Board of Trustees.

LEGAL REVIEW:

None.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

Informational item only. No action required.

SUBMITTED BY: Alexandra Molina

SUPERVISOR:

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

Approved for presentation to the Board of Education:

Superintendent of Schools

MCALLEN INDEPENDENT SCHOOL DISTRICT

School Health Advisory Committee
2021-2022

SHAC

- Chair: Athletic Director
- Comprised of parents selected by principals, Board, volunteers
- Tasked with reviewing recommendations from Administration and giving recommendations to Administration on 10 components of School Health

SHAC

- Last meeting held in April 2019
- Recommendation is 3-4 meetings a year in a method easiest to engage parents.
- Using TEAMS on Wednesday evenings (limited activities) is method that will be utilized going forward.

SHAC & TDA

- Texas Department of Agriculture requires tri-annual assessment of FFA Local Wellness Plan.
- Due 2020 but due to pandemic waved until 6/30/2022
- FFA Local is board policy that addresses specific wellness components & requires measurable goals to promote:
  - Sound nutrition
  - Physical activity
  - Student health
  - Reduce childhood obesity
- FFA Wellness Plan addresses how district will meet these goals and is available on district website for community and parent information

FFA Local Wellness Plan

- Document with strike outs will be FFA Wellness Plan for 2022
  - Most were to maintain consistency in language
  - Use reports currently existing
  - Include all meal program offered
  - No changes to current campus operations
- Voted and approved by SHAC Committee at May Meeting
- Will be revisited tri-annually or more often if needed

WELLNESS PLAN

This document, referred to as the "wellness plan"(the plan), is intended to implement policy FFA(LOCAL), which has been adopted by the Board, to comply with the requirements for a school wellness policy. [Section 9A(a) of the National School Lunch Act (NSLA), 42 U.S.C. 1758b]

STRATEGIES TO SOLICIT INVOLVEMENT

Federal law requires that certain stakeholders be involved in the development, implementation, and periodic review and update of the wellness policy. The District has chosen to use the local school health advisory council (SHAC) to work on behalf of the District to review and consider evidence-based strategies and techniques in order to develop and implement nutrition guidelines, physical activity guidelines, and wellness goals as required by federal law. The SHAC will permit the following persons to work with the SHAC on the District's wellness policy and plan: parents, students, the District's food service provider, physical education teachers, school health professionals, Board members, administrators, and members of the public. The SHAC will solicit involvement and input of these other interested persons by posting on the District's website the dates and times of SHAC meetings at which the wellness policy and plan are scheduled to be discussed.

IMPLEMENTATION

Each campus principal is responsible for the implementation of FFA(LOCAL) and this wellness plan at his or her campus, including the submission of necessary information to the SHAC for evaluation.

The Athletic Director ~~Health and Physical Education Coordinator~~ is the District official responsible for the overall implementation of FFA(LOCAL), including the development of this wellness plan and any other appropriate administrative procedures, and ensuring that each campus complies with the policy and plan.

EVALUATION

In accordance with law, the District will periodically measure and make available to the public an assessment on the implementation of the District's wellness policy, the extent to which each campus is compliant with the wellness policy, a description of the progress made in attaining the goals of the wellness policy, and the extent to which the wellness policy compares with any state- or federally designated model wellness policies. Absent federal regulations to the contrary, the District commits to the evaluation activities described below.

At least tri-annually, the SHAC will prepare a report on the wellness policy and this plan by gathering information from each principal and appropriate District administrators. The SHAC will assess the District's and each campus's progress toward meeting the goals of the policy and plan by reviewing District- and campus-level activities and events tied to the wellness program.

The SHAC may use any of the following tools for that analysis:

- Relevant portions of the WellSAT 2.0 (www.wellsat.org)
- Relevant portions of the Center for Disease Control's School Health Index (http://www.cdc.gov/healthyschools/shi/index.htm)
- A District-developed self-assessment

PUBLIC NOTIFICATION

To comply with the legal requirement to inform and update the public about the content and implementation of the local wellness policy, the District will create a wellness page on its website to document information and activity related to the school wellness policy, including:

1. A copy of the wellness policy [FFA(LOCAL)];
2. A copy of this wellness plan, with dated revisions;
3. Notice of any Board revisions to policy FFA(LOCAL);
4. Notice of any SHAC meeting at which the wellness policy or corresponding documents are scheduled to be discussed;
5. The SHAC's annual report on the District's wellness policy and plan; and
6. Any other relevant information.

RECORDS RETENTION

Records regarding the District's wellness policy will be retained in accordance with law and the District's records management program.

GUIDELINES AND GOALS

The following provisions describe the District's nutrition guidelines and physical education activities and objectives chosen by the SHAC to implement the Board-adopted wellness goals in policy FFA(LOCAL).

NUTRITION

All District campuses participate in the United States Department

GUIDELINES

of Agriculture's (USDA's) child nutrition programs, including the National School Lunch Program (NSLP), School Breakfast Program (SBP) and the CACFP At-Risk Supper Program. Federal law requires that the District establish nutrition guidelines for foods made available on each campus that are consistent with the federal standards and that promote student health and reduce childhood obesity.

The District's nutrition guidelines are to ensure all foods and beverages sold or otherwise made available to students during the school day adhere to all federal regulations and guidance and are designed to promote student health and reduce childhood obesity.

FOODS SOLD

The District will comply with federal requirements for reimbursable meals. For other foods and beverages sold or offered to students during the school day, the District will comply with the federal requirements for competitive foods. The school day is defined federally as midnight to 30 minutes after the end of the instructional day. Competitive foods and beverages are not part of the regular meal programs and occur through sales such as a la carte options or vending machines. All foods sold to students during the school day must be procured through district food service provider with the exceptions of the 2 classroom celebration days, plain uncarbonated water and whole produce. For purposes of this plan, these requirements will be referred to as "Smart Snacks" standards or requirements. The following websites have information regarding meal and Smart Snacks requirements:

- http://www.fns.usda.gov/school-meals/nutrition-standardsschool-meals
- http://www.fns.usda.gov/healthierschoolday/tools-schools-focusing-smart-snacks
- http://www.squaremeals.org/

FUNDRAISERS

Fundraisers including foods and beverages must meet "Smart Snacks" standards requirements **with the exception of two (2) classroom celebration days during the instructional day and six (6) preapproved days occurring after the school day**. [See FJ(LOCAL)].

FOODS AVAILABLE There are currently no federal requirements for foods or beverages made available to students during the school day. The District will comply with state law, which allows a parent or grandparent to provide a food product of his or her choice to classmates of the person's child or grandchild on the occasion of the student's birthday or to children at a school-designated function. Campus administration is responsible for any necessary diet modifications due to medically prescribed special diets. [See CO(LEGAL)]

In addition, the District has established the following local guidelines on foods and beverages made available to students during the school day: Any foods and beverages given away or otherwise made available to students must meet the Smart Snacks standards and be procured through the district's food service provider with the exception of two (2) pre-approved classroom celebrations [see FFA(LOCAL)], plain uncarbonated water and whole fresh produce. Field trips and necessary medical modifications are exempted from this requirement.

MEASURING COMPLIANCE The District will measure compliance with the nutrition guidelines by reviewing meal reimbursement submissions from the child nutrition department to the TDA, reviewing foods and beverages that are sold in competition with the regular school meals, reviewing items sold as part of approved District fundraisers, and monitoring the types of foods and beverages made available to students during the school day.

NUTRITION PROMOTION Federal law requires that the District establish goals for nutrition promotion in its wellness policy. The District's nutrition promotion activities will encourage participation in the National School Lunch Program, the School Breakfast Program, CACFP At-Risk Supper Program, and any supplemental food and nutrition programs offered by the District.

In accordance with FFA(LOCAL), the District has established the following goals for nutrition promotion.

GOAL: The District's food service staff, teachers, and other District personnel shall consistently promote healthy nutrition messages in cafeterias, classrooms, and other appropriate settings.	
Objective 1: The District will increase knowledge at the campus level on meal programs offered on campus and menu offerings resulting in an increase participation in federal child nutrition programs by two percent by the end of each school year.	
Action Steps	**Methods for Measuring Implementation**
Distribute menus with nutrition education information and activities monthly to all campuses for incorporation into lesson plans and reinforce the importance of participation in district meal programs. District shall recognize School Breakfast Week and National School Lunch Week annually	Baseline or benchmark data points: • Participation rates in federal child nutrition programs monthly • Monthly Menus available on district website and printed at campuses • Board Proclamations recognizing NSLP in October and SBP in March Resources needed: • Monthly menus and monthly meal participation reports • Annual board proclamations

GOAL: The District shall share educational nutrition information with families and the general public to promote healthy nutrition choices and positively influence the health of students.	
Objective 1: Child Nutrition Program website will be updated monthly with nutrition information and recipes as well as nutrition information of menu items offered in schools.	
Action Steps	**Methods for Measuring Implementation**

Department website will be maintained with monthly newsletters, recipes, menu, and nutrition analysis of cycle menus.	Baseline or benchmark data points: • Monthly website updates • Visitor counts per pages Resources needed: • Website • Nutrition analysis & recipes
Objective 2: Child Nutrition Program will host annual events to showcase and solicit feedback on new food and beverages to be offered on menus.	
Action Steps Annually in October and throughout the year, a food show and food sampling will be held along with an overview of Federal nutrition guidelines, and a tour of central kitchen. Food and beverage manufacturers will be selected to attend as well campus student representatives, parents, administrators, and community partners.	**Methods for Measuring Implementation** Baseline or benchmark data points: • Feedback surveys and tabulations • Food taste testing and suggestion boxes are available in cafeterias for ongoing feedback. Resources needed: • Flyers and website updates • Invitations to manufacturers, campuses, parents, and community
Objective 3: Child Nutrition Program will participate in recognizing National School Lunch Week Proclamations in October and School breakfast Week Proclamations in March in conjunction with our Board of Directors to educate the community of the importance of Federally subsidized meal programs and the benefit to our students of no cost meal participation.	
Action Steps Annually during October and March, Child Nutrition Program will partner with TDA to showcase local products on menus and will work with Board of Director's on proclamations to ensure the community is aware of the importance of meal participation on learning outcomes.	**Methods for Measuring Implementation** Baseline or benchmark data points: • Board Proclamations Resources needed: • Flyers and website updates • Menus • Promotional activities at campuses

NUTRITION EDUCATION

Federal law requires that the District establish goals for nutrition education in its wellness policy. State law also requires that the District implement a coordinated health program with a nutrition services and health education component at the elementary and middle school levels. [See EHAA]

The District will implement the nutrition services and health education component through instruction of the essential knowledge and skills related to nutrition and health.

In accordance with FFA(LOCAL), the District has established the following goals for nutrition education.

GOAL: The District shall deliver nutrition education that fosters the adoption and maintenance of healthy eating behaviors.	
Objective 1: Child Nutrition Program will provide classroom resource materials and menu activities as part of their website to facilitate nutrition education.	
Action Steps	**Methods for Measuring Implementation**
Monthly Menus will be posted one week prior to start of the month on department website for dissemination to teachers and implementation into lesson planning. TEKS aligned nutrition education activities are also available on website for incorporation into lesson plans Teachers will have breakfast in the classroom at all elementary and middle school campuses and website resources shared at the beginning of the year and as needed during staff meetings at campus level.	Baseline or benchmark data points: • Agendas & Sign In Sheets Resources needed: • Website • Menus

GOAL: District staff will promote consumption of plain uncarbonated water throughout the school day.	
Action Steps	**Methods for Measuring Implementation**

Include in enrollment and registration materials that students are permitted to carry personally owned water bottles at all times and accessibility of water fountains throughout campuses.	Baseline or benchmark data points: • Documentation from the school nutrition department that water was available during meal periods, as required by federal standards, and campus communication that students were informed of water bottle being allowed on campus. Resources needed: • Easily accessible water fountains • Cups for students who do not have their own water bottles for consumption of water during meal periods

PHYSICAL ACTIVITY

The District will implement, in accordance with law, a coordinated health program with physical education and physical activity components and will offer at least the required amount of physical activity for all grades. [See BDF, EHAA, EHAB, and EHAC]

The District will meet the required physical activity in elementary school grades by providing at least 30 minutes per day or 45 minutes three days a week of physical education classes, weather permitting.

At the middle school level, the District will require students, unless exempted because of illness or disability, to be enrolled for a minimum of 45 minutes daily in physical education or athletics courses for at least four out of the six semesters in grades six, seven, and eight.

Federal law requires that the District establish goals for physical activity in its wellness policy.

In accordance with FFA(LOCAL), the District has established the following goals for physical activity.

GOAL: The District shall provide an environment that fosters safe, enjoyable, and developmentally appropriate fitness activities for all students, including those who are not participating in physical education classes or competitive sports.

Objective 1: Students participate in safe, enjoyable and developmentally appropriate fitness activities that improve their fitness levels	
Action Steps	**Methods for Measuring Implementation**
Use current McAllen ISD PE curriculum to support appropriate fitness activities daily for all students. Review current resources, supplies, and equipment at campuses to support fitness activities and encourage use of varied components to encourage student participation.	Baseline or benchmark data points: • Fitness assessments for all students • McAllen ISD curriculum writing and review team reviews annually curriculum and makes changes if needed to improve current fitness levels. Resources needed: • PE Curriculum • PE Equipment and supplies
Objective 2: District is in compliance with minutes requirements in physical education and allowances for student removal from physical activity/physical education	
Action Steps	**Methods for Measuring Implementation**
Master schedules ensure compliance with minute requirements Recess cannot be used to replace instructional minutes removed from physical education.	Baseline or benchmark data points: • Master schedules Resources needed: • • Skyward master schedules

Objective 3: District elementary campuses provide 20 minutes of recess before lunch. Recess or other forms of unstructured physical activity is highly encouraged at middle schools and high school levels.	
Action Steps	**Methods for Measuring Implementation**
Recess will be unstructured activity unrelated to required physical education requirements. Recess will not be used as a form of discipline or as a punishment. Elementary campuses with enrollment exceeding 850 students are exempt from before lunch requirements and can occur after lunch.	Baseline or benchmark data points: • • Campus Schedule Resources needed: • • Incorporation of recess time in campus schedule

GOAL: The District shall make appropriate before-school and after-school physical activity programs available and shall encourage students to participate.	
Objective 1: Before and after physical activity programs are available for students to participate in.	
Action Steps	**Methods for Measuring Implementation**
Partnerships will continue with City of McAllen Parks and Recreation and with McAllen Boys & Girls Clubs to use existing district facilities for afterschool physical activity programs Participation will be encouraged in community events such as Let's Move Pep Rally and McAllen Kid's Marathon, Elementary Cross Country meet annually.	Baseline or benchmark data points: • • Number of students participating in community programs, physical activity programs within school days. Resources needed: • Interlocal agreement with City of McAllen and McAllen Boys & Girls Clubs

GOAL: The District shall encourage students, parents, staff and community members to use the District's recreation facilities, such as tracks, playgrounds, and the like, that are available outside of the school day ([See GKD]	
Objective 1: Students, parents, staff and community will increase participation in the use of District's recreational facilities that are available outside of the school day	
Action Steps	**Methods for Measuring Implementation**
Partnerships will continue with City of McAllen Parks and Recreation, City of McAllen parks after school hours, and with McAllen Boys & Girls Clubs to use existing district facilities for afterschool physical activity programs Incorporate physical activity as part of Safe & Secure Programs	Baseline or benchmark data points: • Sign in sheets and data reporting of participants via team rosters, participation rates, registration forms Resources needed: • Interlocal agreement with City of McAllen and McAllen Boys & Girls Clubs

SCHOOL-BASED ACTIVITIES

Federal law requires that the District establish goals for other school-based activities in its wellness policy to promote student wellness.

In accordance with FFA(LOCAL), the District has established the following goal(s) as part of its student wellness policy to create an environment conducive to healthful eating and physical activity and to promote and express a consistent wellness message.

GOAL: The District shall allow sufficient time for students to eat meals in cafeteria facilities that are clean, safe, and comfortable.	
Objective 1: All campuses will build their master schedules to allow for at least ten minutes to eat breakfast and 20 minutes to eat lunch, from the time a student receives his or her meal and is seated.	
Action Steps	**Methods for Measuring Implementation**

Evaluate current meal time allowances by campus. Work with campus administrators to adjust master schedules as necessary.	Baseline or benchmark data points: Campus Schedule showing transition times and time for students to consume meals Resources needed: • Average time it takes for students to receive a meal and be seated

GOAL: The District shall promote wellness for students and their families at suitable District and campus activities.	
Objective 1: At each athletic event sponsored by the District at which food and beverages are sold, each concession vendor will offer at least one food or beverage that meets the Smart Snacks standards.	
Action Steps	**Methods for Measuring Implementation**
Communicate this objective with appropriate organizations and booster clubs responsible for concession sales in the district.	Baseline or benchmark data points: • Self-reports by administration whether this standard was met consistently during the year on the campus Resources needed: • A list of Smart Snacks compliant foods and beverages to distribute to organizations and booster clubs that are responsible for concession sales

Objective 2: Except for concession stands at extracurricular activities after the school day, all food and beverage items made available through fund-raising activity both on and off campus shall be required to meet USDA Smart Snack guidelines with the exception of six (6) pre-approved days in the instructional year and must occur after the end of the school day and on weekends.	
Action Steps	**Methods for Measuring Implementation**

Communicate this objective with appropriate student, parent, and booster organizations and clubs responsible for fundraising sales in the district annually.	Baseline or benchmark data points: • • Booster club and parent sponsor playbook (reference to board policy Resources needed: • Calendar developed by principal of all fundraising meeting 6 day requirement

GOAL: The District shall promote employee wellness activities and involvement at suitable District and campus activities.	
Objective 1: The District will prioritize employee wellness by providing annual flu clinic and immunization clinics to employees.	
Action Steps	**Methods for Measuring Implementation**
Annual immunization clinic will take place each fall to provide access to all employees. Develop materials to explain the program to employees.	Baseline or benchmark data points: • The number of employees who utilized this benefit Resources needed: • Cooperation of nurses, directors, and principals •
bjective 2: The District will utilize its health insurance provider to encourage well-ss by communicating the preventive services covered at 100 percent during each pen enrollment period and roughout the year	
Action Steps	**Methods for Measuring Implementation**

Work with the District's health insurance provider to determine what services are covered at 100 percent. Develop materials and identify methods to share information about services with employees.	Baseline or benchmark data points: • Documentation of when and how information was shared with employees. • General reports from health insurance provider showing use of services Resources needed: • A list of preventive services covered at 100 percent •

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Report Regarding Intent to Apply for Patrick Leahy Bulletproof Vest Partnership (BVP)

REFERENCE: Goal 1: Student Achievement / Student Focus; Strategy 3: Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Patrick Leahy Bulletproof Vest Partnership (BVP), created by the Bulletproof Vest Partnership Grant Act of 1998 is a unique U.S. Department of Justice initiative designed to provide a critical resource to state and local law enforcement.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

This grant can potentially help fund 50% of body armor vests for our McAllen ISD Police Department.

LEGAL REVIEW:

N/A

BUDGETARY CONSIDERATIONS:

Reimbursable at 50% of the cost of body armor vests purchased for law enforcement officers.

RECOMMENDED BOARD ACTION:

This item is for information purposes only.

SUBMITTED BY: Laura Williams (Jun 8, 2022 18:51 CDT) **SUPERVISOR:**

For further information contact:
Name: Laura Williams
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eMail: laura.williams@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

Report Regarding Intent to Apply for Patrick Leahy Bulletproof Vest Partnership (BVP)

Board Meeting

June 13, 2022

Highlights of the Patrick Leahy Bulletproof Vest Partnership (BVP):

Key Dates:

- Applications being accepted until June 27, 2022
- McAllen ISD can apply every year – usually in April
- Grant period 4/1/22 – 8/31/24

Purpose:

To reimburse states, counties, federally recognized tribes, cities, and local jurisdictions up to 50% of the cost of body armor vests purchased for law enforcement officers.

Since 1999, this program has awarded more than 13,000 jurisdictions a total of $548 million in federal funds for the purchase of over one million vests.

McAllen ISD will engage in the following:

- Must keep documentation to support the BVP vest application and payment requests for a period of at least three years
- McAllen ISD will have in place a uniquely fitted vest requirement
- McAllen ISD has in place a written mandatory wear policy for uniformed patrol officers on duty

Thank you.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Report Regarding Intent to Apply for Fiscal Year 2022 Community Oriented Policing Services (COPS) Hiring Program

REFERENCE: Goal 1: Student Achievement / Student Focus; Strategy 3: Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Fiscal Year 2022 COPS Hiring Program (CHP) is a competitive grant program designed to provide funding directly to law enforcement agencies to hire and/or rehire additional career law enforcement officers in an effort to increase their community policing capacity and crime prevention efforts.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

This program will further the COPS's Office goal of advancing public safety through community policing by funding additional full-time career law enforcement positions to meet law enforcement agencies' community policing strategies and crime prevention efforts.

LEGAL REVIEW:

N/A

BUDGETARY CONSIDERATIONS:

Funding will support three years of officer salary within a five-year period of performance to accommodate time needed for recruitment and hiring.

RECOMMENDED BOARD ACTION:

This item is for information purposes only.

SUBMITTED BY: Laura Williams (Jun 8, 2022 18:47 CDT)

SUPERVISOR:

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Approved for presentation to the Board of Education:

Superintendent of Schools

Report Regarding Intent to Apply for FY 2022 COPS Hiring Program

Board Meeting

June 13, 2022

Highlights of the FY 2022 COPS Hiring Program:

Key Dates:

- Grants.gov application deadline is June 9, 2022
- JustGrants application deadline is June 16, 2022
- Grant period start date 10/1/22
- 185 anticipated awards
- Anticipated maximum dollar amount of awards is $6,250,000

Purpose:

This program will further the COPS's Office goal of advancing public safety through community policing by funding additional full-time career law enforcement positions to meet law enforcement agencies' community policing strategies and crime prevention efforts.

Funding will support three years of officer salary within a five-year period of performance to accommodate time needed for recruitment and hiring.

64

Thank you.

Report Regarding Intent to Apply for FY 2022 COPS Hiring Program

Board Meeting

June 13, 2022

Highlights of the FY 2022 COPS Hiring Program:

Key Dates:

- Grants.gov application deadline is June 9, 2022
- JustGrants application deadline is June 16, 2022
- Grant period start date 10/1/22
- 185 anticipated awards
- Anticipated maximum dollar amount of awards is $6,250,000

Purpose:

This program will further the COPS's Office goal of advancing public safety through community policing by funding additional full-time career law enforcement positions to meet law enforcement agencies' community policing strategies and crime prevention efforts.

Funding will support three years of officer salary within a five-year period of performance to accommodate time needed for recruitment and hiring.

Thank you.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Report Regarding Intent to Apply for Preventing School Violence: Bureau of Justice Assistance (BJA) STOP School Violence Program

REFERENCE: Goal 1: Student Achievement / Student Focus; Strategy 3: Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA) offer opportunities for funding to prevent violence in a K-12 school setting. This program furthers the DOJ's mission by supporting and assisting in improving efforts to reduce violent crime in and around schools.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

This grant can potentially help prevent and reduce school violence.

LEGAL REVIEW:

N/A

BUDGETARY CONSIDERATIONS:

To be determined; up to $1,000,000.

RECOMMENDED BOARD ACTION:

This item is for information purposes only.

SUBMITTED BY: laura Williams (Jun 8, 2022 18:46 CDT)

SUPERVISOR:

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Approved for presentation to the Board of Education:

Superintendent of Schools

Report Regarding Intent to Apply for Patrick Leahy Bulletproof Vest Partnership (BVP)

Board Meeting

June 13, 2022

Highlights of the Patrick Leahy Bulletproof Vest Partnership (BVP):

Key Dates:

- Applications being accepted until June 27, 2022
- McAllen ISD can apply every year – usually in April
- Grant period 4/1/22 – 8/31/24

Purpose:

To reimburse states, counties, federally recognized tribes, cities, and local jurisdictions up to 50% of the cost of body armor vests purchased for law enforcement officers.

Since 1999, this program has awarded more than 13,000 jurisdictions a total of $548 million in federal funds for the purchase of over one million vests.

McAllen ISD will engage in the following:

- Must keep documentation to support the BVP vest application and payment requests for a period of at least three years
- McAllen ISD will have in place a uniquely fitted vest requirement
- McAllen ISD has in place a written mandatory wear policy for uniformed patrol officers on duty

Thank you.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Report Regarding Intent to Apply for Fiscal Year 2022 Implementing Crisis Intervention Teams – Community Policing Development (CPD) Solicitation

REFERENCE: Goal 1: Student Achievement / Student Focus; Strategy 3: Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Through the decades, law enforcement has made significant improvements in its responses to people experiencing mental health crises through the development of various models of crisis intervention team (CIT) training, crisis triage centers, co-response teams, and embedded mental health and behavioral services. The evolution of these approaches has improved the safety of law enforcement and people in crisis. It has also resulted in the deflection of individuals with mental health needs away from the criminal justice system and toward the services and care they need.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

This grant can potentially provide funding to support the implementation of crisis intervention teams, including embedding behavioral or mental health professionals with law enforcement agencies, training for law enforcement officers and embedded behavioral or mental health professionals in crisis intervention response, or a combination of these.

LEGAL REVIEW:

N/A

BUDGETARY CONSIDERATIONS:

Max of $350,000 per award for a grant period of 24 months.

RECOMMENDED BOARD ACTION:

This item is for information purposes only.

SUBMITTED BY: Laura Williams (Jun 8, 2022 18:42 CDT) **SUPERVISOR:**

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Approved for presentation to the Board of Education:

Superintendent of Schools

Report Regarding Intent to Apply for FY22 Implementing Crisis Intervention Teams – Community Policing Development Solicitation

Board Meeting

June 13, 2022

Highlights of the FY22 Implementing Crisis Intervention Teams – Community Policing Development Solicitation:

Key Dates:

- Grants.gov application deadline is June 21, 2022
- JustGrants application deadline is June 23, 2022
- Grant start date 9/1/22
- Grant period 24 months – max of $350,000 per award
- No local match

Purpose:

To create or expand the use of crisis intervention teams to embed mental and behavioral health services with law enforcement agencies to better respond to individuals in crisis in the community.

Thank you.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Report Regarding Intent to Apply for Fiscal Year 2022 School Violence Prevention Program (SVPP)

REFERENCE: Goal 1: Student Achievement / Student Focus; Strategy 3: Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Students, Teachers, and Officers Preventing School Violence Act of 2018 (STOP School Violence Act of 2018) gave the COPS Office authority to provide awards directly to States, units of local government, or Indian tribes to improve security at schools and on school grounds in the jurisdiction of the grantee through evidence-based school safety programs and technology.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The SVPP funding will provide up to 75% funding for the school safety measures in and around K-12 (primary and secondary) schools and school grounds.

LEGAL REVIEW:

N/A

BUDGETARY CONSIDERATIONS:

To be determined.

RECOMMENDED BOARD ACTION:

This item is for information purposes only.

SUBMITTED BY: Laura Williams (Jun 8, 2022 18:43 CDT)

SUPERVISOR:

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Approved for presentation to the Board of Education:

Superintendent of Schools

Report Regarding Intent to Apply for FY 2022 School Violence Prevention Program (SVPP)

Board Meeting

June 13, 2022

Highlights of the FY 2022 School Violence Prevention Program:

Key Dates:

- Grants.gov application deadline is June 14, 2022
- JustGrants application deadline is June 21, 2022
- Grant period starts 10/1/22
- Performance period is 36 months
- Anticipated number of awards: 160
- Anticipated Maximum dollar amount of awards is $500,000

Purpose:

To improve security at schools and on school grounds through the implementation of evidence-based school safety program and technology.

Funding is available in the following areas:

- Coordination of local law enforcement
- Training for local law enforcement officers to prevent student violence against others and self
- Placement and use of metal detectors, locks, lighting, and other deterrent measures
- Acquisition and installation of technology of expedited notification of local law enforcement during an emergency
- Any other measure that, in the determination of the COPS Office Director, may provide a significant improvement in security

- If awarded funding, McAllen ISD must conduct a comprehensive school safety assessment during the grant period for all schools involved in the project.

- 25% Match

Thank you.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Report Regarding Intent to Apply for STOP THE BLEED Grant Kit Program

REFERENCE: Goal 1: Student Achievement / Student Focus; Strategy 3: Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

STOP THE BLEED® is a national campaign to encourage bystanders to become trained, equipped and empowered to help in a bleeding emergency before professional help arrives. Launched as a White House initiative, it is sponsored by a wide scale public-private partnership involving the US Department of Defense, the US Department of Homeland Security, the American College of Surgeons, the American Red Cross, the Stop the Bleed Coalition and many other prominent organizations.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

This grant can potentially help fund the kit that can be used to teach the hands on, American College of Surgeons, STOP THE BLEED course and other Department of Defense approved STOP THE BLEED courses.

LEGAL REVIEW:

N/A

BUDGETARY CONSIDERATIONS:

$1,000 value for the STOP THE BLEED training kit.

RECOMMENDED BOARD ACTION:

This item is for information purposes only.

SUBMITTED BY: Laura Williams (Jun 8, 2022 18:49 CDT)

SUPERVISOR:

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Approved for presentation to the Board of Education:

Superintendent of Schools

Report Regarding Intent to Apply for STOP THE BLEED Grant Kit Program

Board Meeting
June 13, 2022

Highlights of STOP THE BLEED training kit grant program:

Key Dates:

- McAllen ISD applied May 26, 2022
- Applications being accepted until May 31, 2022
- $1,000 value for the STOP THE BLEED training kit

Purpose:

To train 200 million people across the nation in the years ahead.

The kits can be used to teach the hands on, American College of Surgeons, STOP THE BLEED course and other Department of Defense approved STOP THE BLEED courses.

Components of the STOP THE BLEED training kit:

STOP THE BLEED Instructional booklets
Blue training C-A-T tourniquets
QuickClot Combat Gauze Moulage Trainers
Z-Medica Trauma Trainer legs (2)
Protective gloves

Thank you.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Report Regarding Interlocal Cooperative Agreement No. 2020-003 State of Texas Cooperative Purchasing Program

REFERENCE: Goal 4 - Financial Priorities; Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The State of Texas Cooperative Purchasing Program ("Agency") is a customized electronic purchasing system which is administered through the Local Government Purchasing Cooperative. The Agency was created in accordance with Section 791.001 of the Texas Government Code. Its purpose is to provide efficiencies for members of a cooperative, to comply with state bidding requirements, and to identify qualified vendors of commodities, goods, and services.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District utilizes the contracts available through purchasing cooperatives as an additional resource for the acquisition of goods and services for students and staff on an as-needed basis. Additionally, in accordance with Texas Education Code, Chapter 44, Section 44.0331 - Management Fees Under Certain Cooperative Purchasing Contracts, a school district is required to report fees, including management fees, paid by or to the District through Interlocal Cooperative Agreements, if any.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

The McAllen Independent School District pays an annual fee of $100.00 for membership, using budgeted funds.

RECOMMENDED BOARD ACTION:

This item is for informational purposes.

Alejandra Gonzalez
SUBMITTED BY: _____

Cynthia Medrano-Richards
SUPERVISOR: _____

For further information contact:
Name: Alejandra Gonzalez
Office: 956-657-4480
email: alejandra.gonzalez@mcallenisd.net

Approved for presentation to the Board of Education:

J. Hinojosa

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Report Regarding Interlocal Cooperative Agreement No. 2020-022 Region One ESC Local Assessment Fees for Special Service Projects

REFERENCE: Goal 4 - Financial Priorities; Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Region One ESC Local Assessment Fees for Special Service Projects is a customized electronic purchasing system which is administered through the Local Government Purchasing Cooperative ("Agency"). The Agency was created in accordance with Section 791.001 of the Texas Government Code. Its purpose is to provide efficiencies for members of a cooperative, to comply with state bidding requirements, and to identify qualified vendors of commodities, goods, and services. McAllen Independent School District ("District") benefits from the Purchasing Cooperatives as additional resources.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District utilizes the contracts available through purchasing cooperatives as an additional resource for the acquisition of goods and services for students and staff on an as-needed basis. Additionally, in accordance with Texas Education Code, Chapter 44, Section 44.0331 - Management Fees Under Certain Cooperative Purchasing Contracts, a school district is required to report the fees paid for purchases through Interlocal Cooperative Agreements, if any. The membership fees charged by Region One cover administrative costs to provide support for Districts through workshops, special projects, and other staff development resources.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

The District paid $24,099.51 in membership fees for the 2021-2022 school year, using budgeted funds.

RECOMMENDED BOARD ACTION:

This item is for informational purposes.

Alejandra Gonzalez
SUBMITTED BY: _____

Cynthia Medrano-Richards
SUPERVISOR: _____

For further information contact:
Name: Alejandra Gonzalez
Office: 956-657-4480
email: alejandra.gonzalez@mcallenisd.net

Approved for presentation to the Board of Education:

_____
Superintendent of Schools

Local Assessment Fee for Special Service Projects
Commitment Form
2021-2022 School Year

McAllen Independent School District
School District Name

Purchase Order #

1. Total Refined ADA:
   (For 2020-2021 school year) 20,251.69

2. Rate per ADA: $1.19

3. District's Fund Commitment: $24,099.51

Signature of Superintendent

Mar 22, 2022
Date

Dr. Jose A. Gonzalez
Typed Name of Superintendent

Please return the Commitment Form and Purchase Order by **March 31, 2022** to:

Dr. Judith M. Solis, Interim Executive Director
Region One Education Service Center
1900 West Schunior
Edinburg, Texas 78541

For Office Use Only
Account # 16120016400000 R572910

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Report Regarding Interlocal Cooperative Agreement No. 2020-002 Texas Association of School Board (TASB) Purchasing Cooperative Buyboard

REFERENCE: Goal 4 - Financial Priorities; Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Texas Association of School Board (TASB) Buyboard is a customized electronic purchasing system which is administered through the Local Government Purchasing Cooperative ("Agency"). The Agency was created in accordance with Section 791.001 of the Texas Government Code. Its purpose is to provide efficiencies for members of a cooperative, to comply with state bidding requirements, and to identify qualified vendors of commodities, goods, and services. Membership is free and the McAllen Independent School District ("District") benefits from the Purchasing Cooperatives as additonal resources.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District utilizes the contracts available through Purchasing Cooperatives as an additional resource for the acquisition of goods and services for students and staff on an as-needed basis. Additionally, in accordance with Texas Education Code, Chapter 44, Section 44.0331 - Management Fees Under Certain Cooperative Purchasing Contracts, a school district is required to report fees, including management fees, paid by or to the District through Interlocal Cooperative Agreements, if any.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

The District recieved $87,676.00 last year in rebates through Buyboard.

RECOMMENDED BOARD ACTION:

This item is for informational purposes.

Alejandra Gonzalez
SUBMITTED BY: _____

Cynthia Medrano-Richards
SUPERVISOR: _____

For further information contact:
Name: Alejandra Gonzalez
Office: 956-657-4480
email: alejandra.gonzalez@mcallenisd.net

Approved for presentation to the Board of Education:

J. Hinojosa
_____
Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Report Regarding Interlocal Cooperative Agreement No. 2020-284 Region IV ESC Cooperative Purchasing Program

REFERENCE: Goal 4 - Financial Priorities; Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Region IV ESC Cooperative Purchasing Program ("Agency") is a customized electronic purchasing system which is administered through the Local Government Purchasing Cooperative. The Agency was created in accordance with Section 791.001 of the Texas Government Code. Its purpose is to provide efficiencies for members of a cooperative, to comply with state bidding requirements, and to identify qualified vendors of commodities, goods, and services. Membership is free and the McAllen Independent School District ("District") benefits from the Purchasing Cooperatives as additonal resources.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District utilizes the contracts available through Purchasing Cooperatives as an additional resource for the acquisition of goods and services for students and staff on an as-needed basis. Additionally, in accordance with Texas Education Code, Chapter 44, Section 44.0331 - Management Fees Under Certain Cooperative Purchasing Contracts, a school district is required to report fees, including management fees, paid by or to the District through Interlocal Cooperative Agreements, if any.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

The District recieved $24,483.00 last year in rebates through Region IV ESC Cooperative Purchasing Program.

RECOMMENDED BOARD ACTION:

This item is for informational purposes.

Alejandra Gonzalez
SUBMITTED BY: _____

Cynthia Medrano-Richards
SUPERVISOR: _____

For further information contact:
Name: Alejandra Gonzalez
Office: 956-657-4480
email: alejandra.gonzalez@mcallenisd.net

Approved for presentation to the Board of Education:

J. Hinojosa

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Request for Proposal No. 2023-1002 Family Treatment Counseling Program

REFERENCE: Goal 1 - Student Achievement/Student Focus; Strategy 3 - Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District ("District")solicited proposals for family treatment counseling program services. The program's goal is to increase access to mental health services for students and families.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Ninety-two (92) vendors were invited to submit proposals, and two (2) vendors responded, including one (1) non-responsive. On June 2, 2022, the evaluation committee comprised of Norma Cabrera, Director of College, Career, and Counseling; Adrian Garza, Family Treatment Program Manager; Alejandra Gonzalez, Director of Purchasing; Elizabeth Cabrera, Coordinator for Purchasing Services; and Sandra Pulido, Buyer, met to evaluate the proposals. Administration recommends that the Board of Trustees approve this Request for Proposal and award Mesquite Treatment Center, LLC for a primary term of three (3) years, with the option to renew for two (2) additional one (1) year terms.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

The District will not incur any cost for the services. Mesquite Treatment Center, LLC will bill Medicaid, as well as private insurance for their services. If a family does not have Medicaid or private insurance, Mesquite Treatment Center, LLC will conduct pro bono work for continuity of care.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the Request for Proposal No. 2023-1002 Family Treatment Counseling Program and award Mesquite Treatment Center, LLC for a primary term of three (3) years, through June 20, 2025, with the option to renew for two (2) additional one (1) year terms.

SUBMITTED BY: Norma Cabrera (Jun 3, 2022 11:06 CDT)

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Norma Cabrera
Office: 956-618-6098
email: norma.cabrera@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

Attachment A

2023-1002 RFP - Family Treatment Counseling Program

No	Criteria	Max. Pts. 100	Mesquite Treatment Center LLC
	Total Points	**100**	**99**
	Ranking		**1**
1	**Price**	**0**	0
	N/A		
2	**Reputation of the vendor and of the vendor's goods or services;**	**30**	30
	Reference Checks		30
	10 pts per excellent reference		*3 out of 3*
3	**The quality of the vendor's goods or services**	**15**	15
	Number of years with the firm (Staff) (LI # 2.3, 2.18, 2.33)	5	5
	Number of years in the industry (Staff) (LI # 2.4, 2.19, 2.34)	5	5
	Certificate/License (Staff) (LI # 2.5, 2.20, 2.35)	5	5
4	**The extent to which the goods or services meet District's needs**	**48**	48
	Years of experience in substance use education (LI # 2.7, 2.22, 2.37)	6	6
	Years of experience in substance use counseling (LI # 2.8, 2.23, 2.38)	6	6
	Years of experience in cognitive behaviora therapy/skills training (LI # 2.9, 2.24, 2.39)	6	6
	Years of experience in anger management (LI # 2.10, 2.25, 2.40)	6	6
	Years of experience in self-esteem/communication (LI # 2.11, 2.26, 2.41)	6	6
	Years of experience in listening skills training (LI # 2.12, 2.27, 2.42)	6	6
	Years of experience in coping skills (LI # 2.13, 2.28, 2.43)	6	6
	Years of experience in other relevant topics (LI # 2.14, 2.29, 2.44)	6	6
5	**Past Relationship with District**	**1**	**1**
	Past experience = 1; No experience/Negative experience = 0 (LI # 4)		*Yes*
6	**HUB**	**1**	0
	Yes = 1; No = 0. (Attribute # 3.3)		*No*
7	**Total long-term cost to the district to acquire the vendor's goods or services**	**0**	0
	N/A		
8	**Vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state**	**0**	0
	N/A		
9	**Any other relevant factor specifically listed in the request for bids or proposals.**	**5**	5
	Implementation Plan (LI # 1)	3	3
	Recreational Activites (LI # 3)	2	2

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Request for Proposal No. 2021-1005 Professional Development, Site Licenses, Supplemental Materials, and Other Related Products and Services (Round 15)

REFERENCE: Goal 1 - Student Achievement/Student Focus; Strategy 3 - Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

This Request for Proposal ("RFP") is an extended response-period, multiple award contract, solicited in accordance with FASRG, section 5.16 titled "Multiple/Catalog/Discount-from-List Contract Awards". This allows vendors to submit responses throughout the year through the contract term. Vendors are awarded on an incremental basis, upon the Board of Trustees ("Board") approval. The Board previously awarded this RFP on May 10, 2021, June 14, 2021, August 9, 2021, August 30, 2021, September 13, 2021, October 25, 2021, December 13, 2021, January 24, 2022, February 28, 2022, March 21, 2022, April 25, 2022 and May 23, 2022. Two hundred forty (240) vendors were previously awarded through this RFP.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Two thousand thirty-nine (2,039) vendors were invited to submit responses, and sixteen (16) vendors responded, including seven (7) no bid. The evaluation committee, comprised of Rosalba De Hoyos, Assistant Superintendent for Instructional Services; Alejandra Gonzalez, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Sandra Pulido, Buyer, evaluated the proposals. Administration is recommending that the nine (9) vendors listed on the attached list, be awarded, for a total of two hundred forty-nine (249) vendors.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

Funds for these purchases are budgeted through local, state, federal, and grant funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2021-1005 Professional Development, Site Licenses, Supplemental Materials, and Other Related Products and Services (Round 15) and award vendors on the attached list, for a coterminous term through June 30, 2024.

Alejandra Gonzalez
SUBMITTED BY: _____

Rosalba De Hoyos
SUPERVISOR: _____

For further information contact:
Name: Alejandra Gonzalez
Office: 956-657-4480
Email: alejandra.gonzalez@mcallenisd.net

Approved for presentation to the Board of Education:

_____
Superintendent of Schools

2021-1005

RFP – Professional Development, Site Licenses, Supplemental Materials, and Other Related Products and Services (Round 15)

No.	Responding Supplier	City	State	Recommendation
1	1st Class Educator	St. Louis	MO	Qualified
2	CS Educational Services LLC dba thinkLaw	Las Vegas	NV	Qualified
3	Forming Lives, Inc dba Hope Rising SEL	Norman	OK	Qualified
4	Macmillan Holdings LLC; Bedford, Freeman & Worth Publishing Group LLC (Disregarded Entity)	New York	NY	Qualified
5	Mark McLeod dba McLeod Consulting	Purvis	MS	Qualified
6	Mountain Math/Language	Ogden	UT	Qualified
7	The W. Oscar Neuhaus Memorial Foundation dba Neuhaus Education Center	Bellaire	TX	Qualified
8	UpRiver Education	Exeter	NH	Qualified
9	Zaner-Bloser, Inc.	Columbus	OH	Qualified

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Interlocal Cooperative Agreement No. 2023-039 University of Texas at Austin OnRamps Program

REFERENCE: Goal 1 - Student Achievement/Student Focus, Strategy 6 - Future-Ready Students

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The University of Texas at Austin ("UT") OnRamps Program is a cooperative program of dual enrollment courses between UT and McAllen ISD ("District"). OnRamps involves high school teacher training and professional learning; and allows high school students to earn high school credit and college credit from UT. OnRamps is a year-long course taught by high school teachers and utilizes OnRamps curriculum, pedagogy, and online learning tools developed by UT. During the "ramp-up" period, students complete assignments and summative assessments designed and evaluated by UT faculty.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

To continue in the support of college readiness and success, McAllen, Memorial, and Rowe High Schools are requesting to expand course offerings for UT College Credit.

LEGAL REVIEW:

The Interlocal Cooperative Contract has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

Funds for this program are budgeted through the High School Allotment and General Fund. The cost is $149 per student ($99 for economically disadvantaged); and professional development on a per-teacher basis rate of $850 for teachers implementing a course for the first year or after an absence of more than one year and $550 for teachers implementing the same course for two or more consecutive years. Totals expenses depend on the number of students enrolled.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Interlocal Cooperative Agreement No. 2023-039 University of Texas at Austin OnRamps Dual Enrollment Program using budgeted funds, through August 31, 2023.

SUBMITTED BY: Karen Nitsch(Adv Academics) **SUPERVISOR:** Rosalba De Hoyos

For further information contact:
Name: Karen B. Nitsch
Office: 956-618-6059
eMail: karen.nitsch@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

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Interlocal Agreement
Between
The University of Texas at Austin
and
McAllen ISD

FOR THE 2022-2023 ONRAMPS PROGRAM

This Interlocal Agreement (Agreement) with an Effective Date of June 1, 2022, is entered on the Effective Date by McAllen ISD (MISD) and The University of Texas at Austin, on behalf of its OnRamps program, collectively referred to as the Parties.

Contracting Parties:

Receiving Party (MISD)
McAllen ISD
2000 N 23rd St
McAllen, TX 78501

Performing Party The University of Texas at Austin
OnRamps
2616 Wichita St, Ste 101
Austin, TX 78712

WHEREAS, UT Austin and MISD are collaborating to offer eligible high school students the opportunity to enroll in college courses while attending high school and receive simultaneous academic credits from UT Austin and their MISD high school(s).

WHEREAS, eligible students will be able to participate in a dual enrollment, distance education program called OnRamps.

NOW THEREFORE, in consideration of the mutual promises herein contained, the Parties agree as follows:

1. **Interlocal**
   The Texas Interlocal Cooperation Act, Government Code, §791.001, *et seq.* allows local governments and institutions of higher learning to contract with each other for governmental functions and services, including all or part of a function in which the Parties are mutually interested. This Agreement constitutes an "interlocal contract" within the meaning of and as authorized by the Texas Interlocal Cooperation Act. The purpose of the Agreement is to provide "governmental functions or services," as therein defined. Each party represents it has authority to enter into the Agreement and does so by action of its governing body. To the extent any party pays for the performance of governmental functions or services, the party will make those payments from current revenues available to that party.

2. **Nature of OnRamps**

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UT Austin and MISD enter into this Agreement to implement OnRamps by offering distance college courses through a dual-enrollment model, as well as high school teacher training and professional learning. OnRamps offers high school students the opportunity to earn high school credits from MISD and college credits from UT Austin through a distance education course.

MISD and UT Austin will share the responsibility to implement the OnRamps program. By entering into this Agreement for the delivery of distance college courses, MISD becomes an active participant in ensuring the effectiveness and quality of the implementation of OnRamps at MISD.

3. Fees and Payments

Enrollment Fees:

If joining the OnRamps program on or after the Effective Date, the cost of the OnRamps course materials, technical support and course implementation support outlined in this Agreement for MISD will be defined on a per-student, per-course basis. Program costs will be evaluated annually.

MISD is paying a subsidized rate. Subject to available funding, during the 2022-2023 school year, the fee of $249 (or $199 for students identified free and reduced lunch), per student and per course is subsidized to $149 (or $99 for students identified free and reduced lunch). The subsidy is being covered by OnRamps and applicable 87th legislative appropriation. Private, parochial, and out-of-state schools are not eligible for the subsidized rate.

The OnRamps enrollment fee is assessed for each student registered in each OnRamps course on the designated course census date. The program fee covers access to course materials, technology tools, and credit eligibility evaluation. Refunds will not be given at the end of a course for any reason, including if a student is not eligible to earn college credit in the course.

Professional Learning Development (PLD) Fee:

The cost of OnRamps professional development will be assessed on a per-teacher basis at a rate of $850 for teachers implementing a course for the first year or after an absence of more than one year and $550 for teachers implementing the same course for two or more consecutive years. This fee covers professional learning and development requirements during the entire term of this agreement, including Summer Professional Learning Institute (PLI), academic year PLIs, virtual conferences, virtual learning modules, virtual coaching, and professional development assignments. If MISD or the MISD high school teacher joins after the conclusion of Summer PLI, the total fee is still required based upon the status of the teacher at student census.

The Professional Learning Development fee does not include lodging, transportation, or teacher substitute cost. If a PLI is held in person, a lodging fee may be charged in addition to the PLD fee.

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MISD is responsible for paying within 30 days of receipt of any undisputed invoice.

All checks should be made payable to The University of Texas at Austin. Payments should be mailed and/or delivered to:

The University of Texas at Austin
OnRamps
2616 Wichita St, Ste 101
Austin, TX 78712

4. Scope of Work and Responsibilities

Responsibilities to implement OnRamps distance college courses will be shared by MISD and OnRamps. MISD is an active participant in ensuring the effectiveness and quality of OnRamps implementation at its facilities. The Parties agree to provide the following, collectively referred to as the "Services."

4.1 Responsibilities of OnRamps

Enrollment and Records

A. Register high school students for OnRamps courses (as listed in Exhibit A fully incorporated by this reference) through the OnRamps student information system (OnRamps Portal).
B. Maintain, as part of routine educational effectiveness evaluation at UT Austin, OnRamps student educational records, including registration, enrollment, orientation, and course evaluation data for purposes of administering, implementing, and improving the program and providing official reporting to UT Austin and MISD. OnRamps engages in additional data sharing with UT Austin departments as defined in the data sharing agreement between Parties, attached and incorporated herein.
C. Record grades on UT Austin transcripts for students who are eligible for and accept college credit for the distance college course.
D. Support documentation of distance college course credit, including enrollment and non-enrollment confirmation letters and assistance in securing official transcripts.

Curriculum and Instruction

E. Provide UT Austin faculty and academic staff to develop and define college-level course materials and curriculum and assume primary responsibility for oversight of distance college courses.
F. Deliver instructional materials via distance education. All college course-related materials will be available to the student through unique login in Canvas Learning Management System (Canvas LMS).
G. Administer OnRamps distance college courses via a dual-enrollment model. UT Austin faculty and academic course staff ensure comparability of distance college courses to campus-based courses and are approved by UT Austin Department Chairs and supported by Deans. All OnRamps students register for semester- or

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year-long courses. The college enrollment process differs between the two course types.

a. Semester-long and year-long course college enrollment information
    i. Students must complete a series of required assignments and summative assessments as published in the college syllabus that are designed, designated, and evaluated by UT Austin faculty and college Instructors of Record to earn college credit.
    ii. Students in year-long courses must earn a passing grade (D- or above) on the designated portion of the course determined by the UT Austin Instructor of Record to be eligible to earn college credit in the OnRamps distance college course.
    iii. Students who earn a passing grade (D- or above) in the college course may accept or decline their college credit.
    iv. Students who accept college credit will have an official UT Austin transcript showing the letter grade earned in the course.
b. Additional year-long course college enrollment information
    i. A student who does not earn a passing grade (D- or above) may be determined to be eligible if the student meets the Texas Success Initiative (TSI) exemption criteria for that course. Grade-based eligibility criteria and TSI exemption criteria are detailed in each college course syllabus for which TSI exemption may be used.
    ii. Eligible student enrollments are recorded with the University in alignment with OnRamps and University processes.

H. Provide technology and support services necessary for teaching and learning in OnRamps courses and program implementation:
    a. Maintain servers operated by or hosted on OnRamps's web-based Canvas LMS.
    b. Provide access and training on the Canvas LMS for every OnRamps student to access course content and instructional experiences.
    c. Provide online and phone-based technical support for OnRamps teachers, students, and UT Austin faculty using the curriculum when that support is not provided through Canvas LMS.
    d. Provide access to teleconference functions in Canvas LMS or other commensurate distance technology with consultants available to students for writing consultation related to distance college course writing assignments.
    e. Provide a student orientation module in Canvas LMS for all OnRamps courses that details program enrollment, student academic integrity, and FERPA rights.
    f. Provide information in the OnRamps Portal or through email notifications related to distance college course enrollment activities, including registration, eligibility, credit type selection, credit status, and official transcript requests.
    g. Provide adequate procedures for submitting and resolving complaints, grade appeals, information requests, and other inquiries related to participation in OnRamps.

Professional Development and Support

I. Deliver professional learning to participating MISD teachers who teach the OnRamps course.

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a. Summer PLI for participating MISD teachers will be delivered by OnRamps using distance education and virtual learning technologies. Summer PLI is required for all OnRamps high school teachers.
b. Academic year PLIs: One-day PLIs for new and returning participating MISD teachers will be held at UT Austin or designated regional sites, or delivered virtually during the fall and spring semesters, at UT Austin's sole discretion. MISD teachers are **required** to participate in and fully complete the one-day workshop during each semester in which the teacher delivers an OnRamps course, regardless of whether the course will be offered in the subsequent year.
c. Participating MISD teachers will be credited with continuing professional education hours for the hours of documented attendance.

J. Deliver professional learning and development opportunities specific to administrative and counselor roles and functions to MISD and its administration.
K. Deliver in-person or virtual presentations and/or workshops to MISD staff and community members regarding the OnRamps program overview, implementation, and strategies for success.
L. OnRamps will hire and assign a qualified course coordinator for each course offered. The coordinator will serve as the content expert and point of contact and support for the high school teacher.
M. Provide ongoing, one-on-one feedback and guidance to the high school teacher.
N. Provide virtual coaching to each OnRamps high school teacher to support course implementation and enhance their professional practice.

Institutional Effectiveness

O. Provide feedback regarding course implementation to UT Austin faculty and academic staff, as well as MISD high school teachers and administrators. To ensure OnRamps is implemented and facilitated with quality and fidelity, OnRamps staff will provide updates at the end of the fall and spring semesters and, as needed, throughout the year regarding the status of OnRamps implementation, based on communication with the OnRamps MISD high school teacher(s) and classroom observations.
    a. OnRamps staff will alert MISD administration of any serious concerns regarding MISD or campus implementation of the OnRamps course pertaining to quality and fidelity. If MISD implementation of the OnRamps course is deemed unsatisfactory, OnRamps reserves the right to deny the opportunity to offer the OnRamps course in the future or to require a replacement high school teacher.
    b. A MISD high school teacher deemed by OnRamps to be unsatisfactorily implementing the course will be given the opportunity to bring course implementation into alignment with OnRamps expectations and be provided coaching and support as available through the course staff, OnRamps PLIs, virtual coaching, and ongoing communication. Should the high school teacher's implementation of OnRamps continue to be unsatisfactory or without improvement in OnRamps's sole discretion, OnRamps will notify MISD, who will use its best efforts to identify an alternate high school teacher, and MISD will work with OnRamps to continue implementation of the course with the

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alternate high school teacher. OnRamps reserves the right to deny any unsatisfactorily performing teacher the opportunity to offer the course in the future.

c. Should OnRamps deem an OnRamps MISD high school teacher as not compatible with or not in the best interest of the program in OnRamps's sole discretion, OnRamps will notify MISD who will work with OnRamps to continue the course through an alternate teacher.
d. Any person performing Services under this Agreement on behalf of OnRamps must be actively employed or eligible for employment by UT Austin and may not be on administrative or medical leave. UT Austin must comply with applicable criminal background check requirements for their respective faculty, staff, and employees performing Services under this Agreement. If UT Austin becomes aware that one of its faculty, staff, or employees performing Services does not meet these requirements, a representative of the OnRamps program must inform the MISD district contact.

Extended Student Absences [subject to MISD policies]

P. In a case where a student is removed from their home campus and assigned to an alternative campus due to disciplinary reasons, the MISD point of contact, campus principal and/or the high school teacher of the campus must notify the OnRamps Associate Director for Enrollment Management. Information needs to include the length of the placement to determine if the student will continue in the enrolled OnRamps course. If the alternative placement is longer than seven (7) school days, then the following will need to be done:
    a. The administrator, OnRamps MISD high school teacher, and OnRamps course staff will work together to determine if the student has the opportunity to continue the course at the alternative campus. If determined the student will not have the appropriate instruction and access to the course, the student will be dropped from the OnRamps course.
        i. If this occurs prior to the identified course census date, then the MISD will not be invoiced for this student.
        ii. If the student is enrolled in a year-long OnRamps course, the student will be dropped from the OnRamps course, the Canvas LMS system, and a schedule change will be made for the student's high school schedule. If the student is enrolled in History or Rhetoric, the student will be dropped from the course for the semester in which the student is taking the course (fall or spring). If the student is taking History or Rhetoric in the fall, the student will have the opportunity to enroll in History or Rhetoric in the spring, if the student returns to the home campus in time for registration at the beginning of spring instruction.
Q. In a case where a student is hospitalized or removed from instruction or the school setting for longer periods due to illness, accident, or other circumstance, the MISD point of contact, campus principal and/or the high school instructor must notify the OnRamps Associate Director of Enrollment Management immediately to determine if eligibility for enrollment may continue, which decision will be made on OnRamps in its sole discretion.

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4.2 Responsibilities of MISD [subject to MISD policies and applicable law]

A. Implement one or more OnRamps courses.
   a. Assign a(n) MISD contact responsible for overseeing implementation of OnRamps high school course(s) and participating in meetings designated for MISD administration with OnRamps staff.
      i. This MISD contact will provide up-to-date contact information for MISD and its campus administration. In the event there is a change in administration at MISD or at its campuses, the MISD contact will update the OnRamps Portal.
   b. Assign 1-2 campus administrators to attend the OnRamps train-the-trainer session(s) held online in a webinar-based format. The training will model the parent night presentation, resources, and retention strategies.
   c. OnRamps courses do not replace Advanced Placement (AP) curriculum or prepare students for AP exams. Neither OnRamps syllabi nor course content may be used for submission to satisfy the requirements for third party evaluation.
   d. In the case of Introduction to Rhetoric: Reading, Writing and Research and Reading and Writing: the Rhetoric of American Identity, the UT Austin Department of Rhetoric and Writing:
      i. Prohibits the OnRamps courses from being offered as an AP English course.
      ii. Requires a cap of 25 students per section with a limit of two (2) sections per teacher for a maximum of 50 students. Alternatively, a teacher may have 60 students distributed in three (3) or more sections. With approval, the cap of 60 students may be exceeded in exceptional circumstances at OnRamps sole discretion.

B. Recruit high school teacher(s) with appropriate qualifications to teach the OnRamps course(s), all consistent with MISD policies.
   a. Minimum requirements for all OnRamps MISD high school teachers include:
      i. Bachelor's degree in the discipline or a related field.
      ii. One (1) or more years of teaching experience in the relevant course or a higher-level course (e.g. calculus for pre-calculus).
      iii. Completed annual OnRamps teacher application.
      iv. Obtain a UT EID in order to access Canvas LMS, the OnRamps Portal, and other systems required for implementation of the OnRamps program. OnRamps will provision the EID as high assurance and may suspend, terminate, or revoke access to its systems through the EID affiliation at OnRamps sole discretion. The EID affiliation with OnRamps will be revoked if this agreement is terminated or if an OnRamps MISD high school teacher can no longer complete the course.
      v. Successful completion of required tasks before the start of Summer PLI, including, but not limited to, completion of FERPA training module provided by OnRamps. Tasks will be determined and shared by the OnRamps professional learning and development staff in advance of Summer PLI. MISD high school teachers approved on a conditional basis may be required to complete additional tasks. Any high school teacher who

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does not complete the required pre-PLI tasks may not be eligible to attend PLI. The decision to admit or deny such teacher and any accompanying conditions will be determined by the UT Austin Faculty Lead and Managing Director at their discretion.

vi. Successful completion of Summer PLI. New OnRamps MISD high school teachers must participate in the entire Summer PLI and complete all assigned work, both pre- and during PLI.

vii. Attendance at and completion of all required monthly virtual conferences or virtual learning modules, academic year PLIs, and professional development assignments.
   1. Completion of the minimum number of virtual coaching uploads over the course of the academic year is required.

viii. Attendance at the Fall and Spring PLIs.
   1. MISD teachers are required to participate in and fully complete both academic year PLIs in which the teacher delivers an OnRamps course, regardless of whether the course will be offered in the subsequent year. Each Fall and Spring PLI will provide up to eight hours of continuing professional education hours.

ix. Review communication from OnRamps course staff in weekly newsletters and respond accordingly to routine requests.

x. Adhere to guidelines regarding OnRamps course content intellectual property. MISD is responsible for informing teachers that they do not have a license to use any OnRamps provided materials outside of the scope of this agreement.

xi. Deliver OnRamps instructional materials through the OnRamps instance of Canvas LMS.

b. Additional requirements for OnRamps returning MISD teachers include:
   i. Successful implementation of OnRamps course during the previous academic year according to requirements under section D below.

C. Ensure OnRamps MISD high school teachers and students have the necessary resources to implement the program with fidelity, including, but not limited to:
   a. Access to the OnRamps Portal and Canvas LMS. Participating MISD campuses will work with the OnRamps support team to ensure their campus and students can fully access the OnRamps Portal and Canvas LMS.
   b. Access to computer, internet, and allow lists, as specified by OnRamps, and adhere to requirements outlined in the most recent OnRamps Technology Manual.
   c. Scheduled access to technology that meets the specifications defined by OnRamps for each course. This includes regular in-class and out-of-class, one-to-one (1:1) access to computers and the internet to view materials and complete and submit assignments, quizzes, tests, and exams, and the following technology for specific course implementation (as applicable).
   d. Graphing calculators as specified in the most recent OnRamps Technology Manual.
   e. Audio/visual projection and/or whiteboard.

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f. Copy/scanning services to duplicate some course materials and distribute to students in the OnRamps course and upload assignments.
g. For Biology, Geoscience, Physics and Chemistry, required lab materials.
h. The Chemistry course(s) must be offered in a lab setting that meets the Texas Education Agency standard with minimal viable components including an eyewash station, vent hood, and equipment required for student implementation of the lab course including use and disposal of the required chemical list.

D. Ensure OnRamps MISD high school teachers implement the program with fidelity, including the following:
   a. OnRamps instructors are expected to adhere to Texas Administrative and Education Code, including the Educators' Code of Ethics (19 TAC Chapter 247).
   b. Administer and facilitate OnRamps-required assignments and assessments without alteration through the OnRamps instance of Canvas LMS.
   c. Have students create a UT EID and register for OnRamps via the OnRamps Portal.
   d. Use Canvas LMS to assign and grade high school work as specified by OnRamps course staff.
   e. Participate in professional learning, including Summer PLI, one-day workshops, monthly video conferences or virtual learning modules, virtual coaching and uploads of classroom video, and ongoing opportunities during each semester in which they teach the OnRamps course. To facilitate teacher participation in the one-day workshops, MISD agrees to pay the cost of substitute teachers for the days the teacher will attend the workshops.
   f. Maintain regular communication via email, phone, video web conferencing, etc. with OnRamps course coordinator and other staff regarding the success and challenges of implementation, responding in a timely manner to requests for information, including turning in any requested documentation to evaluate student progress or success by specified deadlines.
   g. Notify OnRamps of MISD high school teacher absences that exceed four or more consecutive class days or of teacher resignations using the provided form in the case when the teacher cannot self-report.

E. Recruit and approve students to participate in the OnRamps courses.
F. Ensure students enrolled in the OnRamps program meet the minimum academic requirements for each course as shown in Exhibit A.
G. Ensure students complete the OnRamps registration process within the first two weeks of school. The student and, if the student is under 18 years of age at the time of registration, the student's parent or guardian shall acknowledge and consent the student is enrolling in a college course with the opportunity to earn college credit.
H. Any person performing Services under this Agreement on behalf of MISD must be actively employed or eligible for employment by MISD and may not be on administrative leave. MISD must comply with applicable criminal background check requirements for their respective faculty, staff, and employees performing Services under this Agreement. If MISD becomes aware that one of its faculty, staff, or employees performing Services does not meet these requirements, the

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district contact, who oversees the OnRamps program, must inform OnRamps within 24 business hours.

5. Summer PLI Teacher Registration and Attendance

A. MISD high school teachers are required to register for Summer PLI **two weeks prior** to the start of Summer PLI.

B. New OnRamps MISD high school teachers must participate in the entire Summer PLI and complete all assigned work, both pre- and during PLI. New OnRamps high school teachers are defined as those who are implementing an OnRamps course for the first time or for the first time after more than one year of absence.
   a. The MISD teacher assigned to the course **must** successfully complete the New Instructor Summer PLI experience at least once, in its entirety, before implementing an OnRamps course for the first time. If the teacher continues to offer the course in subsequent years, they are required to attend the Returning Instructor Summer PLI for each subsequent year they implement that course. If a teacher is assigned to implement a new OnRamps course in addition to their current OnRamps course, the instructor must complete the New Instructor Summer PLI for the new course.

C. Cancelation policy:
   a. All high school teachers must cancel their registration in writing at least one week prior to any in-person PLI or will pay 100% of fees for room/board and meals for which those charges apply. MISD will be invoiced for all high school teachers who are registered on the day three weeks prior to the event starting, and will pay such invoices within thirty (30) days.
   b. If a high school teacher registers for Summer PLI and is unable to attend, the teacher must communicate this change to the OnRamps Professional Learning and Development team in writing at least one week prior to the start of Summer PLI. The district contact may coordinate with OnRamps to identify an appropriate replacement. Fees will be assessed based on teachers who complete Summer PLI.
   c. In the event of an emergency about which OnRamps staff and the teacher's principal are notified, a teacher may arrange to make up as much as 20% of Summer PLI and still be eligible to teach the OnRamps course. OnRamps MISD high school teachers who miss more than 20% of Summer PLI, regardless of the reason, will be on probationary status and their approval to serve as an OnRamps high school teacher will be evaluated by OnRamps on a case-by-case basis.

D. If a high school teacher attends Summer PLI, and the course for which the teacher is trained is not offered for the school year, MISD will be:
   a. Charged the full fee based on whether they are new or returning, for Summer PLI.
   b. All materials provided to MISD for the course must be returned to OnRamps within 30 days.

6. Educational Records and Data Sharing

A. MISD and OnRamps create, maintain, and manage their own educational records for students and teachers. OnRamps maintains all educational records created as a result of the OnRamps program consistent with FERPA, as well as applicable UT Austin policy defined in Chapter 9 of the General Catalog of UT Austin, subchapter 9-100 through 9-400, and any applicable law. In order to provide the OnRamps program and related

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services to MISD and for MISD's accountability reporting purposes, OnRamps requires specific student information from MISD. All such records are provided the same security as those outlined in this section 6.C, section 7, and the Data Sharing Agreement, and will not be sold or shared with external sources except as allowed by law. See Exhibit B Data Sharing Agreement which sets terms and conditions for the exchange by the Parties of data needed to support the OnRamps program.

B. Following UT Austin's Institutional Review Board standards and policy, as applicable, OnRamps may obtain and maintain data and/or feedback about student and teacher experiences with the program for the purpose of understanding outcomes and program improvements.

C. For legitimate educational interests, OnRamps will facilitate the exchange of information among institutions, OnRamps high school teachers, OnRamps faculty and staff, and MISD contacts 1) pertaining to students' progress toward the opportunity to earn college credit; 2) to verify student accommodations under IDEA and/or Section 504; 3) to facilitate early intervention and support student success; 4) pertaining to whether college credit is earned, accepted, and/or declined; 5) to facilitate accurate recordkeeping; and 6) to address academic integrity issues. If either party obtains access to MISD and/or UT Austin records or record systems protected under FERPA, each party agrees to adhere to the provisions of FERPA. While in possession of FERPA records and data, only persons authorized to access the student data related to the OnRamps program will be granted access consistent with FERPA.

7. Governmental Function, Immunity, Record Protection, and Criminal History

The Parties agree that the performance of this Agreement is for the purpose of performing governmental functions and that, in all things related to this Agreement, Parties are performing governmental functions as defined by the Texas Interlocal Cooperation Act. Nothing herein or in the performance of this Agreement shall be construed as a waiver of sovereign/governmental immunity or similar rights. Parties agree that neither party waives any immunity or defense that would otherwise be available to it pursuant to the Texas Tort Claims Act or other applicable statutes, laws, rules or regulations against claims arising from the exercise of its powers or functions. No provision of this Agreement that imposes an obligation or restriction on MISD or UT Austin not otherwise permitted by applicable law shall be enforceable. Records relating to this Agreement may be subject to disclosure pursuant to the Texas Public Information Act, Section 552.001 et. seq. of the Texas Government Code.

Each party agrees that if it received information or records concerning any student, it shall not disclose the same except as permitted by the Family Educational Rights and Privacy Act a/k/a FERPA (20 U.S.C. 1232(g)). FERPA is specifically referenced in the Texas Public Information Act as an exception to records that are subject to disclosure to the public (Texas Government Code 552.001 et seq.).

8. Indemnity

The Parties expressly agree that, except as provided herein, no party shall have the right to seek indemnification or contribution from the other party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

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9. Term and Termination

This Agreement is effective on June 1, 2022, no matter the date fully executed by both Parties and covers a period beginning June 1, 2022 and ending August 31, 2023. This agreement cannot be renewed or extended.

Either party may, without penalty, terminate this Agreement at the end of any budget period of such party during the term if funds required to fulfill this Agreement have not been appropriated, and with written notice to the other party. Such notice shall be effective thirty (30) calendar days from the date of receipt.

Either party may terminate this Agreement without cause upon thirty (30) days' advance written notice of termination to the other party. MISD agrees any amounts owed for Services rendered through the termination date and properly invoiced will be promptly paid upon notice of termination and in accordance with the provisions of Chapter 2251, Texas Government Code.

10. Ownership of Intellectual Property

UT Austin and the OnRamps program shall solely own all intellectual property rights in or relating to OnRamps, including all written materials, study guides, course materials, syllabi, and assessments prepared under the program ("Materials"). Intellectual property rights means any rights or titles to inventions, discoveries, concepts, methods, processes, data, trade secrets, branding, trademarks, copyrights, computer programs and related documentation, or works of authorship fixed in a medium of expression of any kind whether or not patentable, copyrightable, or eligible for registration as a trademark, as well as applications for any such rights. There are no implied licenses; MISD agrees and understands that it may not copy, modify, share, distribute, or display any Materials without the prior written permission of UT Austin and the OnRamps program.

11. Contractual Relationship

Nothing contained herein shall be construed as creating an employer/employee relationship, a partnership, a joint venture or joint obligations between the Parties. Each party retains the right to conduct its business as it sees fit. The Parties shall, at all times, be deemed independent contractors/entities.

12. Disputes

If any dispute concerning any fact, interpretation, allowable costs, etc. arise during performance of this Agreement, reasonable efforts shall be made to resolve said dispute(s) through informal discussions between the Parties.

13. Notice to Parties

Except as otherwise provided by this Section, notices, consents, approvals, demands, requests or other communications provided or permitted under this Agreement, will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extend a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given 1) if delivered by certified

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mail, when deposited, postage prepaid, in the United States mail, or 2) if delivered by hand, overnight courier, facsimile (to the extend a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

MISD at:
McAllen ISD
2000 N 23rd St
McAllen, TX 78501

UT Austin at:
Darrell Bazzell, Senior Vice President and Chief Financial Officer
101 Inner Campus Dr, Ste 102
Austin, TX 78712

With a copy to:
OnRamps
2616 Wichita St, Ste 101
Austin, TX 78712
Email: sp.contracts@austin.utexas.edu

or such other address as later provided by a party through written notice to the other party.

14. Venue; Governing Law

This Agreement, all of its terms and conditions, all rights and obligations of the Parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

15. Mutual Negotiation

This Agreement has been prepared at the joint request, direction, and construction of the Parties, at arms' length, and shall be construed without favor to any party.

16. Entire Agreement

This Agreement and any subsequent amendments constitute the entire and only agreement between the Parties relating to the matters described herein, and supersedes all prior agreements and discussions, whether written or oral. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto.

17. Amendment and Assignment

Any changes to this Agreement may only be made by mutual written agreement of the Parties. This Agreement may not be assigned by either party without the express written consent of the other party. Any attempt to assign without such consent shall be void, and shall be deemed a material breach of this Agreement.

18. Survival

A party shall remain obligated to the other party under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement.

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19. Cybersecurity Training Program

During the term and any renewal of this Agreement, each party shall comply with Texas Government Code Chapter 2054 concerning cybersecurity for state agencies and local government, and to the extent applicable verify compliance to the other party.

20. Access by Individuals with Disabilities

Performing Party represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Performing Party provides to Receiving Party under this Agreement (**EIRs**) comply with applicable requirements set forth in 1 TAC Chapter 213 and 1 TAC Section 206.70 (ref. Subchapter M, Chapter 2054, *Texas Government Code*). To the extent Performing Party becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Performing Party represents and warrants it will, at no cost to Receiving Party, either 1) perform all necessary remediation to make EIRs satisfy the EIR Accessibility Warranty or 2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. If Performing Party is unable to do so, Receiving Party may terminate this Agreement and, within thirty (30) days after termination, Performing Party will refund to Receiving Party all amounts Receiving Party paid under this Agreement.

Performing Party will provide all assistance and cooperation necessary for the performance of accessibility testing conducted by Receiving Party or Receiving Party's third party testing resources as required by 1 TAC Section 213.38(g).

21. Payment of Debt or Delinquency to the State

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

22. State Auditor's Office

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

23. Severability

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

24. Public Records

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

25. Signatory Representations

Receiving Party represents and warrants that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Receiving Party has been duly authorized to act for and bind Receiving Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as shown below.

Receiving Party McAllen ISD	Performing Party The University of Texas at Austin
Signature: _____	Signature: DocuSigned by: Kathleen Brock 423D22B53BC0421... DS DG
Name: Tony Forina	Name: Kathleen Brock
Title: Board of Trustees President	Title: Senior director
Date: _____	Date: 2022-05-27 | 11:19:23 CDT

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

by: Stephen L. Crain
Stephen L. Crain (May 31, 2022 07:51 CDT)
Stephen L. Crain

DocuSign Envelope ID: FEFEFA6E-9649-4F40-9DC4-D65E74572592

Exhibit A
OnRamps Courses

OnRamps Course Name	UT Austin Course Code	TCCNS Equivalency	Texas Core Code	Required Prerequisites	Recommended Prerequisites
Foundation of Arts and Entertainment Technologies	AET 304	-	050	-	Graphic Design
Introduction to Biology I	BIO 311C	BIOL 1306	030	Credit in TEKS-based Biology & TEKS-based Chemistry	-
Lab for Introduction to Biology I	BIO 106M	BIOL 1106	-	Credit in TEKS-based Biology & TEKS-based Chemistry	-
College Chemistry: Principles of Chemistry I (Lecture)	CH 301	CHEM 1311	030	Credit in Algebra I	-
College Chemistry: Introduction to Chemical Practices I (Lab)	CH 104M	CHEM 1111	-	Credit in Algebra I	-
College Chemistry: Principles of Chemistry II (Lecture)	CH 302	CHEM 1312	030	Credit in Chemistry	-
College Chemistry: Introduction to Chemical Practices II (Lab)	CH 104N	CHEM 1112	-	Credit in Chemistry	-
Thriving in Our Digital World	CS 302	-	093	Credit in Algebra I	Credit or concurrent enrollment in Algebra II
Earth, Wind, and Fire: An Introduction to Geoscience	GEO 302E	-	030	Credit in Biology and Chemistry or IPC and Chemistry	-
United States, 1492-1865	HIS 315K	HIST 1301	060	Credit or concurrent enrollment in English II	-

DocuSign Envelope ID: FEFEFA6E-9649-4F40-9DC4-D65E74572592

OnRamps Course Name	UT Austin Course Code	TCCNS Equivalency	Texas Core Code	Required Prerequisites	Recommended Prerequisites
United States Since 1865	HIS 315L	HIST 1302	060	Credit or concurrent enrollment in English II	-
College Algebra	M 301	MATH 1314	-	Credit in Algebra I	Credit in Geometry
Discovery Precalculus: A Creative and Connected Approach	M 305G	MATH 2312	020	Credit in Algebra II & Geometry	-
Mechanics, Heat, and Sound: General Physics Technical Course I	PHY 302K	PHYS 1301	030	Credit in Algebra I & Geometry	Credit in Algebra II or Precalculus
Lab for Mechanics, Heat, and Sound	PHY 102M	PHYS 1101	-	Credit in Algebra I & Geometry	Credit in Algebra II or Precalculus
Electromagnetism, Optics, and Nuclear Physics: General Physics Technical Course II	PHY 302L	PHYS 1302	030	Credit in TEKS-based Physics, Algebra II, & Geometry	Credit in PHY 302K, AP Physics I, Honors Physics, PHYS 1301, or Precalculus
Introduction to Rhetoric: Reading, Writing, and Research	RHE 306	ENGL 1301	010	Credit in English I & English II	-
Reading and Writing and Rhetoric of American Identity	RHE 309K	ENGL 1302	010	Credit in English I & English II	-
Elementary Statistical Methods	SDS 301	MATH 1342	020	Credit in Algebra I	Credit in Algebra II & Geometry
Quantum Computing	PHY 309L	PHYS 1307	030	Credit in Algebra I & Geometry	Credit in Algebra II or Precalculus

DocuSign Envelope ID: FEFEFA6E-9649-4F40-9DC4-D65E74572592

Exhibit B
Data Sharing Agreement

DATA SHARING AGREEMENT
BY AND BETWEEN
McAllen ISD
AND
ONRAMPS
AT THE UNIVERSITY OF TEXAS AT AUSTIN

Pursuant to this Data Sharing Agreement and underlying Interlocal, MISD agrees to provide individual student-level data to OnRamps at The University of Texas at Austin (UT Austin) for the purpose of implementing, billing, and evaluating the OnRamps dual enrollment program and informing OnRamps students of academic opportunities at UT Austin. MISD hereby appoints OnRamps as a legitimate educational official of MISD in accordance with the Family Educational Rights and Privacy Act (FERPA). Likewise, OnRamps hereby appoints MISD as a legitimate educational official of OnRamps in accordance with FERPA. OnRamps agrees to provide individual student-level data to MISD for the purpose of evaluation, accountability, and student record-keeping. The terms of this Data Sharing Agreement are in effect until August 31, 2023 unless terminated in writing by one or both Parties.

1. Data type and exchange timeline
MISD Designee for Student Data and OnRamps will coordinate data exchange for all OnRamps program participants for the 2022-2023 academic year, as follows:

Responsible Party	Time Period	Type of Data
OnRamps	August 2022 – July 2023	Throughout the academic year OnRamps will provide information about student enrollments, including course rosters, college course eligibility status, and final grades. Access to the portal will be limited to pre-identified campus and MISD personnel who must obtain a UT Electronic Identification and password in order to access the portal. The following enrollment and performance data is provided throughout the academic year, as information becomes available. • Course enrollments • Eligibility status • Eligibility letter grade • Final letter grade • Credit decision (credit accepted or declined) • University transcript grade

DocuSign Envelope ID: FEFEFA6E-9649-4F40-9DC4-D65E74572592

		• Student qualifying status for free/reduced lunch • Student qualifying status for accommodations under IDEA or Section 504
MISD	December 2022 – February 2023	In order for OnRamps to identify students who qualify for the reduced course enrollment fee, OnRamps must obtain Student State IDs. Based on the Student State IDs, the Texas Education Agency (TEA) provides OnRamps with students' Economic Disadvantage Status. • TEA-assigned TX-UNIQUE-STUDENT-ID (StudentUnique ID)
MISD	May 2023 – July 2023	In order for OnRamps to engage in ongoing learning about student experiences, high school grades are exchanged. • High school grade in OnRamps course, semester 1 • High school grade in OnRamps course, semester 2 • High school grade in OnRamps course, cumulative

2. Data protection

All data will be exchanged using secure systems and in an encrypted, password protected electronic format by MISD and OnRamps.

OnRamps endeavors that in all reports, electronic or otherwise, derived from information made available under this Data Sharing Agreement, all data shall be aggregated in such a way that no individual will be identified directly or by deduction. OnRamps further endeavors that the data elements will not be released to a third party without written parental or student (as applicable) consent.

While in possession of this data, both Parties shall permit access only to employees and contractors authorized to assist in the implementation or evaluation of OnRamps or other UT Austin program to have access to the data. Both Parties agree to store the data in an encrypted format, in a secure area and to prevent unauthorized access.

3. Information shared with TEA

- Share rosters of individual students, including student state ID, for all students enrolled in an OnRamps course at fall or spring census to determine student eligibility for reduced course fee, AND
- Share rosters of individual students, including student state ID, for students who complete an OnRamps course for the purpose of calculating state accountability and other required state performance reporting and metrics.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Second Amendment to the Amended and Restated Memorandum of Understanding No. 2020-274 Easter Seals Rio Grande Valley

REFERENCE: Goal 1 - Student Achievement/Student Focus; Strategy 3 - Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On February 10, 2020 the Board of Trustees approved the Memorandum of Understanding ("MOU") with Easter Seals Rio Grande Valley for a term of one (1) year with the option to renew for three (3) additional one (1) year terms. On August 9, 2021 the Board of Trustees approved the amended and restated MOU, which superseded the original MOU to include program requirements as set by the Texas Education Agency. Thereafter, on May 13, 2022 renewal one (1) of three (3) was signed.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The McAllen Independent School District ("District") and Easter Seals Rio Grande Valley would like to amend this MOU, beginning with renewal one (1), effective July 1, 2022 through June 30, 2023.

LEGAL REVIEW:

The Amendment has been approval by legal counsel.

BUDGETARY CONSIDERATIONS:

The teacher assigned to this daycare is paid by the District through General Funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the Second Amendment to the Amended and Restated Memorandum of Understanding No. 2020-274 Easter Seals Rio Grande Valley.

SUBMITTED BY: Elizabeth Cavazos

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Elizabeth Cavazos
Office: 956-687-6473
Email: elizabeth.cavazos@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

SECOND AMENDMENT TO

Memorandum of Understanding NO. 2020-274 Easter Seals Rio Grande Valley

This Second Amendment to Memorandum of Understanding No. 2020-274 ("MOU") effective this 1st day of July, 2022 by and between McAllen Independent School District ("MISD") and Easter Seals Rio Grande Valley, a Community-Based Prekindergarten Provider ("CBPP") as follows:

WHEREAS, MISD and CBPP entered into MOU No. 2020-274 dated March 4, 2020;

WHEREAS, MISD and CBPP entered a amended and restated MOU on June 15, 2021, which superseded that MOU dated March 4, 2020;

WHEREAS, both parties agreed to renew said MOU in accordance with the renewal terms, for a term of one (1) year beginning July 1, 2022 through June 30, 2023;

WHEREAS, MISD and CBPP desire to amend the revised and restated MOU dated June 15, 2021; and

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

1. The paragraph titled "Program Description" has been deleted in its entirety and substituted with the following:
    a. Children that are 3 or 4 years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP**. Collaboratively, the children attending **CBPP** will receive six (6) hours of instruction daily, in cognitive development by a certified **MISD** teacher, funded by **MISD**, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designed facility meeting Child Care licensing and **MISD** requirement.
2. The paragraph titled "Responsibilities" Exhibit A-3 has been deleted in its entirety and substituted with the following:
    a. Provide certified early childhood teachers to deliver six (6) hours of instruction in cognitive development daily by a certified **MISD** teacher to participating children;
3. The paragraph titled "Responsibilities" Exhibit A-6 has been deleted in its entirety and substituted with the following:
    a. Provide special education services to children who are identified in need of special services through the **MISD** Special Education Program;
4. The paragraph titled "Responsibilities" Exhibit B-1 has been deleted in its entirety and substituted with the following:
    a. Provide six (6) hours of daily instruction, in cognitive development to the **CPBB** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-year-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
5. Except as modified herein, all terms and conditions of the MOU, as amended, remain in full force and effect. MISD and CBPP ratify and confirm the terms and provisions of the MOU as amended.

Signature page to follow.

EXECUTED IN DUPLICATE ORIGINALS and effective as of _____.
Date

McAllen Independent School District
By: _____
Tony Forina
Board of Trustees, President

Easter Seals Rio Grande Valley

By: Patricia Rosenlund
Patricia Rosenlund (May 26, 2022 17:17 CDT)
Name: Patricia Rosenlund
Title: Executive Director

Approved as to form:
Atlas, Hall, & Rodriguez LLP
by: Stephen L. Crain
Stephen L. Crain (May 25, 2022 12:42 CDT)
Stephen Crain

Alejandra Gonzalez
Director of Purchasing Services

March 21, 2022

Pattie Rosenlund
Easter Seals Rio Grande Valley
1217 W Houston Ave
McAllen, TX 78501
prosenlund@easterseals-rgv.org

RE: Contract 2020-274 Community Based Prekindergarten Provider (Easter Seals Rio Grande Valley)

Ms. Rosenlund,

Please accept this letter as our notice of intent to exercise the option to renew the referenced contract as allowed by the term of the Contract, for one (1) additional year, July 1, 2022 through June 30, 2023. This is renewal one (1) out of three (3) renewals.

Please indicate your preference in the appropriate checkbox, affix required signature, and return the signed document via email to krystal.mercado@mcallenisd.net no later than March 28, 2022.

If you have any questions regarding this matter, please contact Krystal Mercado, Senior Buyer at (956) 657-4484 or via e-mail at krystal.mercado@mcallenisd.net

Sincerely,

Alejandra Gonzalez
Director of Purchasing Services

☑ My company WILL renew the agreement for one (1) additional year, as indicated above. Please affix signature below.

☐ My company WILL renew the agreement for one (1) additional year WITH EXCEPTIONS as noted below. Please affix signature below.
Exceptions: _____

☐ My company WILL NOT renew the agreement for one (1) additional year, as indicated above.

Patricia Rosenlund Patricia Rosenlund (May 13, 2022 16:05 CDT)	Patricia Rosenlund
Authorized Signature	Type/Print Name
Executive Director	Patricia Rosenlund
Title	Phone
prosenlund@easterseals-rgv.org	May 13, 2022
E-mail address	Date

2020-274
MEMORANDUM OF UNDERSTANDING BETWEEN McALLEN INDEPENDENT SCHOOL DISTRICT AND EASTER SEALS RIO GRANDE VALLEY
2021-2022

This Memorandum of Understanding ("MOU") is by and between **Easter Seals Rio Grande Valley**, a Community-Based Prekindergarten Provider ("CBPP") and the McAllen Independent School District ("MISD") to provide services to age-eligible and criteria-eligible prekindergarten children as per the guidelines established by the Department of Health and Human Services (DHHS) and the Texas Education Agency (TEA).

Whereas CBPP and MISD have executed an MOU providing for same or similar services to prekindergarten children as per guidelines established by the Department of Human Services ("DHHS") and ("TEA");

Whereas CBPP and MISD desire to amend and restate their existing MOU and have this MOU supersede and replace any existing MOU in effect between the parties hereto as of the date of execution of this MOU; and

Whereas CBPP meets component number two (2) Texas Rising Star program 3 or higher and component number four (4) Texas School ready participant, as described in subparagraph 1 of Program Requirements herein below.

The purpose of the Memorandum of Understanding is to develop and foster a cohesive working relationship with prekindergarten education providers to establish high quality early childhood programs in the community; to ensure that each party hereto assumes the responsibility to communicate with the other and share leadership responsibilities to maximize resources; and to ensure that these working relationships between MISD and the CBPP are developed, implemented, and reviewed annually to improve quality of services.

Each party hereto has received information regarding the nature and scope of the proposed working relationship and have approved and granted signatory authority to the individuals designated as authorized to bind their respective organizations. Signatory authorities are listed at the end of this MOU. Each designee shall ensure that their respective Board of Directors, Owners or Board of Trustees as applicable are informed of the various aspects and elements of this MOU.

The terms and conditions set forth in this MOU shall constitute the entire MOU between MISD and CBPP and may not be amended except by a written document signed by both entities.

Program Requirements:

This program can be provided at the childcare site as long as the following conditions are met:

1. the site meets at least one of the following high-quality components set by the Texas Education Agency: (1) is nationally accredited; or (2) is a Texas Rising Star program 3 or higher; or (3) is a Head Start provider; or (4) is a Texas School ready participant; or (5) meets the prekindergarten program requirements under TEC 29.1532
2. the site maintains a minimum of 15 students that meet prekindergarten eligibility rules and requirements set by the Texas Education Agency. The site has up to 60 days from the first day of school or from the date of this MOU to reach the minimum of 15 students.

The CBPP and MISD agree that a fundamental requirement of this MOU obligation is to ensure the CBPP PreK classroom meets the minimum requirement of 15 eligible students. This may be accomplished by: 1.) a homogenous Pk3 or Pk4 enrollment at the center, or 2.) combined PK3 and PK4 students who are eligible to be served by MISD into one classroom for the purposes of meeting minimum requirements to continue providing a full-day teacher on-site.

Term:

The Term of this Memorandum of Understanding commences July 1, 2021 and ends on June 30, 2022 (the "Term") unless earlier terminated as herein provided. If this MOU is not terminated as herein provided, then MISD and CBPP may by mutual agreement extend the term for three (3) additional one-year terms on the same terms and conditions stated herein.

Program Description:

Children that are 3 or 4-years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP.** Collaboratively, the children attending **CBPP** will receive three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher, funded by MISD, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designated facility meeting Child Care Licensing and **MISD** requirements.

Days and Hours of Operation:

Days of operation shall not be less than one-hundred eighty-seven (187) days, during the months of August through May ("Days of Operation"). The daily operations will be from 7:45 am to 4:15 pm. (Note: District Calendar will be developed and approved by both entities).

Center Sites:

The name and address of the **CBPP** site that will be serviced by **MISD** is:

Easter Seals Rio Grande Valley
Pattie Rosenlund
1217 W. Houston Ave.
McAllen, TX 78501

Responsibilities:

A. **MISD** will:

- **Provide** appropriate educational and supportive services to ensure children and families are school ready per guidelines set by the Texas Education Agency (TEA);

- Assign a **MISD** principal, and/or program specialist, to the **CBPP** to provide supervision, oversight, support and evaluation of the **MISD** teachers;
- Provide certified early childhood teachers to deliver three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher to participating children;
- Implement MISD's state adopted curriculum;
- Supplement health services, educational services, parental training and other services as required by the children and their families;
- Assign special education teachers to provide services to children who are identified in need of special services through the **MISD** Special Education Program;
- Provide instructional technology and resources that are essential to implement a high quality comprehensive early childhood education program. Any instructional technology and/or resources that are provided for use at the CBPP for PreK classrooms shall remain the sole property of MISD. Such MISD provided instructional technology and resources may not be altered, used for purposes other than those for which they are intended, or removed. This includes, but is not limited to monitors, computers, iPads, and hotspot devices;
- Meet monthly or on a regular basis with designated personnel of **CBPP** to facilitate the instructional process and other services provided; and
- Provide an overview of the academic program with the participating Administrators.

B. The **MISD** Teacher/Staff will:

- Provide three (3) to six (6) hours of daily instruction, depending on enrollment, in cognitive development to the **CBPP** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-yrea-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
- Attend and/or assist in delivery of collaborative Professional Development for **MISD** and **CBPP** as deemed appropriate;
- Participate with the **CBPP** staff in the student recruitment process;
- Implement a curriculum which is planned, purposeful, playful and engaging designed to support the child's social, emotional, cognitive, and physical development;
- Attend **CBPP** meetings as deemed necessary during the school year;
- Complete and fulfill the required documentation for **MISD** and **CBPP** with the assistance of **MISD** and **CBPP**'s respective human resource departments;
- Work together with the **CBPP** teachers to provide high quality early childhood instruction and prevent a duplication of efforts;
- Inform **CBPP** when she/he is going to be absent;
- Follow established protocol with any issues or concerns which may arise;
- Follow **MISD** requirements, policies and procedures as well as the Texas Child Care Licensing Minimum Standards;
- Comply with any other responsibilities assigned by the teacher's immediate supervisor;
- Coordinate efforts with the **CBPP** staff to register the children online;

- Assigned **MISD** school teachers will travel to the **CBPP** site and provide instruction to students at such locations;

C. **CBPP** will:

- Provide classroom space in a state childcare licensed facility which meets the state guidelines and MISD's requirements, and is appropriately staffed and furnished to deliver **CBPP** services based on the qualifying standards set forth by the Texas Education Agency (TEA), Child Care Licensing and district, local, and state and MISD requirements;
- Provide a CBPP assistant teacher with the credentials required by CBPP;
- Coordinate efforts with **MISD** to identify children with special needs and follow the **MISD** referral process for identification and services;
- Identify personnel who will attend the ARDs conducted by **MISD;**
- Assist with the distribution, completion, and submission of the required **MISD** student enrollment documents within the first week of a child's enrollment;
- Provide assistance with daily attendance reporting and meeting attendance goals;
- Meet monthly or as needed with the designated **MISD** personnel;
- Schedule a time for the **CBPP** teacher and **MISD** teacher to plan weekly to implement a high-quality early childhood instruction and prevent a duplication of effort;
- Ensure that the classroom size meets the adult/child ratio as required by state and federal standards; and
- Coordinate with MISD staff to transition children to the public schools at the end of each school year.

D. Collaboratively **MISD** and **CBPP** will:

- Implement an early childhood program utilizing best early childhood practices;
- Coordinate and partner to plan for instruction, and share resources to meet the needs of eligible four-year- old (Pre-K children) and three- year-old children;
- Schedule a weekly planning time for lesson planning and preparation;
- Share information on upcoming workshops and conferences on Early Childhood Education;
- Review program operations to avoid duplication of efforts;
- Meet on a regular basis to discuss the progress of the program;
- Perform children's assessment and evaluation, and collaborative program evaluation, to meet **MISD** and **CBPP** requirements;
- Analyze and share data for program planning and improvement;
- Work together to meet attendance goals;
- Inform all stakeholders of the working relationship of the parties hereto and this Memorandum of Understanding (MOU);
- Provide family services, parent engagement activities and home visits;
- Support all events which promote the shared goals of MISD and CBPP;
- Organize and plan to sustain the program and promote a collaborative culture;

General Conditions:

- This Agreement shall not serve to create a principal agent relationship, partnership or joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party shall have any right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied or in the name of or on behalf of the other party, except as agreed in this MOU. It is expressly understood and agreed that, in the execution of this Agreement, **MISD** and any other governmental entities named herein do not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.
- Each party at their own expense, shall provide and maintain, during the term of the Agreement, General Liability insurance of $1,000,000.00 per occurrence for bodily injury, personal injury and property damage; Automobile insurance of $1,000,000.00 combined single limit per accident for bodily injury, personal injury and property damage and statutory Worker's Compensation and Employees' Liability insurance with policy limits of $1,000.000.00 for each accident, $100,000.00 policy limit -disease, $100,000.00 each employee disease, or in the case of MISD, MISD may self-insure.
- CBPP shall furnish the MISD Certificates of Insurance evidencing such coverage and **MISD** must be named as an additional insured on the Certificate of Insurance.
- This Agreement shall be governed by and construed by the laws of the State of Texas and is performable in Hidalgo County, Texas and shall constitute the complete understanding of **MISD** and **CBPP,** and may not be modified in any manner without the express written consent of all parties.
    - Notwithstanding those rules and regulations or standards set by both laws and regulatory agencies, the parties agree that if a dispute arises related to this MOU, the parties will not be required to submit the dispute to arbitration, but to non-binding mediation in Hidalgo County, Texas.
    - This Memorandum of Understanding is performable in Hidalgo County, Texas.
- Either party may terminate this Memorandum of Understanding, with or without cause by providing 30 days' written notice to the other party.
- Each party shall, to the extent allowed by law, hold harmless and indemnify the other party on claims or losses sustained by individuals directly or indirectly involved with performance of services in connection with this MOU.

Indemnification:

To the extent allowed by law, **CBPP** will and does hereby agree to indemnify, protect, defend with counsel approved by the Board of Trustees of MISD, and hold harmless **MISD** and their respective elected officials, employees, representatives and agents (collectively "**MISD Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**MISD Claims**") by any person or entity, arising out of, caused by, or resulting from **CBPP** performance under or breach of this MOU and

that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **CBPP**, anyone directly employed by **CBPP** or anyone for whose acts **CBPP** may be liable. The provisions of this section will not be construed to eliminate or reduce any other indemnification or right which any **MISD** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

To the extent allowed by law, **MISD** will and does hereby agree to indemnify, protect, defend with counsel approved by **CBPP** from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively **"CBPP claims")** by any person or entity, arising out of, caused by, or resulting from **MISD's** performance under or breach of this MOU and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **MISD** employees, anyone directly employed by the **MISD** or anyone for whose acts **MISD** may be liable. The provisions of this paragraph will not be construed to eliminate or reduce any other indemnification or right which any **CBPP** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

The below signed authorities agree to the statements in this document in order to develop a strong working relationship and an open communication system at all levels which will enable both **MISD** and **CBPP** to provide the children the best services available. The date of this MOU shall be the later of the dates of the execution by the signatories shown below.

This MOU shall supersede and replace any previous MOU in effect between the parties as of the date hereof regarding the subject matter hereof.

Executed effective as of 11th date of August, 2021.

McAllen Independent School District

By: Sam Saldivar, Jr.
Sam Saldivar, Jr. (Aug 11, 2021 13:27 CDT)

Sam Saldivar Jr., President, Board of Trustees

CBPP
Easter Seals Rio Grande Valley

By: Patricia Rosenlund
Patricia Rosenlund (Jun 11, 2021 11:18 CDT)

Pattie Rosenlund, Executive Director

APPROVED AS TO FORM:
Atlas, Hall & Rodriguez, LLP

By: Stephen L. Crain
Stephen L. Crain (Jun 3, 2021 13:29 CDT)

Stephen L. Crain

MEMORANDUM OF UNDERSTANDING BETWEEN McALLEN INDEPENDENT SCHOOL DISTRICT AND COMMUNITY-BASED PREKINDERGARTEN PROVIDER
2019-2020

This Memorandum of Understanding is by and between, Easter Seals Rio Grande Valley, a Community-Based Prekindergarten Provider ("CBPP") and the McAllen Independent School District ("MISD") to provide services to age-eligible and criteria-eligible prekindergarten children as per the guidelines established by the Department of Health and Human Services (DHHS) and the Texas Education Agency (TEA).

The purpose of the Memorandum of Understanding is to develop and foster a cohesive working relationship with prekindergarten providers to establish high quality early childhood programs in the community; to ensure that each party hereto assumes the responsibility to communicate with the other and share leadership responsibilities to maximize resources; and to ensure that these working relationships between MISD and the CBPP are developed, implemented, and reviewed annually to improve quality of services.

Each party hereto has received information regarding the nature and scope of the proposed working relationship and have approved and granted signatory authority to the individuals designated as authorized to bind their respective organizations. Signatory authorities are listed at the end of this Agreement. Each designee shall ensure that their respective Board of Directors, Owners or Board of Trustees are informed of the various aspects and elements of this Agreement.

The terms and conditions set forth in this Agreement shall constitute the entire agreement between MISD and CBPP and may not be amended except by a written document signed by both entities.

Program Requirements:

This program can be provided at the childcare site as long as the following conditions are met:

1. the site meets at least one of the following high-quality components set by the Texas Education Agency: (1) is nationally accredited; or (2) is a Texas Rising Star program 3 or higher; or (3) is a Head Start provider; or (4) is a Texas School ready participant; or (5) meets the prekindergarten program requirements under TEC 29.1532
2. the site maintains a minimum of 15 students that meet prekindergarten eligibility rules and requirements set by the Texas Education Agency. The site has up to 60 days from the first day of school or from the date of this agreement to reach the minimum of 15 students.

Term:

The Term of this Memorandum of Understanding commences February 11, 2020 and ends on June 30, 2020 (the "Term") unless earlier terminated as herein provided. If this MOU is not terminated as herein provided, then MISD and CBPP may by mutual agreement extend the term for two (2) additional one-year terms on the same terms and conditions stated herein.

Program Description

Children that are 3 or 4-years old as of September 1, of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP.** Collaboratively, the children attending **CBPP** will receive three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher, funded by MISD, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designated facility meeting Child Care Licensing and **MISD** requirements.

Days and Hours of Operation:

Days of operation shall not be less than one-hundred eighty-seven (187) days, during the months of August through May ("Days of Operation"). The daily operations will be from 7:45 am to 4:15 pm. (Note: District Calendar will be developed and approved by both entities).

Center Sites:

The name and address of the **CBPP** site that will be serviced by **MISD** is:

Easter Seals Rio Grande Valley
1217 W Houston Ave.
McAllen, TX 78501

Responsibilities:

A. **MISD** will:

- **Provide** appropriate educational and supportive services to ensure children and families are school ready per guidelines set by the Texas Education Agency (TEA).
- Assign a **MISD** principal, and/or program specialist, to the **CBPP** to provide supervision, oversight, support and evaluation of the **MISD** teachers.
- Provide certified early childhood teachers to deliver three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher to participating children.
- Supplement health services, educational services, parental training and other services as required by the children and their families.
- Assign special education teachers to provide services to children who are identified in need of special services through the **MISD** Special Education Program.
- Provide instructional resources essential to implement a high quality comprehensive early childhood education program.
- Meet monthly or on a regular basis with designated personnel of **CBPP** to facilitate the instructional process and other services.
- Provide an overview of the academic program with the participating Administrators.

B. The **MISD** Teacher/Staff will:

- Provide three (3) to six (6) hours of daily instruction, depending on enrollment, in cognitive development to the **CBPP** children utilizing the State Adopted Curriculum (4 year olds), Pre-K Guidelines (4 yr. olds), and Three-Year-Old Early Learning Guidelines (3 year olds).
- Attend and/or assist in delivery of collaborative Professional Development for **MISD** and **CBPP** as deemed appropriate.
- Participate with the **CBPP** staff in the student recruitment process.
- Implement a curriculum which is planned, purposeful, playful and engaging designed to support the child's social, emotional, cognitive, and physical development.
- Attend **CBPP** meetings as deemed necessary during the school year.
- Complete and fulfill the required documentation for **MISD** and **CBPP** with the assistance of **MISD** and **CBPP**'s respective human resource departments.
- Work together with the **CBPP** teachers to provide high quality early childhood instruction and prevent a duplication of efforts.
- Inform **CBPP** when she/he is going to be absent.
- Follow established protocol with any issues/concerns which may arise.
- Follow **MISD** requirements, policies and procedures as well as the Texas Child Care Licensing Minimum Standards.
- Comply with any other responsibilities assigned by the teacher's immediate supervisor.
- Coordinate efforts with the **CBPP** staff to register the children online.
- Assigned **MISD** school teachers will travel to the **CBPP** site and provide instruction to students at such locations.

C. **CBPP** will:

- Provide classroom space in a state childcare licensed facility which meets the state guidelines and school districts requirements, and is appropriately staffed and furnished to deliver **CBPP** services based on the qualifying standards set forth by the Texas Education Agency (TEA), Child Care Licensing and district, local, and state requirements.
- Coordinate efforts with **MISD** to identify children with special needs and follow the **MISD** referral process for identification and services.
- Identify personnel who will attend the ARDs conducted by **MISD**.
- Assist with the distribution, completion, and submission of the required **MISD** student enrollment documents within the first week of a child's enrollment.

- Provide assistance with daily attendance reporting and meeting attendance goals
- Meet monthly or as needed with the designated **MISD** personnel.
- Schedule a time for the **CBPP** teacher and **MISD** teacher to plan weekly to implement a high-quality early childhood instruction and prevent a duplication of effort.
- Ensure that the classroom size meets the adult/child ratio as required by state and federal standards.
- Coordinate with district staff to transition children to the public schools at the end of each school year.

D. Collaboratively **MISD** and **CBPP** will:

- Implement an early childhood program utilizing best early childhood practices.
- Coordinate and partner to plan for instruction, share resources and intensify services to meet the needs of eligible four-year- old (Pre-K children) and three- year-old children.
- Schedule a weekly planning time for lesson planning and preparation.
- Share information on upcoming workshops and conferences on Early Childhood Education.
- Review program operations to avoid duplication of efforts.
- Meet on a regular basis to discuss the progress of the program.
- Perform children's assessment and evaluation, and collaborative program evaluation, to meet **MISD** and **CBPP** requirements.
- Analyze and share data for program planning and improvement.
- Work together to meet attendance goals.
- Inform all stakeholders of the working relationship and Memorandum of Understanding (MOU).
- Provide family services, parent engagement activities and home visits.
- Support all events which promote the shared goals of MISD and CBPP.
- Organize and plan to sustain the program and promote a collaborative culture.

General Conditions:

- This Agreement shall not serve to create a principal agent relationship, partnership or joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party shall have any right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied or in the name of or on behalf of the other party, except as agreed in this MOU.

- It is expressly understood and agreed that, in the execution of this Agreement, **MISD** and any other governmental entities named herein do not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.
- Each party, at their own expense, shall provide and maintain, during the term of this Agreement, insurance, without retention, or self-insurance program, which shall provide general liability coverage for liability, property damage, and bodily injury. The certificate of insurance for commercial general liability, i) Bodily Injury and Property Damage $300,000 each Occurrence, and ii) General Aggregate $600,000. **CBPP and MISD** must be named as an additional insured, respectively.
- This Agreement shall be governed by and construed by the laws of the State of Texas and is performable in Hidalgo County, Texas and shall constitute the complete understanding of **MISD** and **CBPP,** and may not be modified in any manner without the express written consent of all parties.
    - Notwithstanding those rules and regulations or standards set by both laws and regulatory agencies, the parties agree that if a dispute arises related to this MOU, the parties will not be required to submit the dispute to arbitration, but to non-binding mediation in Hidalgo County, Texas.
    - This Memorandum of Understanding is performable in Hidalgo County, Texas.
- Either party may terminate this Memorandum of Understanding, with or without cause by providing 30 days' written notice to the other party.
- Each party shall, to the extent allowed by law, hold harmless and indemnify the other party on claims or losses sustained by individuals directly or indirectly involved with performance of services in connection with this Agreement.

Indemnification:

To the extent allowed by law, **CBPP** will and does hereby agree to indemnify, protect, defend with counsel approved by the Board of Trustees of MISD, and hold harmless **MISD** and their respective elected officials, employees, representatives and agents (collectively "**MISD Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**MISD Claims**") by any person or entity, arising out of, caused by, or resulting from **CBPP** performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **CBPP**, anyone directly employed by **CBPP** or anyone for whose acts **CBPP** may be liable. The provisions of this section will not be construed to eliminate or reduce any other indemnification or right which any **MISD** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

To the extent allowed by law, **MISD** will and does hereby agree to indemnify, protect, defend with counsel approved by **CBPP,** and hold harmless **CBPP** and its respective Board members, employees, representatives and agents (collectively "**CBPP Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature,

kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively **"CBPP claims")** by any person or entity, arising out of, caused by, or resulting from **MISD's** performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **MISD** employees, anyone directly employed by the **MISD** or anyone for whose acts the **MISD** may be liable. The provisions of this Section will not be construed to eliminate or reduce any other indemnification or right which any **CBPP** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

The below signed authorities agree to the statements in this document in order to develop a strong working relationship and an open communication system at all levels which will enable both **MISD** and **CBPP** to provide the children the best services available. The date of this MOU shall be the later of the dates of the execution by the signatories shown below.

McAllen Independent School District

By: _____ February 18, 2020
Jose A. Gonzalez, Ed. D. Date
Superintendent of Schools
McAllen Independent School District

By: _____ February 17, 2020
Marco Suarez Date
McAllen ISD Board of Trustees

CBPP

By: _____ March 4, 2020
Its: Pattie Rosenlund, Executive Director Date
Easter Seals Rio Grande Valley
CBPP

APPROVED AS TO FORM:

Atlas, Hall & Rodriguez, LLP

By: Stephen L. Crain
Stephen L. Crain (Jan 29, 2020)
Stephen L. Crain

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Second Amendment to the Amended and Restated Memorandum of Understanding No. 2020-278 Rhema's Learning Center, LLC

REFERENCE: Goal 1 - Student Achievement/Student Focus; Strategy 3 - Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On September 24, 2019 the Board of Trustees approved the Memorandum of Understanding ("MOU") with Rhema's Learning Center, LLC for a term of one (1) year with the option to renew for three (3) additional one (1) year terms. On June 14, 2021 the Board of Trustees approved the amended and restated MOU, which superseded the original MOU to include program requirements as set by the Texas Education Agency. Thereafter, on March 12, 2022 renewal one (1) of three (3) was signed.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The McAllen Independent School District ("District") and Rhema's Learning Center, LLC would like to amend this MOU, beginning with renewal one (1), effective July 1, 2022 through June 30, 2023.

LEGAL REVIEW:

The Amendment has been approval by legal counsel.

BUDGETARY CONSIDERATIONS:

The teacher assigned to this daycare is paid by the District through General Funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the Second Amendment to the Amended and Restated Memorandum of Understanding No. 2020-278 Rhema's Learning Center, LLC.

SUBMITTED BY: Elizabeth Cavazos **SUPERVISOR:** Rosalba De Hoyos

For further information contact:
Name: Elizabeth Cavazos
Office: 956-687-6473
Email: elizabeth.cavazos@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

SECOND AMENDMENT TO

Memorandum of Understanding NO. 2020-278 Rhema's Learning Center, LLC

This Second Amendment to Memorandum of Understanding No. 2020-278 ("MOU") effective this 1st day of July, 2022 by and between McAllen Independent School District ("MISD") and Rhema's Learning Center, LLC, a Community-Based Prekindergarten Provider ("CBPP") as follows:

WHEREAS, MISD entered into MOU No. 2020-278 dated September 26, 2019;

WHEREAS, MISD and CBPP entered a amended and restated MOU on June 15, 2021, which

superseded that MOU dated September 26, 2019;

WHEREAS, both parties agreed to renew said MOU in accordance with the renewal terms, for a term of one (1) year beginning July 1, 2022 through June 30, 2023;

WHEREAS, MISD and CBPP desire to amend the revised and restated MOU dated June 15, 2021; and

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

1. The paragraph titled "Responsibilities" Exhibit A-6 has been deleted in its entirety and substituted with the following:
    a. Provide special education services to children who are identified in need of special services through the **MISD** Special Education Program;
2. The paragraph titled "Responsibilities" Exhibit B-1 has been deleted in its entirety and substituted with the following:
    a. Provide six (6) hours of daily instruction, in cognitive development to the **CPBB** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-year-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
3. Except as modified herein, all terms and conditions of the MOU, as amended, remain in full force and effect. MISD and CBPP ratify and confirm the terms and provisions of the MOU as amended.

Signature page to follow.

EXECUTED IN DUPLICATE ORIGINALS and effective as of _____.
Date

McAllen Independent School District
By: _____
Tony Forina
Board of Trustees, President

Rhema's Learning Center, LLC

By: _____
Name: Lizeth Solar
Title: Director

Approved as to form:
Atlas, Hall, & Rodriguez LLP
by: Stephen L. Crain
Stephen L. Crain (May 25, 2022 11:58 CDT)
Stephen Crain

Alejandra Gonzalez
Director of Purchasing Services

March 9, 2022

Lizeth Solar
Rhema's Learning Center, LLC
2402 Buddy Owens Avenue
McAllen, TX 78504
rhemaslearningcenter@yahoo.com

RE: Contract 2020-278 Community Based Prekindergarten Provider (Rhema's Learning Center)

Ms. Solar,

Please accept this letter as our notice of intent to exercise the option to renew the referenced contract as allowed by the term of the Contract, for one (1) additional year, July 1, 2022 through June 30, 2023. This is renewal one (1) out of three (3) renewals.

Please indicate your preference in the appropriate checkbox, affix required signature, and return the signed document via email to krystal.mercado@mcallenisd.net no later than March 23, 2022.

If you have any questions regarding this matter, please contact Krystal Mercado, Senior Buyer at (956) 657-4484 or via e-mail at krystal.mercado@mcallenisd.net

Sincerely,

Alejandra Gonzalez
Director of Purchasing Services

☑ My company WILL renew the agreement for one (1) additional year, as indicated above. Please affix signature below.

☐ My company WILL renew the agreement for one (1) additional year WITH EXCEPTIONS as noted below. Please affix signature below.
Exceptions: _____

☐ My company WILL NOT renew the agreement for one (1) additional year, as indicated above.

Lizeth Solar (Mar 12, 2022 15:26 CST)
Authorized Signature

Lizeth Solar
Type/Print Name

Director
Title

9567892466
Phone

rhemaslearningcenter@yahoo.com
E-mail address

Mar 12, 2022
Date

2020-278
MEMORANDUM OF UNDERSTANDING BETWEEN McALLEN INDEPENDENT SCHOOL DISTRICT AND RHEMA'S LEARNING CENTER, LLC
2021-2022

This Memorandum of Understanding ("MOU") is by and between **Rhema's Learning Center, LLC**, a Community-Based Prekindergarten Provider ("CBPP") and the McAllen Independent School District ("MISD") to provide services to age-eligible and criteria-eligible prekindergarten children as per the guidelines established by the Department of Health and Human Services (DHHS) and the Texas Education Agency (TEA).

Whereas CBPP and MISD have executed an MOU providing for same or similar services to prekindergarten children as per guidelines established by the Department of Human Services ("DHHS") and ("TEA");

Whereas CBPP and MISD desire to amend and restate their existing MOU and have this MOU supersede and replace any existing MOU in effect between the parties hereto as of the date of execution of this MOU; and

Whereas CBPP meets component number two (2) Texas Rising Star program 3 or higher and component number four (4) Texas School ready participant, as described in subparagraph 1 of Program Requirements herein below.

The purpose of the Memorandum of Understanding is to develop and foster a cohesive working relationship with prekindergarten education providers to establish high quality early childhood programs in the community; to ensure that each party hereto assumes the responsibility to communicate with the other and share leadership responsibilities to maximize resources; and to ensure that these working relationships between MISD and the CBPP are developed, implemented, and reviewed annually to improve quality of services.

Each party hereto has received information regarding the nature and scope of the proposed working relationship and have approved and granted signatory authority to the individuals designated as authorized to bind their respective organizations. Signatory authorities are listed at the end of this MOU. Each designee shall ensure that their respective Board of Directors, Owners or Board of Trustees as applicable are informed of the various aspects and elements of this MOU.

The terms and conditions set forth in this MOU shall constitute the entire MOU between MISD and CBPP and may not be amended except by a written document signed by both entities.

Program Requirements:

This program can be provided at the childcare site as long as the following conditions are met:

1. the site meets at least one of the following high-quality components set by the Texas Education Agency: (1) is nationally accredited; or (2) is a Texas Rising Star program 3 or higher; or (3) is a Head Start provider; or (4) is a Texas School ready participant; or (5) meets the prekindergarten program requirements under TEC 29.1532
2. the site maintains a minimum of 15 students that meet prekindergarten eligibility rules and requirements set by the Texas Education Agency. The site has up to 60 days from the first day of school or from the date of this MOU to reach the minimum of 15 students.

The CBPP and MISD agree that a fundamental requirement of this MOU obligation is to ensure the CBPP PreK classroom meets the minimum requirement of 15 eligible students. This may be accomplished by: 1.) a homogenous Pk3 or Pk4 enrollment at the center, or 2.) combined PK3 and PK4 students who are eligible to be served by MISD into one classroom for the purposes of meeting minimum requirements to continue providing a full-day teacher on-site.

Term:

The Term of this Memorandum of Understanding commences July 1, 2021 and ends on June 30, 2022 (the "Term") unless earlier terminated as herein provided. If this MOU is not terminated as herein provided, then MISD and CBPP may by mutual agreement extend the term for three (3) additional one-year terms on the same terms and conditions stated herein.

Program Description:

Children that are 3 or 4-years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP.** Collaboratively, the children attending **CBPP** will receive three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher, funded by MISD, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designated facility meeting Child Care Licensing and **MISD** requirements.

Days and Hours of Operation:

Days of operation shall not be less than one-hundred eighty-seven (187) days, during the months of August through May ("Days of Operation"). The daily operations will be from 7:45 am to 4:15 pm. (Note: District Calendar will be developed and approved by both entities).

Center Sites:

The name and address of the **CBPP** site that will be serviced by **MISD** is:

Rhema's Learning Center, LLC
Lizeth Acevedo
2402 Buddy Owens Avenue
McAllen, TX 78504

Responsibilities:

A. **MISD** will:

- **Provide** appropriate educational and supportive services to ensure children and families are school ready per guidelines set by the Texas Education Agency (TEA);

- Assign a **MISD** principal, and/or program specialist, to the **CBPP** to provide supervision, oversight, support and evaluation of the **MISD** teachers;
- Provide certified early childhood teachers to deliver three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher to participating children;
- Implement MISD's state adopted curriculum;
- Supplement health services, educational services, parental training and other services as required by the children and their families;
- Assign special education teachers to provide services to children who are identified in need of special services through the **MISD** Special Education Program;
- Provide instructional technology and resources that are essential to implement a high quality comprehensive early childhood education program. Any instructional technology and/or resources that are provided for use at the CBPP for PreK classrooms shall remain the sole property of MISD. Such MISD provided instructional technology and resources may not be altered, used for purposes other than those for which they are intended, or removed. This includes, but is not limited to monitors, computers, iPads, and hotspot devices;
- Meet monthly or on a regular basis with designated personnel of **CBPP** to facilitate the instructional process and other services provided; and
- Provide an overview of the academic program with the participating Administrators.

B. The **MISD** Teacher/Staff will:

- Provide three (3) to six (6) hours of daily instruction, depending on enrollment, in cognitive development to the **CBPP** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-yrea-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
- Attend and/or assist in delivery of collaborative Professional Development for **MISD** and **CBPP** as deemed appropriate;
- Participate with the **CBPP** staff in the student recruitment process;
- Implement a curriculum which is planned, purposeful, playful and engaging designed to support the child's social, emotional, cognitive, and physical development;
- Attend **CBPP** meetings as deemed necessary during the school year;
- Complete and fulfill the required documentation for **MISD** and **CBPP** with the assistance of **MISD** and **CBPP**'s respective human resource departments;
- Work together with the **CBPP** teachers to provide high quality early childhood instruction and prevent a duplication of efforts;
- Inform **CBPP** when she/he is going to be absent;
- Follow established protocol with any issues or concerns which may arise;
- Follow **MISD** requirements, policies and procedures as well as the Texas Child Care Licensing Minimum Standards;
- Comply with any other responsibilities assigned by the teacher's immediate supervisor;
- Coordinate efforts with the **CBPP** staff to register the children online;

- Assigned **MISD** school teachers will travel to the **CBPP** site and provide instruction to students at such locations;

C. **CBPP** will:

- Provide classroom space in a state childcare licensed facility which meets the state guidelines and MISD's requirements, and is appropriately staffed and furnished to deliver **CBPP** services based on the qualifying standards set forth by the Texas Education Agency (TEA), Child Care Licensing and district, local, and state and MISD requirements;
- Provide a CBPP assistant teacher with the credentials required by CBPP;
- Coordinate efforts with **MISD** to identify children with special needs and follow the **MISD** referral process for identification and services;
- Identify personnel who will attend the ARDs conducted by **MISD;**
- Assist with the distribution, completion, and submission of the required **MISD** student enrollment documents within the first week of a child's enrollment;
- Provide assistance with daily attendance reporting and meeting attendance goals;
- Meet monthly or as needed with the designated **MISD** personnel;
- Schedule a time for the **CBPP** teacher and **MISD** teacher to plan weekly to implement a high-quality early childhood instruction and prevent a duplication of effort;
- Ensure that the classroom size meets the adult/child ratio as required by state and federal standards; and
- Coordinate with MISD staff to transition children to the public schools at the end of each school year.

D. Collaboratively **MISD** and **CBPP** will:

- Implement an early childhood program utilizing best early childhood practices;
- Coordinate and partner to plan for instruction, and share resources to meet the needs of eligible four-year- old (Pre-K children) and three- year-old children;
- Schedule a weekly planning time for lesson planning and preparation;
- Share information on upcoming workshops and conferences on Early Childhood Education;
- Review program operations to avoid duplication of efforts;
- Meet on a regular basis to discuss the progress of the program;
- Perform children's assessment and evaluation, and collaborative program evaluation, to meet **MISD** and **CBPP** requirements;
- Analyze and share data for program planning and improvement;
- Work together to meet attendance goals;
- Inform all stakeholders of the working relationship of the parties hereto and this Memorandum of Understanding (MOU);
- Provide family services, parent engagement activities and home visits;
- Support all events which promote the shared goals of MISD and CBPP;
- Organize and plan to sustain the program and promote a collaborative culture;

General Conditions:

- This Agreement shall not serve to create a principal agent relationship, partnership or joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party shall have any right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied or in the name of or on behalf of the other party, except as agreed in this MOU. It is expressly understood and agreed that, in the execution of this Agreement, **MISD** and any other governmental entities named herein do not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.
- Each party at their own expense, shall provide and maintain, during the term of the Agreement, General Liability insurance of $1,000,000.00 per occurrence for bodily injury, personal injury and property damage; Automobile insurance of $1,000,000.00 combined single limit per accident for bodily injury, personal injury and property damage and statutory Worker's Compensation and Employees' Liability insurance with policy limits of $1,000.000.00 for each accident, $100,000.00 policy limit -disease, $100,000.00 each employee disease, or in the case of MISD, MISD may self-insure.
- CBPP shall furnish the MISD Certificates of Insurance evidencing such coverage and **MISD** must be named as an additional insured on the Certificate of Insurance.
- This Agreement shall be governed by and construed by the laws of the State of Texas and is performable in Hidalgo County, Texas and shall constitute the complete understanding of **MISD** and **CBPP,** and may not be modified in any manner without the express written consent of all parties.
    - Notwithstanding those rules and regulations or standards set by both laws and regulatory agencies, the parties agree that if a dispute arises related to this MOU, the parties will not be required to submit the dispute to arbitration, but to non-binding mediation in Hidalgo County, Texas.
    - This Memorandum of Understanding is performable in Hidalgo County, Texas.
- Either party may terminate this Memorandum of Understanding, with or without cause by providing 30 days' written notice to the other party.
- Each party shall, to the extent allowed by law, hold harmless and indemnify the other party on claims or losses sustained by individuals directly or indirectly involved with performance of services in connection with this MOU.

Indemnification:

To the extent allowed by law, **CBPP** will and does hereby agree to indemnify, protect, defend with counsel approved by the Board of Trustees of MISD, and hold harmless **MISD** and their respective elected officials, employees, representatives and agents (collectively "**MISD Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**MISD Claims**") by any person or entity, arising out of, caused by, or resulting from **CBPP** performance under or breach of this MOU and

that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **CBPP**, anyone directly employed by **CBPP** or anyone for whose acts **CBPP** may be liable. The provisions of this section will not be construed to eliminate or reduce any other indemnification or right which any **MISD** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

To the extent allowed by law, **MISD** will and does hereby agree to indemnify, protect, defend with counsel approved by **CBPP** from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively **"CBPP claims")** by any person or entity, arising out of, caused by, or resulting from **MISD's** performance under or breach of this MOU and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **MISD** employees, anyone directly employed by the **MISD** or anyone for whose acts **MISD** may be liable. The provisions of this paragraph will not be construed to eliminate or reduce any other indemnification or right which any **CBPP** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

The below signed authorities agree to the statements in this document in order to develop a strong working relationship and an open communication system at all levels which will enable both **MISD** and **CBPP** to provide the children the best services available. The date of this MOU shall be the later of the dates of the execution by the signatories shown below.

This MOU shall supersede and replace any previous MOU in effect between the parties as of the date hereof regarding the subject matter hereof.

Executed effective as of 15th date of June, 2021.

McAllen Independent School District

By: Sam Saldivar, Jr.
Sam Saldivar, Jr. (Jun 15, 2021 09:11 CDT)
Sam Saldivar Jr., President, Board of Trustees

CBPP
Rhema's Learning Center, LLC

By: Lizeth Acevedo-Solar (Jun 3, 2021 14:56 CDT)
Lizeth Acevedo, Director

APPROVED AS TO FORM:
Atlas, Hall & Rodriguez, LLP

By: Stephen L. Crain
Stephen L. Crain (Jun 3, 2021 13:40 CDT)
Stephen L. Crain

MEMORANDUM OF UNDERSTANDING BETWEEN McALLEN INDEPENDENT SCHOOL DISTRICT AND RHEMA'S LEARNING CENTER, LLC
2019-2020

Purpose:

This Memorandum of Understanding is by and between Rhema's Learning Center, LLC, a Texas limited liability company ("Rhema's Learning Center") qualified as a 4-star Texas Rising Star child care provides the McAllen Independent School District ("MISD") to provide services to age and income eligible pre-K children as per the guidelines established by the Department of Health and Human Services (DHHS), Texas School Ready (TRS) and Texas Education Agency (TEA). The purpose of the Memorandum of Understanding is to collaboratively develop and foster a cohesive partnership to provide a high quality early childhood program for children and their families; to ensure that each party hereto assumes the responsibility to communicate with the other and share leadership responsibilities to maximize resources; and to ensure that these collaboration arrangements between MISD and Rhema's Learning Center, LLC are developed, implemented, and reviewed annually to improve quality of services.

Each party hereto has received information regarding the nature and scope of the proposed partnership and have, approved the partnership and granted signatory authority to the individuals designated as authorized to bind their respective organizations. Signatory authorities are listed at the end of this Agreement. Each designee shall ensure that their respective Board of Directors, Owners or Board of Trustees are informed of the various aspects and elements of this Agreement.

The terms and conditions set forth in this Agreement shall constitute the entire agreement between MISD and Rhema's Learning Center, LLC may not be amended except by a written document signed by both entities.

Days and Hours of Operation:

Days of operation shall not be less than one-hundred eighty-seven (187) days, during the months of August through May ("Days of Operation"). The daily operations will be from 7:45 am to 4:15 pm.

(Note: District Calendar will be developed and approved by both entities)

Center Sites:

The name and address of the **RHEMA'S LEARNING CENTER** site that will be serviced by **MISD** is:

Rhema's Learning Center, LLC
2402 Buddy Owens Avenue
McAllen, Texas 78504

Term:

The Term of this Memorandum of Understanding is for one (1) year commencing July 1, 2019 and ending June 30, 2020 (the "Term") unless earlier terminated as herein provided. If this MOU is not terminated as herein provided, then MISD and Rhema's Learning Center, LLC may by mutual agreement extend the term for two (2) additional one year terms on the same terms and conditions stated herein as long as the Planning Grant is in effect.

Responsibilities:

MISD will provide appropriate educational and supportive services to ensure children and families are school ready. **MISD** shall comply with and provide in a satisfactory manner as outlined in the Texas Rising Stars-4 training programs and as applicable either the Texas Education Agency (TEA), United States Department of Agriculture (USDA), or the Texas Department of Family and Protective Services (TDFPS) Childcare Licensing Regulations.

Program Description

Eligible children are 3 or 4 year old's as of September 1, of the year of the term then in effect, will be dual-enrolled and served by **MISD** and **RHEMA'S LEARNING CENTER, LLC.** Collaboratively, the children attending Rhema's Learning Center, LLC will receive three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher, funded by Pre-K Planning Grant in each classroom, and full day services by a MISD teacher and a **RHEMA'S LEARNING CENTER, LLC** assistant teacher with credentials required by **RHEMA'S LEARNING CENTER, LLC** in a designated facility meeting, Child Care Licensing and **MISD** requirements.

Partnership Responsibilities

A. **MISD** will:
   a. Assign a **MISD** principal, and/or program specialist to the **RHEMA'S LEARNING CENTER, LLC** facilities to provide supervision, oversight, support and evaluation of the **MISD** teachers.
   b. Provide certified early childhood teachers to deliver Three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher to participating **RHEMA'S LEARNING CENTER, LLC** children.
   c. Coordinate efforts with **RHEMA'S LEARNING CENTER, LLC** to identify at least 10% of funded enrollment of **RHEMA'S LEARNING CENTER, LLC** children with special needs and follow the referral process for identification and provision of services.
   d. Permit TSR Day Care representatives to attend ARDs conducted by **MISD** involving **RHEMA'S LEARNING CENTER, LLC** children.
   e. Supplement health services, educational services, parental training and other services as required by the children and their families.
   f. Assign special education teachers to provide services to children who are identified in need of special services through the **MISD** Special Education Program.
   g. Provide support staff to assist with various services to the children, parents, and teachers.
   h. Provide instructional resources essential to implement a high quality comprehensive early childhood education program.
   i. Meet monthly or on a regular basis with designated personnel of **RHEMA'S LEARNING CENTER, LLC** to facilitate the instructional process and other services.
   j. Provide an overview of the collaboration with the participating Administrators.

k. Finance the **MISD** personnel and other resources.
l. Purchase and maintain a certificate of insurance for commercial general liability, i) Bodily Injury and Property Damage $300,000 each Occurrence, and ii) General Aggregate $600,000. **RHEMA'S LEARNING CENTER, LLC** must be named as an additional insured.

B. The **MISD** Teacher/Staff will:
   a. Provide three (3) to six (6) hours of daily instruction, depending on enrollment, in cognitive development to the **RHEMA'S LEARNING CENTER, LLC** children utilizing the State Adopted Curriculum (4 year olds), Pre-K Guidelines (4 yr. olds), and Three-Year-Old Early Learning Guidelines (3 year olds).
   b. Attend and/or assist in delivery of collaborative Professional Development for MISD and **RHEMA'S LEARNING CENTER, LLC** as deemed appropriate.
   c. Participate with the **RHEMA'S LEARNING CENTER, LLC** staff in the recruitment process.
   d. Implement a curriculum which is planned, purposeful, playful and engaging designed to support the child's social, emotional, cognitive, and physical development.
   e. Attend **RHEMA'S LEARNING CENTER, LLC** collaboration meetings as deemed necessary during the school year.
   f. Complete and fulfill the required documentation for **MISD** and **RHEMA'S LEARNING CENTER, LLC** with the assistance of both Human Resource Departments.
   g. Collaborate with the **RHEMA'S LEARNING CENTER, LLC** teacher to provide high quality early childhood instruction and prevent a duplication of efforts.
   h. Teacher will inform the Center Manager and **RHEMA'S LEARNING CENTER, LLC** when she/he is going to be absent.
   i. Follow collaboration protocol with any issues/concerns which may arise.
   j. Follow **MISD** requirements, policies and procedures as well as the TSR Day Care's Performance Standards and the Texas Child Care Licensing Minimum Standards.
   k. Comply with any other responsibilities assigned by the immediate supervisor.
   l. Coordinate efforts with the **RHEMA'S LEARNING CENTER, LLC** staff to register the children online.

C. **Rhema's Learning Center, LLC** will:
   a. Provide classroom space in a state child care licensed facility which meets the state guidelines of **Texas Rising Star-4 Day Care's** and school districts requirements, is appropriately staffed and furnished to deliver **RHEMA'S LEARNING CENTER, LLC** services based on the TSR Standards, Child Care Licensing and district/state requirements.
   b. Coordinate efforts with **MISD** to identify children with special needs and follow the **MISD** referral process for identification and services.
   c. Identify personnel who will attend the ARDs conducted by **MISD**.
   d. Assist with the distribution, completion, and submission of the required **MISD** student enrollment documents within the first week of a child's enrollment.

e. Coordinate with district staff to transition children to the public schools at the end of each school year.
f. Provide assistance with daily attendance reporting.
g. Meet monthly or as needed with the designated **MISD** personnel.
h. Schedule a time for the **RHEMA'S LEARNING CENTER, LLC** teacher and **MISD** teacher to plan weekly to implement a high quality early childhood instruction and prevent a duplication of effort.
i. Ensure that the classroom size meets the adult/child ratio as required by state and federal standards.
j. Finance program operations based on the **RHEMA'S LEARNING CENTER, LLC** planning Grant.

D. Collaboratively **MISD** and **RHEMA'S LEARNING CENTER, LLC** will:
a. Implement an early childhood program utilizing best early childhood practices.
b. Coordinate and collaborate to plan for instruction, share resources and intensify services to meet the needs of eligible four-year- old (Pre-K children) and three-year-old children.
c. Schedule a weekly planning time for lesson planning and preparation.
d. Share information on upcoming workshops and conferences on Early Childhood and Day Care's.
e. Review program operations to avoid duplication of efforts.
f. Meet on a regular basis to discuss the progress of the collaboration.
g. Perform children's assessment and evaluation, and collaborative program evaluation, to meet **MISD** and **RHEMA'S LEARNING CENTER, LLC** requirements.
h. Analyze and share data for program planning and improvement.
i. Work together to meet attendance goal.
j. Inform all stakeholders of the collaboration and Memorandum of Understanding (MOU).
k. Provide family services, parent engagement activities and home visits.
l. Support all events which promote the partnership.
m. Organize and plan to sustain the partnership and promote a collaborative culture.

Transportation Services

Assigned **MISD** School teachers will travel to the **RHEMA'S LEARNING CENTER, LLC** site and provide instruction to students at such locations.

General Conditions

- This Agreement shall not serve to create a principal agent relationship, partnership or joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party shall have any right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied or in the name of or on behalf of the other party, except as agreed in this MOU.

- It is expressly understood and agreed that, in the execution of this Agreement, **MISD** and any other governmental entities named herein do not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.
- Each party, at their own expense, shall provide and maintain, during the term of this Agreement, insurance, without retention, or self-insurance program, which shall provide general liability coverage for liability, property damage, and bodily injury.
- This Agreement shall be governed by, and construed by the laws of the State of Texas and is performable in Hidalgo County, Texas and shall constitute the complete understanding of **MISD** and **RHEMA'S LEARNING CENTER, LLC,** and may not be modified in any manner without the express written consent of all parties.
    - Notwithstanding those rules and regulations or standards set by both laws and regulatory agencies, the parties agree that if a dispute arises related to this MOU, the parties will not be required to submit the dispute to arbitration, but to non-binding mediation in Hidalgo County, Texas.
    - This Memorandum of Understanding is performable in Hidalgo County, Texas.
- Either party may terminate this Agreement, with or without cause by providing 30 days' written notice to the other party.
- Each party shall, to the extent allowed by law, hold harmless and indemnify the other party on claims or losses sustained by individuals directly or indirectly involved with performance of services in connection with this Agreement.

Payment to Rhema's Learning Center, LLC:

MISD shall within thirty (30) days following the termination of this MOU pay Rhema's Learning Center, LLC the sum of One Hundred and no one hundredths Dollars ($100.00) per student attending Rhema's Learning Center, LLC during the Term of this MOU provided however for a student so attending to be counted for such payment to Rhema's Learning Center, LLC such student must have attended Rhema's Learning Center, LLC for thirty (30) consecutive days of the Days of Operation and have achieved ninety five percent attendance for such thirty day period during the Term of this MOU.

Indemnification:

To the extent allowed by law, **RHEMA'S LEARNING CENTER, LLC** will and does hereby agree to indemnify, protect, defend with counsel approved by the Board of Trustees of MISD, and hold harmless **MISD** and their respective elected officials, employees, representatives and agents (collectively "**MISD Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**MISD Claims**") by any person or entity, arising out of, caused by, or resulting from **RHEMA'S LEARNING CENTER, LLC** performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **RHEMA'S LEARNING CENTER, LLC**, anyone directly employed by **RHEMA'S LEARNING**

CENTER, LLC or anyone for whose acts **RHEMA'S LEARNING CENTER, LLC** may be liable. The provisions of this section will not be construed to eliminate or reduce any other indemnification or right which any **MISD** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

To the extent allowed by law, **MISD** will and does hereby agree to indemnify, protect, defend with counsel approved by **RHEMA'S LEARNING CENTER, LLC** from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**RHEMA'S LEARNING CENTER, LLC**") claims by any person or entity, arising out of, caused by, or resulting from **MISD's** performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **MISD** employees, anyone directly employed by the **MISD** or anyone for whose acts the **MISD** may be liable. The provisions of this Section will not be construed to eliminate or reduce any other indemnification or right which any **RHEMA'S LEARNING CENTER, LLC** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

The below signed authorities agree to the statements in this document in order to develop a strong collaboration and an open communication system at all levels which will enable both **MISD** and **RHEMA'S LEARNING CENTER, LLC** to provide the children the best services available.

McAllen Independent School District

By: Marco Suarez (Sep 26, 2019)
Marco Suarez, President
McAllen ISD Board of Trustees

Sep 26, 2019
Date

RHEMA'S LEARNING CENTER, LLC

By: _____
Its: Lizeth Acevedo
Director
Rhema's Learning Center, LLC

9/26/19
Date

APPROVED AS TO FORM:
Atlas, Hall & Rodriguez, LLP

By: Stephen L. Crain (Sep 25, 2019)
Stephen L. Crain

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Second Amendment to the Amended and Restated Memorandum of Understanding No. 2021-082 Kids Village Montessori, LLC

REFERENCE: Goal 1 - Student Achievement/Student Focus; Strategy 3 - Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On August 10, 2020 the Board of Trustees approved the Memorandum of Understanding ("MOU") with Kids Village Montessori, LLC for a term of one (1) year with the option to renew for three (3) additional one (1) year terms. On June 14, 2021 the Board of Trustees approved the amended and restated MOU, which superseded the original MOU to include program requirements as set by the Texas Education Agency. Thereafter, on March 23, 2022 renewal one (1) of three (3) was signed.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The McAllen Independent School District ("District") and Kids Village Montessori, LLC would like to amend this MOU, beginning with renewal one (1), effective July 1, 2022 through June 30, 2023.

LEGAL REVIEW:

The Amendment has been approval by legal counsel.

BUDGETARY CONSIDERATIONS:

The teacher assigned to this daycare is paid by the District through General Funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the Second Amendment to the Amended and Restated Memorandum of Understanding No. 2021-082 Kids Village Montessori, LLC.

SUBMITTED BY: Elizabeth Cavazos **SUPERVISOR:** Rosalba De Hoyos

For further information contact:
Name: Elizabeth Cavazos
Office: 956-687-6473
Email: elizabeth.cavazos@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

SECOND AMENDMENT TO

Memorandum of Understanding NO. 2021-082 Kid's Village Montessori, LLC

This Second Amendment to Memorandum of Understanding No. 2021-082 ("MOU") effective this 1st day of July, 2022 by and between McAllen Independent School District ("MISD") and Kid's Village Montessori, LLC, a Community-Based Prekindergarten Provider ("CBPP") as follows:

WHEREAS, MISD entered into MOU No. 2021-082 dated August 18, 2020;

WHEREAS, MISD and CBPP entered a amended and restated MOU on June 15, 2021; which superseded that MOU dated August 18, 2020;

WHEREAS, both parties agreed to renew said MOU in accordance with the renewal terms, for a term of one (1) year beginning July 1, 2022 through June 30, 2023;

WHEREAS, MISD and CBPP desire to amend the revised and restated MOU dated June 15, 2021; and

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

1. The paragraph titled "Responsibilities" Exhibit A-6 has been deleted in its entirety and substituted with the following:
    a. Provide special education services to children who are identified in need of special services through the **MISD** Special Education Program;
2. The paragraph titled "Responsibilities" Exhibit B-1 has been deleted in its entirety and substituted with the following:
    a. Provide six (6) hours of daily instruction, in cognitive development to the **CPBB** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-year-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
3. Except as modified herein, all terms and conditions of the MOU, as amended, remain in full force and effect. MISD and CBPP ratify and confirm the terms and provisions of the MOU as amended.

Signature page to follow.

EXECUTED IN DUPLICATE ORIGINALS and effective as of _____.
Date

McAllen Independent School District
By: _____
Tony Forina
Board of Trustees, President

Kids Village Montessori, LLC

By: Maria Laura Rocha
Maria Laura Rocha (May 31, 2022 16:50 CDT)
Name: Maria Laura Rocha
Title: Director

Approved as to form:
Atlas, Hall, & Rodriguez LLP
by: Stephen L. Crain
Stephen L. Crain (May 25, 2022 12:44 CDT)
Stephen Crain

MCALLEN INDEPENDENT SCHOOL DISTRICT

Alejandra Gonzalez
Director of Purchasing Services

March 9, 2022

Laura Rosales
Kids Village Montessori LLC
5401 N. G Street
McAllen, TX 78504
kidsvillagemo@yahoo.com

RE: Contract 2021-082 Community Based Prekindergarten Provider (Kids Village Montessori LLC)

Ms. Rosales,

Please accept this letter as our notice of intent to exercise the option to renew the referenced contract as allowed by the term of the Contract, for one (1) additional year, July 1, 2022 through June 30, 2023. This is renewal one (1) out of three (3) renewals.

Please indicate your preference in the appropriate checkbox, affix required signature, and return the signed document via email to krystal.mercado@mcallenisd.net no later than March 23, 2022.

If you have any questions regarding this matter, please contact Krystal Mercado, Senior Buyer at (956) 657-4484 or via e-mail at krystal.mercado@mcallenisd.net

Sincerely,

Alejandra Gonzalez
Director of Purchasing Services

☑ My company WILL renew the agreement for one (1) additional year, as indicated above. Please affix signature below.

☐ My company WILL renew the agreement for one (1) additional year WITH EXCEPTIONS as noted below. Please affix signature below.
Exceptions:

☐ My company WILL NOT renew the agreement for one (1) additional year, as indicated above.

Authorized Signature

OWNER/DIRECTOR
Title

Kidsvillagemo@yahoo.com
E-mail address

Type/Print Name

956/686-8602
Phone

3/23/2022
Date

2021-082
MEMORANDUM OF UNDERSTANDING BETWEEN McALLEN INDEPENDENT SCHOOL DISTRICT AND KIDS VILLAGE MONTESSORI, LLC
2021-2022

This Memorandum of Understanding ("MOU") is by and between **Kids Village Montessori LLC**, a Community-Based Prekindergarten Provider ("CBPP") and the McAllen Independent School District ("MISD") to provide services to age-eligible and criteria-eligible prekindergarten children as per the guidelines established by the Department of Health and Human Services (DHHS) and the Texas Education Agency (TEA).

Whereas CBPP and MISD have executed an MOU providing for same or similar services to prekindergarten children as per guidelines established by the Department of Human Services ("DHHS") and ("TEA");

Whereas CBPP and MISD desire to amend and restate their existing MOU and have this MOU supersede and replace any existing MOU in effect between the parties hereto as of the date of execution of this MOU; and

Whereas CBPP meets component number five (5) meets the prekindergarten program requirements under TEC 29.1532, as described in subparagraph 1 of Program Requirements herein below.

The purpose of the Memorandum of Understanding is to develop and foster a cohesive working relationship with prekindergarten education providers to establish high quality early childhood programs in the community; to ensure that each party hereto assumes the responsibility to communicate with the other and share leadership responsibilities to maximize resources; and to ensure that these working relationships between MISD and the CBPP are developed, implemented, and reviewed annually to improve quality of services.

Each party hereto has received information regarding the nature and scope of the proposed working relationship and have approved and granted signatory authority to the individuals designated as authorized to bind their respective organizations. Signatory authorities are listed at the end of this MOU. Each designee shall ensure that their respective Board of Directors, Owners or Board of Trustees as applicable are informed of the various aspects and elements of thisMOU.

The terms and conditions set forth in this MOU shall constitute the entire MOU between MISD and CBPP and may not be amended except by a written document signed by both entities.

Program Requirements:

This program can be provided at the childcare site as long as the following conditions are met:

1. the site meets at least one of the following high-quality components set by the Texas Education Agency: (1) is nationally accredited; or (2) is a Texas Rising Star program 3 or higher; or (3) is a Head Start provider; or (4) is a Texas School ready participant; or (5) meets the prekindergarten program requirements under TEC 29.1532
2. the site maintains a minimum of 15 students that meet prekindergarten eligibility rules and requirements set by the Texas Education Agency. The site has up to 60 days from the first day of school or from the date of this MOU to reach the minimum of 15 students.

The CBPP and MISD agree that a fundamental requirement of this MOU obligation is to ensure the CBPP PreK classroom meets the minimum requirement of 15 eligible students. This may be accomplished by: 1.) a homogenous Pk3 or Pk4 enrollment at the center, or 2.) combined PK3 and PK4 students who are eligible to be served by MISD into one classroom for the purposes of meeting minimum requirements to continue providing a full-day teacher on-site.

Term:

The Term of this Memorandum of Understanding commences July 1, 2021 and ends on June 30, 2022 (the "Term") unless earlier terminated as herein provided. If this MOU is not terminated as herein provided, then MISD and CBPP may by mutual agreement extend the term for three (3) additional one-year terms on the same terms and conditions stated herein.

Program Description:

Children that are 3 or 4-years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP.** Collaboratively, the children attending **CBPP** will receive three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher, funded by MISD, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designated facility meeting Child Care Licensing and **MISD** requirements.

Days and Hours of Operation:

Days of operation shall not be less than one-hundred eighty-seven (187) days, during the months of August through May ("Days of Operation"). The daily operations will be from 7:45 am to 4:15 pm. (Note: District Calendar will be developed and approved by both entities).

Center Sites:

The name and address of the **CBPP** site that will be serviced by **MISD** is:

Kids Village Montessori LLC
Laura Rosales
5401 N. G Street.
McAllen, TX 78504

Responsibilities:

A. **MISD** will:

- **Provide** appropriate educational and supportive services to ensure children and families are school ready per guidelines set by the Texas Education Agency (TEA);
- Assign a **MISD** principal, and/or program specialist, to the **CBPP** to provide

supervision, oversight, support and evaluation of the **MISD** teachers;

- Provide certified early childhood teachers to deliver three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher to participating children;
- Implement MISD's state adopted curriculum;
- Supplement health services, educational services, parental training and other services as required by the children and their families;
- Assign special education teachers to provide services to children who are identified in need of special services through the **MISD** Special Education Program;
- Provide instructional technology and resources that are essential to implement a high quality comprehensive early childhood education program. Any instructional technology and/or resources that are provided for use at the CBPP for PreK classrooms shall remain the sole property of MISD. Such MISD provided instructional technology and resources may not be altered, used for purposes other than those for which they are intended, or removed. This includes, but is not limited to monitors, computers, iPads, and hotspot devices;
- Meet monthly or on a regular basis with designated personnel of **CBPP** to facilitate the instructional process and other services provided; and
- Provide an overview of the academic program with the participating Administrators.

B. The **MISD** Teacher/Staff will:

- Provide three (3) to six (6) hours of daily instruction, depending on enrollment, in cognitive development to the **CBPP** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-yrea-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
- Attend and/or assist in delivery of collaborative Professional Development for **MISD** and **CBPP** as deemed appropriate;
- Participate with the **CBPP** staff in the student recruitment process;
- Implement a curriculum which is planned, purposeful, playful and engaging designed to support the child's social, emotional, cognitive, and physical development;
- Attend **CBPP** meetings as deemed necessary during the school year;
- Complete and fulfill the required documentation for **MISD** and **CBPP** with the assistance of **MISD** and **CBPP**'s respective human resource departments;
- Work together with the **CBPP** teachers to provide high quality early childhood instruction and prevent a duplication of efforts;
- Inform **CBPP** when she/he is going to be absent;
- Follow established protocol with any issues or concerns which may arise;
- Follow **MISD** requirements, policies and procedures as well as the Texas Child Care Licensing Minimum Standards;
- Comply with any other responsibilities assigned by the teacher's immediate supervisor;
- Coordinate efforts with the **CBPP** staff to register the children online;
- Assigned **MISD** school teachers will travel to the **CBPP** site and provide instruction to students at such locations;

C. **CBPP** will:

- Provide classroom space in a state childcare licensed facility which meets the state guidelines and MISD's requirements, and is appropriately staffed and furnished to deliver **CBPP** services based on the qualifying standards set forth by the Texas Education Agency (TEA), Child Care Licensing and district, local, and state and MISD requirements;
- Provide a CBPP assistant teacher with the credentials required by CBPP;
- Coordinate efforts with **MISD** to identify children with special needs and follow the **MISD** referral process for identification and services;
- Identify personnel who will attend the ARDs conducted by **MISD;**
- Assist with the distribution, completion, and submission of the required **MISD** student enrollment documents within the first week of a child's enrollment;
- Provide assistance with daily attendance reporting and meeting attendance goals;
- Meet monthly or as needed with the designated **MISD** personnel;
- Schedule a time for the **CBPP** teacher and **MISD** teacher to plan weekly to implement a high-quality early childhood instruction and prevent a duplication of effort;
- Ensure that the classroom size meets the adult/child ratio as required by state and federal standards; and
- Coordinate with MISD staff to transition children to the public schools at the end of each school year.

D. Collaboratively **MISD** and **CBPP** will:

- Implement an early childhood program utilizing best early childhood practices;
- Coordinate and partner to plan for instruction, and share resources to meet the needs of eligible four-year- old (Pre-K children) and three- year-old children;
- Schedule a weekly planning time for lesson planning and preparation;
- Share information on upcoming workshops and conferences on Early Childhood Education;
- Review program operations to avoid duplication of efforts;
- Meet on a regular basis to discuss the progress of the program;
- Perform children's assessment and evaluation, and collaborative program evaluation, to meet **MISD** and **CBPP** requirements;
- Analyze and share data for program planning and improvement;
- Work together to meet attendance goals;
- Inform all stakeholders of the working relationship of the parties hereto and this Memorandum of Understanding (MOU);
- Provide family services, parent engagement activities and home visits;
- Support all events which promote the shared goals of MISD and CBPP;
- Organize and plan to sustain the program and promote a collaborative culture;

General Conditions:

- This Agreement shall not serve to create a principal agent relationship, partnership or joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party shall have any right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied or in the name of or on behalf of the other party, except as agreed in this MOU. It is expressly understood and agreed that, in the execution of this Agreement, **MISD** and any other governmental entities named herein do not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.
- Each party at their own expense, shall provide and maintain, during the term of the Agreement, General Liability insurance of $1,000,000.00 per occurrence for bodily injury, personal injury and property damage; Automobile insurance of $1,000,000.00 combined single limit per accident for bodily injury, personal injury and property damage and statutory Worker's Compensation and Employees' Liability insurance with policy limits of $1,000.000.00 for each accident, $100,000.00 policy limit -disease, $100,000.00 each employee disease, or in the case of MISD, MISD may self-insure.
- CBPP shall furnish the MISD Certificates of Insurance evidencing such coverage and **MISD** must be named as an additional insured on the Certificate of Insurance.
- This Agreement shall be governed by and construed by the laws of the State of Texas and is performable in Hidalgo County, Texas and shall constitute the complete understanding of **MISD** and **CBPP,** and may not be modified in any manner without the express written consent of all parties.
    - Notwithstanding those rules and regulations or standards set by both laws and regulatory agencies, the parties agree that if a dispute arises related to this MOU, the parties will not be required to submit the dispute to arbitration, but to non-binding mediation in Hidalgo County, Texas.
    - This Memorandum of Understanding is performable in Hidalgo County, Texas.
- Either party may terminate this Memorandum of Understanding, with or without cause by providing 30 days' written notice to the other party.
- Each party shall, to the extent allowed by law, hold harmless and indemnify the other party on claims or losses sustained by individuals directly or indirectly involved with performance of services in connection with this MOU.

Indemnification:

To the extent allowed by law, **CBPP** will and does hereby agree to indemnify, protect, defend with counsel approved by the Board of Trustees of MISD, and hold harmless **MISD** and their respective elected officials, employees, representatives and agents (collectively "**MISD Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**MISD Claims**") by any person or entity, arising out of, caused by, or resulting from **CBPP** performance under or breach of this MOU and

that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **CBPP**, anyone directly employed by **CBPP** or anyone for whose acts **CBPP** may be liable. The provisions of this section will not be construed to eliminate or reduce any other indemnification or right which any **MISD** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

To the extent allowed by law, **MISD** will and does hereby agree to indemnify, protect, defend with counsel approved by **CBPP** from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively **"CBPP claims")** by any person or entity, arising out of, caused by, or resulting from **MISD's** performance under or breach of this MOU and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **MISD** employees, anyone directly employed by the **MISD** or anyone for whose acts **MISD** may be liable. The provisions of this paragraph will not be construed to eliminate or reduce any other indemnification or right which any **CBPP** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

The below signed authorities agree to the statements in this document in order to develop a strong working relationship and an open communication system at all levels which will enable both **MISD** and **CBPP** to provide the children the best services available. The date of this MOU shall be the later of the dates of the execution by the signatories shown below.

This MOU shall supersede and replace any previous MOU in effect between the parties as of the date hereof regarding the subject matter hereof.

Executed effective as of 15th date of June, 2021.

McAllen Independent School District

By: Sam Saldivar, Jr.
Sam Saldivar, Jr. (Jun 15, 2021 09:15 CDT)
Sam Saldivar Jr., President, Board of Trustees

CBPP
Kids Village Montessori, LLC

By: Maria L Rocha Callejas
Maria L Rocha Callejas (Jun 4, 2021 14:28 CDT)
Laura Rosales, Owner/Director

APPROVED AS TO FORM:
Atlas, Hall & Rodriguez, LLP

By: Stephen L. Crain
Stephen L. Crain (Jun 3, 2021 13:39 CDT)
Stephen L. Crain

MEMORANDUM OF UNDERSTANDING BETWEEN McALLEN INDEPENDENT SCHOOL DISTRICT AND COMMUNITY-BASED PREKINDERGARTEN PROVIDER
2019-2020

This Memorandum of Understanding is by and between Kids Village Montessori LLC (a Texas, Limited Liability Company), a Community-Based Prekindergarten Provider ("CBPP") and the McAllen Independent School District ("MISD") to provide services to age-eligible and criteria-eligible prekindergarten children as per the guidelines established by the Department of Health and Human Services ("DHHS") and the Texas Education Agency ("TEA").

The purpose of the Memorandum of Understanding is to develop and foster a cohesive working relationship with prekindergarten providers to establish high quality early childhood programs in the community; to ensure that each party hereto assumes the responsibility to communicate with the other and share leadership responsibilities to maximize resources; and to ensure that these working relationships between MISD and the CBPP are developed, implemented, and reviewed annually to improve quality of services.

Each party hereto has received information regarding the nature and scope of the proposed working relationship and have approved and granted signatory authority to the individuals designated as authorized to bind their respective organizations. Signatory authorities are listed at the end of this Agreement. Each designee shall ensure that their respective Board of Directors, Owners or Board of Trustees are informed of the various aspects and elements of this Agreement.

The terms and conditions set forth in this Agreement shall constitute the entire agreement between MISD and CBPP and may not be amended except by a written document signed by both entities.

Program Requirements:

This program can be provided at the childcare site as long as the following conditions are met:

1. the site meets at least one of the following high-quality components set by the Texas Education Agency: (1) is nationally accredited; or (2) is a Texas Rising Star program 3 or higher; or (3) is a Head Start provider; or (4) is a Texas School ready participant; or (5) meets the prekindergarten program requirements under TEC 29.1532
2. the site maintains a minimum of 15 students that meet prekindergarten eligibility rules and requirements set by the Texas Education Agency. The site has up to 60 days from the first day of school or from the date of this agreement to reach the minimum of 15 students.

Term:

The Term of this Memorandum of Understanding commences September 1, 2020 and ends on June 30, 2021 (the "Term") unless earlier terminated as herein provided. If this MOU is not terminated as herein provided, then MISD and CBPP may by mutual agreement extend the term for two (2) additional one-year terms on the same terms and conditions stated herein.

Program Description

Children that are 3 or 4-years old as of September 1, of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP.** Collaboratively, the children attending **CBPP** will receive three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher, funded by MISD, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designated facility meeting Child Care Licensing and **MISD** requirements.

Days and Hours of Operation:

Days of operation shall not be less than one-hundred eighty-seven (187) days, during the months of August through May ("Days of Operation"). The daily operations will be from 7:45 am to 4:15 pm. (Note: District Calendar will be developed and approved by both entities).

Center Sites:

The name and address of the **CBPP** site that will be serviced by **MISD** is:

Kids VNillage Montessori LLC
5401 N. G Street
McAllen, Texas 78504

Responsibilities:

A. **MISD** will:

- **Provide** appropriate educational and supportive services to ensure children and families are school ready per guidelines set by the Texas Education Agency (TEA).
- Assign a **MISD** principal, and/or program specialist, to the **CBPP** to provide supervision, oversight, support and evaluation of the **MISD** teachers.
- Provide certified early childhood teachers to deliver three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher to participating children.
- Supplement health services, educational services, parental training and other services as required by the children and their families.
- Assign special education teachers to provide services to children who are identified in need of special services through the **MISD** Special Education Program.
- Provide instructional resources essential to implement a high quality comprehensive early childhood education program.
- Meet monthly or on a regular basis with designated personnel of **CBPP** to facilitate the instructional process and other services.
- Provide an overview of the academic program with the participating Administrators.

B. The **MISD** Teacher/Staff will:

- Provide three (3) to six (6) hours of daily instruction, depending on enrollment, in cognitive development to the **CBPP** children utilizing the State Adopted Curriculum (4 year olds), Pre-K Guidelines (4 yr. olds), and Three-Year-Old Early Learning Guidelines (3 year olds).
- Attend and/or assist in delivery of collaborative Professional Development for **MISD** and **CBPP** as deemed appropriate.
- Participate with the **CBPP** staff in the student recruitment process.
- Implement a curriculum which is planned, purposeful, playful and engaging designed to support the child's social, emotional, cognitive, and physical development.
- Attend **CBPP** meetings as deemed necessary during the school year.
- Complete and fulfill the required documentation for **MISD** and **CBPP** with the assistance of **MISD** and **CBPP**'s respective human resource departments.
- Work together with the **CBPP** teachers to provide high quality early childhood instruction and prevent a duplication of efforts.
- Inform **CBPP** when she/he is going to be absent.
- Follow established protocol with any issues/concerns which may arise.
- Follow **MISD** requirements, policies and procedures as well as the Texas Child Care Licensing Minimum Standards.
- Comply with any other responsibilities assigned by the teacher's immediate supervisor.
- Coordinate efforts with the **CBPP** staff to register the children online.
- Assigned **MISD** school teachers will travel to the **CBPP** site and provide instruction to students at such locations.

C. **CBPP** will:

- Provide classroom space in a state childcare licensed facility which meets the state guidelines and school districts requirements, and is appropriately staffed and furnished to deliver **CBPP** services based on the qualifying standards set forth by the Texas Education Agency (TEA), Child Care Licensing and district, local, and state requirements.
- Coordinate efforts with **MISD** to identify children with special needs and follow the **MISD** referral process for identification and services.
- Identify personnel who will attend the ARDs conducted by **MISD**.
- Assist with the distribution, completion, and submission of the required **MISD** student enrollment documents within the first week of a child's enrollment.

- Provide assistance with daily attendance reporting and meeting attendance goals
- Meet monthly or as needed with the designated **MISD** personnel.
- Schedule a time for the **CBPP** teacher and **MISD** teacher to plan weekly to implement a high-quality early childhood instruction and prevent a duplication of effort.
- Ensure that the classroom size meets the adult/child ratio as required by state and federal standards.
- Coordinate with district staff to transition children to the public schools at the end of each school year.

D. Collaboratively **MISD** and **CBPP** will:

- Implement an early childhood program utilizing best early childhood practices.
- Coordinate and partner to plan for instruction, share resources and intensify services to meet the needs of eligible four-year- old (Pre-K children) and three- year-old children.
- Schedule a weekly planning time for lesson planning and preparation.
- Share information on upcoming workshops and conferences on Early Childhood Education.
- Review program operations to avoid duplication of efforts.
- Meet on a regular basis to discuss the progress of the program.
- Perform children's assessment and evaluation, and collaborative program evaluation, to meet **MISD** and **CBPP** requirements.
- Analyze and share data for program planning and improvement.
- Work together to meet attendance goals.
- Inform all stakeholders of the working relationship and Memorandum of Understanding (MOU).
- Provide family services, parent engagement activities and home visits.
- Support all events which promote the shared goals of MISD and CBPP.
- Organize and plan to sustain the program and promote a collaborative culture.

General Conditions:

- This Agreement shall not serve to create a principal agent relationship, partnership or joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party shall have any right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied or in the name of or on behalf of the other party, except as agreed in this MOU.

- It is expressly understood and agreed that, in the execution of this Agreement, **MISD** and any other governmental entities named herein do not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.
- Each party, at their own expense, shall provide and maintain, during the term of this Agreement, insurance, without retention, or self-insurance program, which shall provide general liability coverage for liability, property damage, and bodily injury. The certificate of insurance for commercial general liability, i) Bodily Injury and Property Damage $300,000 each Occurrence, and ii) General Aggregate $600,000. **CBPP and MISD** must be named as an additional insured, respectively.
- This Agreement shall be governed by and construed by the laws of the State of Texas and is performable in Hidalgo County, Texas and shall constitute the complete understanding of **MISD** and **CBPP,** and may not be modified in any manner without the express written consent of all parties.
    - Notwithstanding those rules and regulations or standards set by both laws and regulatory agencies, the parties agree that if a dispute arises related to this MOU, the parties will not be required to submit the dispute to arbitration, but to non-binding mediation in Hidalgo County, Texas.
    - This Memorandum of Understanding is performable in Hidalgo County, Texas.
- Either party may terminate this Memorandum of Understanding, with or without cause by providing 30 days' written notice to the other party.
- Each party shall, to the extent allowed by law, hold harmless and indemnify the other party on claims or losses sustained by individuals directly or indirectly involved with performance of services in connection with this Agreement.

Indemnification:

To the extent allowed by law, **CBPP** will and does hereby agree to indemnify, protect, defend with counsel approved by the Board of Trustees of MISD, and hold harmless **MISD** and their respective elected officials, employees, representatives and agents (collectively "**MISD Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**MISD Claims**") by any person or entity, arising out of, caused by, or resulting from **CBPP** performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **CBPP**, anyone directly employed by **CBPP** or anyone for whose acts **CBPP** may be liable. The provisions of this section will not be construed to eliminate or reduce any other indemnification or right which any **MISD** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

To the extent allowed by law, **MISD** will and does hereby agree to indemnify, protect, defend with counsel approved by **CBPP** from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively

"CBPP claims") by any person or entity, arising out of, caused by, or resulting from **MISD's** performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **MISD** employees, anyone directly employed by the **MISD** or anyone for whose acts the **MISD** may be liable. The provisions of this Section will not be construed to eliminate or reduce any other indemnification or right which any **CBPP** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

The below signed authorities agree to the statements in this document in order to develop a strong working relationship and an open communication system at all levels which will enable both **MISD** and **CBPP** to provide the children the best services available. The date of this MOU shall be the later of the dates of the execution by the signatories shown below.

McAllen Independent School District

By: _____ Aug 5, 2020

Jose A. Gonzalez, Ed. D. — Date
Superintendent of Schools
McAllen Independent School District

By: Conrado Alvarado — Conrado Alvarado (Aug 12, 2020 13:55 CDT) — Aug 12, 2020

Conrado Alvarado — Date
McAllen ISD Board of Trustees, President

Kids Village Montessori, LLC

By: Maria L. Rosales Rocha — Maria L. Rosales Rocha (Aug 18, 2020 11:39 CDT) — Aug 18, 2020

Laura Rosales
Owner/Director Kids Village Montessori, LLC

APPROVED AS TO FORM:

Atlas, Hall & Rodriguez, LLP

By: Stephen L. Crain — Stephen L. Crain (Aug 5, 2020 12:28 CDT)

Stephen L. Crain

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Second Amendment to the Amended and Restated Memorandum of Understanding No. 2020-273 ABC University Educare

REFERENCE: Goal 1 - Student Achievement/Student Focus; Strategy 3 - Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On December 9, 2019 the Board of Trustees approved the Memorandum of Understanding ("MOU") with ABC University Educare for a term of one (1) year with the option to renew for three (3) additional one (1) year terms. On June 14, 2021 the Board of Trustees approved the amended and restated MOU, which superseded the original MOU to include program requirements as set by the Texas Education Agency. Thereafter, on March 11, 2022 renewal one (1) of three (3) was signed.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The McAllen Independent School District ("District") and ABC University Educare would like to amend this MOU, beginning with renewal one (1) effective July 1, 2022 through June 30, 2023.

LEGAL REVIEW:

The Amendment has been approval by legal counsel.

BUDGETARY CONSIDERATIONS:

The teacher assigned to this daycare is paid by the District through General Funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the Second Amendment to the Amended and Restated Memorandum of Understanding No. 2020-273 ABC University Educare.

SUBMITTED BY: Elizabeth Cavazos

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Elizabeth Cavazos
Office: 956-687-6473
Email: elizabeth.cavazos@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

SECOND AMENDMENT TO

Memorandum of Understanding NO. 2020-273 ABC University Educare

This Second Amendment to Memorandum of Understanding No. 2020-273 ("MOU") effective this 1st day of July, 2022 by and between McAllen Independent School District ("MISD") and ABC University Educare, a Community-Based Prekindergarten Provider ("CBPP") as follows:

WHEREAS, MISD and CBPP entered into MOU No. 2020-273 dated March 4, 2020;

WHEREAS, MISD and CBPP entered into a amended and restated MOU on June 15, 2021, which superseded that MOU dated March 4, 2020;

WHEREAS, both parties agreed to renew said MOU in accordance with the renewal terms, for a term of one (1) year beginning July 1, 2022 through June 30, 2023;

WHEREAS, MISD and CBPP desire to amend the revised and restated MOU dated June 15, 2021; and

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

1. The paragraph titled "Program Description" has been deleted in its entirety and substituted with the following:
    a. Children that are 3 or 4 years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP**. Collaboratively, the children attending **CBPP** will receive six (6) hours of instruction daily, in cognitive development by a certified **MISD** teacher, funded by **MISD**, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designed facility meeting Child Care licensing and **MISD** requirement.
2. The paragraph titled "Responsibilities" Exhibit A-3 has been deleted in its entirety and substituted with the following:
    a. Provide certified early childhood teachers to deliver six (6) hours of instruction in cognitive development daily by a certified **MISD** teacher to participating children;
3. The paragraph titled "Responsibilities" Exhibit A-6 has been deleted in its entirety and substituted with the following:
    a. Provide special education services to children who are identified in need of special services through the **MISD** Special Education Program;
4. The paragraph titled "Responsibilities" Exhibit B-1 has been deleted in its entirety and substituted with the following:
    a. Provide six (6) hours of daily instruction, in cognitive development to the **CPBB** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-year-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
5. Except as modified herein, all terms and conditions of the MOU, as amended, remain in full force and effect. MISD and CBPP ratify and confirm the terms and provisions of the MOU as amended.

Signature page to follow.

EXECUTED IN DUPLICATE ORIGINALS and effective as of _____.
Date

McAllen Independent School District
By: _____
Tony Forina
Board of Trustees, President

ABC University Educare

By: Maria Cortes
Maria Cortes (May 25, 2022 14:38 CDT)
Name: Maria Cortes
Title: Director/Owner

Approved as to form:
Atlas, Hall, & Rodriguez LLP
by: Stephen L. Crain
Stephen L. Crain (May 25, 2022 12:42 CDT)
Stephen Crain

Alejandra Gonzalez
Director of Purchasing Services

March 9, 2022

Maria Cortes
ABC University Educare
517 Pecan Blvd.
McAllen, TX 78501
Abc.university@yahoo.com

RE: Contract 2020-273 Community Based Prekindergarten Provider (ABC University Educare)

Ms. Cortes,

Please accept this letter as our notice of intent to exercise the option to renew the referenced contract as allowed by the term of the Contract, for one (1) additional year, July 1, 2022 through June 30, 2023. This is renewal one (1) out of three (3) renewals.

Please indicate your preference in the appropriate checkbox, affix required signature, and return the signed document via email to krystal.mercado@mcallenisd.net no later than March 23, 2022.

If you have any questions regarding this matter, please contact Krystal Mercado, Senior Buyer at (956) 657-4484 or via e-mail at krystal.mercado@mcallenisd.net

Sincerely,

Alejandra Gonzalez
Director of Purchasing Services

☑ My company WILL renew the agreement for one (1) additional year, as indicated above. Please affix signature below.

☐ My company WILL renew the agreement for one (1) additional year WITH EXCEPTIONS as noted below. Please affix signature below.
Exceptions: _____

☐ My company WILL NOT renew the agreement for one (1) additional year, as indicated above.

Maria Cortes Maria Cortes (Mar 11, 2022 11:56 CST)	Maria Cortes
Authorized Signature	Type/Print Name
Owner/Director	(956)971-8701
Title	Phone
abc.university@yahoo.com	Mar 11, 2022
E-mail address	Date

2020-273
MEMORANDUM OF UNDERSTANDING BETWEEN McALLEN INDEPENDENT SCHOOL DISTRICT AND ABC UNIVERSITY EDUCARE
2021-2022

This Memorandum of Understanding ("MOU") is by and between **ABC University Educare**, a Community-Based Prekindergarten Provider ("CBPP") and the McAllen Independent School District ("MISD") to provide services to age-eligible and criteria-eligible prekindergarten children as per the guidelines established by the Department of Health and Human Services (DHHS) and the Texas Education Agency (TEA).

Whereas CBPP and MISD have executed an MOU providing for same or similar services to prekindergarten children as per guidelines established by the Department of Human Services ("DHHS") and ("TEA");

Whereas CBPP and MISD desire to amend and restate their existing MOU and have this MOU supersede and replace any existing MOU in effect between the parties hereto as of the date of execution of this MOU; and

Whereas CBPP meets component number two (2) Texas Rising Star program 3 or higher and component number four (4) Texas School ready participant, as described in subparagraph 1 of Program Requirements herein below.

The purpose of the Memorandum of Understanding is to develop and foster a cohesive working relationship with prekindergarten education providers to establish high quality early childhood programs in the community; to ensure that each party hereto assumes the responsibility to communicate with the other and share leadership responsibilities to maximize resources; and to ensure that these working relationships between MISD and the CBPP are developed, implemented, and reviewed annually to improve quality of services.

Each party hereto has received information regarding the nature and scope of the proposed working relationship and have approved and granted signatory authority to the individuals designated as authorized to bind their respective organizations. Signatory authorities are listed at the end of this MOU. Each designee shall ensure that their respective Board of Directors, Owners or Board of Trustees as applicable are informed of the various aspects and elements of this MOU.

The terms and conditions set forth in this MOU shall constitute the entire MOU between MISD and CBPP and may not be amended except by a written document signed by both entities.

Program Requirements:

This program can be provided at the childcare site as long as the following conditions are met:

1. the site meets at least one of the following high-quality components set by the Texas Education Agency: (1) is nationally accredited; or (2) is a Texas Rising Star program 3 or higher; or (3) is a Head Start provider; or (4) is a Texas School ready participant; or (5) meets the prekindergarten program requirements under TEC 29.1532
2. the site maintains a minimum of 15 students that meet prekindergarten eligibility rules and requirements set by the Texas Education Agency. The site has up to 60 days from the first day of school or from the date of this MOU to reach the minimum of 15 students.

The CBPP and MISD agree that a fundamental requirement of this MOU obligation is to ensure the CBPP PreK classroom meets the minimum requirement of 15 eligible students. This may be accomplished by: 1.) a homogenous Pk3 or Pk4 enrollment at the center, or 2.) combined PK3 and PK4 students who are eligible to be served by MISD into one classroom for the purposes of meeting minimum requirements to continue providing a full-day teacher on-site.

Term:

The Term of this Memorandum of Understanding commences July 1, 2021 and ends on June 30, 2022 (the "Term") unless earlier terminated as herein provided. If this MOU is not terminated as herein provided, then MISD and CBPP may by mutual agreement extend the term for three (3) additional one-year terms on the same terms and conditions stated herein.

Program Description:

Children that are 3 or 4-years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP.** Collaboratively, the children attending **CBPP** will receive three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher, funded by MISD, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designated facility meeting Child Care Licensing and **MISD** requirements.

Days and Hours of Operation:

Days of operation shall not be less than one-hundred eighty-seven (187) days, during the months of August through May ("Days of Operation"). The daily operations will be from 7:45 am to 4:15 pm. (Note: District Calendar will be developed and approved by both entities).

Center Sites:

The name and address of the **CBPP** site that will be serviced by **MISD** is:

ABC University Educare
Maria Cortes
517 Pecan Blvd.
McAllen, TX 78501

Responsibilities:

A. **MISD** will:

- **Provide** appropriate educational and supportive services to ensure children and families are school ready per guidelines set by the Texas Education Agency (TEA);

- Assign a **MISD** principal, and/or program specialist, to the **CBPP** to provide supervision, oversight, support and evaluation of the **MISD** teachers;
- Provide certified early childhood teachers to deliver three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher to participating children;
- Implement MISD's state adopted curriculum;
- Supplement health services, educational services, parental training and other services as required by the children and their families;
- Assign special education teachers to provide services to children who are identified in need of special services through the **MISD** Special Education Program;
- Provide instructional technology and resources that are essential to implement a high quality comprehensive early childhood education program. Any instructional technology and/or resources that are provided for use at the CBPP for PreK classrooms shall remain the sole property of MISD. Such MISD provided instructional technology and resources may not be altered, used for purposes other than those for which they are intended, or removed. This includes, but is not limited to monitors, computers, iPads, and hotspot devices;
- Meet monthly or on a regular basis with designated personnel of **CBPP** to facilitate the instructional process and other services provided; and
- Provide an overview of the academic program with the participating Administrators.

B. The **MISD** Teacher/Staff will:

- Provide three (3) to six (6) hours of daily instruction, depending on enrollment, in cognitive development to the **CBPP** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-yrea-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
- Attend and/or assist in delivery of collaborative Professional Development for **MISD** and **CBPP** as deemed appropriate;
- Participate with the **CBPP** staff in the student recruitment process;
- Implement a curriculum which is planned, purposeful, playful and engaging designed to support the child's social, emotional, cognitive, and physical development;
- Attend **CBPP** meetings as deemed necessary during the school year;
- Complete and fulfill the required documentation for **MISD** and **CBPP** with the assistance of **MISD** and **CBPP**'s respective human resource departments;
- Work together with the **CBPP** teachers to provide high quality early childhood instruction and prevent a duplication of efforts;
- Inform **CBPP** when she/he is going to be absent;
- Follow established protocol with any issues or concerns which may arise;
- Follow **MISD** requirements, policies and procedures as well as the Texas Child Care Licensing Minimum Standards;
- Comply with any other responsibilities assigned by the teacher's immediate supervisor;
- Coordinate efforts with the **CBPP** staff to register the children online;

- Assigned **MISD** school teachers will travel to the **CBPP** site and provide instruction to students at such locations;

C. **CBPP** will:

- Provide classroom space in a state childcare licensed facility which meets the state guidelines and MISD's requirements, and is appropriately staffed and furnished to deliver **CBPP** services based on the qualifying standards set forth by the Texas Education Agency (TEA), Child Care Licensing and district, local, and state and MISD requirements;
- Provide a CBPP assistant teacher with the credentials required by CBPP;
- Coordinate efforts with **MISD** to identify children with special needs and follow the **MISD** referral process for identification and services;
- Identify personnel who will attend the ARDs conducted by **MISD;**
- Assist with the distribution, completion, and submission of the required **MISD** student enrollment documents within the first week of a child's enrollment;
- Provide assistance with daily attendance reporting and meeting attendance goals;
- Meet monthly or as needed with the designated **MISD** personnel;
- Schedule a time for the **CBPP** teacher and **MISD** teacher to plan weekly to implement a high-quality early childhood instruction and prevent a duplication of effort;
- Ensure that the classroom size meets the adult/child ratio as required by state and federal standards; and
- Coordinate with MISD staff to transition children to the public schools at the end of each school year.

D. Collaboratively **MISD** and **CBPP** will:

- Implement an early childhood program utilizing best early childhood practices;
- Coordinate and partner to plan for instruction, and share resources to meet the needs of eligible four-year- old (Pre-K children) and three- year-old children;
- Schedule a weekly planning time for lesson planning and preparation;
- Share information on upcoming workshops and conferences on Early Childhood Education;
- Review program operations to avoid duplication of efforts;
- Meet on a regular basis to discuss the progress of the program;
- Perform children's assessment and evaluation, and collaborative program evaluation, to meet **MISD** and **CBPP** requirements;
- Analyze and share data for program planning and improvement;
- Work together to meet attendance goals;
- Inform all stakeholders of the working relationship of the parties hereto and this Memorandum of Understanding (MOU);
- Provide family services, parent engagement activities and home visits;
- Support all events which promote the shared goals of MISD and CBPP;
- Organize and plan to sustain the program and promote a collaborative culture;

General Conditions:

- This Agreement shall not serve to create a principal agent relationship, partnership or joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party shall have any right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied or in the name of or on behalf of the other party, except as agreed in this MOU. It is expressly understood and agreed that, in the execution of this Agreement, **MISD** and any other governmental entities named herein do not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.
- Each party at their own expense, shall provide and maintain, during the term of the Agreement, General Liability insurance of $1,000,000.00 per occurrence for bodily injury, personal injury and property damage; Automobile insurance of $1,000,000.00 combined single limit per accident for bodily injury, personal injury and property damage and statutory Worker's Compensation and Employees' Liability insurance with policy limits of $1,000.000.00 for each accident, $100,000.00 policy limit -disease, $100,000.00 each employee disease, or in the case of MISD, MISD may self-insure.
- CBPP shall furnish the MISD Certificates of Insurance evidencing such coverage and **MISD** must be named as an additional insured on the Certificate of Insurance.
- This Agreement shall be governed by and construed by the laws of the State of Texas and is performable in Hidalgo County, Texas and shall constitute the complete understanding of **MISD** and **CBPP,** and may not be modified in any manner without the express written consent of all parties.
    - Notwithstanding those rules and regulations or standards set by both laws and regulatory agencies, the parties agree that if a dispute arises related to this MOU, the parties will not be required to submit the dispute to arbitration, but to non-binding mediation in Hidalgo County, Texas.
    - This Memorandum of Understanding is performable in Hidalgo County, Texas.
- Either party may terminate this Memorandum of Understanding, with or without cause by providing 30 days' written notice to the other party.
- Each party shall, to the extent allowed by law, hold harmless and indemnify the other party on claims or losses sustained by individuals directly or indirectly involved with performance of services in connection with this MOU.

Indemnification:

To the extent allowed by law, **CBPP** will and does hereby agree to indemnify, protect, defend with counsel approved by the Board of Trustees of MISD, and hold harmless **MISD** and their respective elected officials, employees, representatives and agents (collectively "**MISD Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**MISD Claims**") by any person or entity, arising out of, caused by, or resulting from **CBPP** performance under or breach of this MOU and

that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **CBPP**, anyone directly employed by **CBPP** or anyone for whose acts **CBPP** may be liable. The provisions of this section will not be construed to eliminate or reduce any other indemnification or right which any **MISD** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

To the extent allowed by law, **MISD** will and does hereby agree to indemnify, protect, defend with counsel approved by **CBPP** from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively **"CBPP claims")** by any person or entity, arising out of, caused by, or resulting from **MISD's** performance under or breach of this MOU and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **MISD** employees, anyone directly employed by the **MISD** or anyone for whose acts **MISD** may be liable. The provisions of this paragraph will not be construed to eliminate or reduce any other indemnification or right which any **CBPP** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

The below signed authorities agree to the statements in this document in order to develop a strong working relationship and an open communication system at all levels which will enable both **MISD** and **CBPP** to provide the children the best services available. The date of this MOU shall be the later of the dates of the execution by the signatories shown below.

This MOU shall supersede and replace any previous MOU in effect between the parties as of the date hereof regarding the subject matter hereof.

Executed effective as of 15th date of June, 2021.

McAllen Independent School District

By: Sam Saldivar, Jr.
Sam Saldivar, Jr., (Jun 15, 2021 09:11 CDT)
Sam Saldivar Jr., President, Board of Trustees

CBPP
ABC University Educare

By: Maria Cortes
Maria Cortes (Jun 3, 2021 17:09 CDT)
Maria Cortes, Owner/Director

APPROVED AS TO FORM:
Atlas, Hall & Rodriguez, LLP

By: Stephen L. Crain
Stephen L. Crain (Jun 3, 2021 13:28 CDT)
Stephen L. Crain

MEMORANDUM OF UNDERSTANDING BETWEEN McALLEN INDEPENDENT SCHOOL DISTRICT AND COMMUNITY-BASED PREKINDERGARTEN PROVIDER
2019-2020

This Memorandum of Understanding is by and between Maria Cortes a resident of Hidalgo County, Texas doing business as ABC University Educare, a Community-Based Prekindergarten Provider ("CBPP") and the McAllen Independent School District ("MISD") to provide services to age-eligible and criteria-eligible prekindergarten children as per the guidelines established by the Department of Health and Human Services (DHHS) and the Texas Education Agency (TEA).

The purpose of the Memorandum of Understanding is to develop and foster a cohesive working relationship with prekindergarten providers to establish high quality early childhood programs in the community; to ensure that each party hereto assumes the responsibility to communicate with the other and share leadership responsibilities to maximize resources; and to ensure that these working relationships between MISD and the CBPP are developed, implemented, and reviewed annually to improve quality of services.

Each party hereto has received information regarding the nature and scope of the proposed working relationship and have approved and granted signatory authority to the individuals designated as authorized to bind their respective organizations. Signatory authorities are listed at the end of this Agreement. Each designee shall ensure that their respective Board of Directors, Owners or Board of Trustees are informed of the various aspects and elements of this Agreement.

The terms and conditions set forth in this Agreement shall constitute the entire agreement between MISD and CBPP and may not be amended except by a written document signed by both entities.

Program Requirements:

This program can be provided at the childcare site as long as the following conditions are met:

1. the site meets at least one of the following high-quality components set by the Texas Education Agency: (1) is nationally accredited; or (2) is a Texas Rising Star program 3 or higher; or (3) is a Head Start provider; or (4) is a Texas School ready participant; or (5) meets the prekindergarten program requirements under TEC 29.1532
2. the site maintains a minimum of 15 students that meet prekindergarten eligibility rules and requirements set by the Texas Education Agency. The site has up to 60 days from the first day of school or from the date of this agreement to reach the minimum of 15 students.

Term:

The Term of this Memorandum of Understanding commences December 10, 2019 and ends on June 30, 2020 (the "Term") unless earlier terminated as herein provided. If this MOU is not terminated as herein provided, then MISD and CBPP may by mutual agreement extend the term for two (2) additional one-year terms on the same terms and conditions stated herein.

Program Description

Children that are 3 or 4-years old as of September 1, of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP.** Collaboratively, the children attending **CBPP** will receive three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher, funded by MISD, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designated facility meeting Child Care Licensing and **MISD** requirements.

Days and Hours of Operation:

Days of operation shall not be less than one-hundred eighty-seven (187) days, during the months of August through May ("Days of Operation"). The daily operations will be from 7:45 am to 4:15 pm. (Note: District Calendar will be developed and approved by both entities).

Center Sites:

The name and address of the **CBPP** site that will be serviced by **MISD** is:

Maria Cortes, ABC University Educare
517 Pecan Blvd.
McAllen, Texas 78501

Responsibilities:

A. **MISD** will:

- **Provide** appropriate educational and supportive services to ensure children and families are school ready per guidelines set by the Texas Education Agency (TEA).
- Assign a **MISD** principal, and/or program specialist, to the **CBPP** to provide supervision, oversight, support and evaluation of the **MISD** teachers.
- Provide certified early childhood teachers to deliver three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher to participating children.
- Supplement health services, educational services, parental training and other services as required by the children and their families.
- Assign special education teachers to provide services to children who are identified in need of special services through the **MISD** Special Education Program.
- Provide instructional resources essential to implement a high quality comprehensive early childhood education program.
- Meet monthly or on a regular basis with designated personnel of **CBPP** to facilitate the instructional process and other services.
- Provide an overview of the academic program with the participating Administrators.

B. The **MISD** Teacher/Staff will:

- Provide three (3) to six (6) hours of daily instruction, depending on enrollment, in cognitive development to the **CBPP** children utilizing the State Adopted Curriculum (4 year olds), Pre-K Guidelines (4 yr. olds), and Three-Year-Old Early Learning Guidelines (3 year olds).
- Attend and/or assist in delivery of collaborative Professional Development for **MISD** and **CBPP** as deemed appropriate.
- Participate with the **CBPP** staff in the student recruitment process.
- Implement a curriculum which is planned, purposeful, playful and engaging designed to support the child's social, emotional, cognitive, and physical development.
- Attend **CBPP** meetings as deemed necessary during the school year.
- Complete and fulfill the required documentation for **MISD** and **CBPP** with the assistance of **MISD** and **CBPP**'s respective human resource departments.
- Work together with the **CBPP** teachers to provide high quality early childhood instruction and prevent a duplication of efforts.
- Inform **CBPP** when she/he is going to be absent.
- Follow established protocol with any issues/concerns which may arise.
- Follow **MISD** requirements, policies and procedures as well as the Texas Child Care Licensing Minimum Standards.
- Comply with any other responsibilities assigned by the teacher's immediate supervisor.
- Coordinate efforts with the **CBPP** staff to register the children online.
- Assigned **MISD** school teachers will travel to the **CBPP** site and provide instruction to students at such locations.

C. **CBPP** will:

- Provide classroom space in a state childcare licensed facility which meets the state guidelines and school districts requirements, and is appropriately staffed and furnished to deliver **CBPP** services based on the qualifying standards set forth by the Texas Education Agency (TEA), Child Care Licensing and district, local, and state requirements.
- Coordinate efforts with **MISD** to identify children with special needs and follow the **MISD** referral process for identification and services.
- Identify personnel who will attend the ARDs conducted by **MISD**.
- Assist with the distribution, completion, and submission of the required **MISD** student enrollment documents within the first week of a child's enrollment.

- Provide assistance with daily attendance reporting and meeting attendance goals
- Meet monthly or as needed with the designated **MISD** personnel.
- Schedule a time for the **CBPP** teacher and **MISD** teacher to plan weekly to implement a high-quality early childhood instruction and prevent a duplication of effort.
- Ensure that the classroom size meets the adult/child ratio as required by state and federal standards.
- Coordinate with district staff to transition children to the public schools at the end of each school year.

D. Collaboratively **MISD** and **CBPP** will:

- Implement an early childhood program utilizing best early childhood practices.
- Coordinate and partner to plan for instruction, share resources and intensify services to meet the needs of eligible four-year- old (Pre-K children) and three- year-old children.
- Schedule a weekly planning time for lesson planning and preparation.
- Share information on upcoming workshops and conferences on Early Childhood Education.
- Review program operations to avoid duplication of efforts.
- Meet on a regular basis to discuss the progress of the program.
- Perform children's assessment and evaluation, and collaborative program evaluation, to meet **MISD** and **CBPP** requirements.
- Analyze and share data for program planning and improvement.
- Work together to meet attendance goals.
- Inform all stakeholders of the working relationship and Memorandum of Understanding (MOU).
- Provide family services, parent engagement activities and home visits.
- Support all events which promote the shared goals of MISD and CBPP.
- Organize and plan to sustain the program and promote a collaborative culture.

General Conditions:

- This Agreement shall not serve to create a principal agent relationship, partnership or joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party shall have any right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied or in the name of or on behalf of the other party, except as agreed in this MOU.

- It is expressly understood and agreed that, in the execution of this Agreement, **MISD** and any other governmental entities named herein do not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.
- Each party, at their own expense, shall provide and maintain, during the term of this Agreement, insurance, without retention, or self-insurance program, which shall provide general liability coverage for liability, property damage, and bodily injury. The certificate of insurance for commercial general liability, i) Bodily Injury and Property Damage $300,000 each Occurrence, and ii) General Aggregate $600,000. **CBPP and MISD** must be named as an additional insured, respectively.
- This Agreement shall be governed by and construed by the laws of the State of Texas and is performable in Hidalgo County, Texas and shall constitute the complete understanding of **MISD** and **CBPP,** and may not be modified in any manner without the express written consent of all parties.
    - Notwithstanding those rules and regulations or standards set by both laws and regulatory agencies, the parties agree that if a dispute arises related to this MOU, the parties will not be required to submit the dispute to arbitration, but to non-binding mediation in Hidalgo County, Texas.
    - This Memorandum of Understanding is performable in Hidalgo County, Texas.
- Either party may terminate this Memorandum of Understanding, with or without cause by providing 30 days' written notice to the other party.
- Each party shall, to the extent allowed by law, hold harmless and indemnify the other party on claims or losses sustained by individuals directly or indirectly involved with performance of services in connection with this Agreement.

Indemnification:

To the extent allowed by law, **CBPP** will and does hereby agree to indemnify, protect, defend with counsel approved by the Board of Trustees of MISD, and hold harmless **MISD** and their respective elected officials, employees, representatives and agents (collectively "**MISD Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**MISD Claims**") by any person or entity, arising out of, caused by, or resulting from **CBPP** performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **CBPP**, anyone directly employed by **CBPP** or anyone for whose acts **CBPP** may be liable. The provisions of this section will not be construed to eliminate or reduce any other indemnification or right which any **MISD** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

To the extent allowed by law, **MISD** will and does hereby agree to indemnify, protect, defend with counsel approved by **CBPP** from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively

"CBPP claims") by any person or entity, arising out of, caused by, or resulting from **MISD's** performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **MISD** employees, anyone directly employed by the **MISD** or anyone for whose acts the **MISD** may be liable. The provisions of this Section will not be construed to eliminate or reduce any other indemnification or right which any **CBPP** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

The below signed authorities agree to the statements in this document in order to develop a strong working relationship and an open communication system at all levels which will enable both **MISD** and **CBPP** to provide the children the best services available. The date of this MOU shall be the later of the dates of the execution by the signatories shown below.

McAllen Independent School District

By: _____ 12/17/2019
Jose A. Gonzalez, Ed. D. Date
Superintendent of Schools
McAllen Independent School District

By: _____ 12/9/19
Marco Suarez Date
McAllen ISD Board of Trustees

CBPP

By: _____ 03/04/2020
Its: Maria Cortes Date
Owner/Director, ABC University Educare
CBPP

APPROVED AS TO FORM:

Atlas, Hall & Rodriguez, LLP

By: Stephen L. Crain
Stephen L. Crain (Dec 5, 2019)
Stephen L. Crain

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Second Amendment to the Amended and Restated Memorandum of Understanding No. 2020-275 Tony's Playhouse Discovery Center, LLC

REFERENCE: Goal 1 - Student Achievement/Student Focus; Strategy 3 - Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On February 10, 2020 the Board of Trustees approved the Memorandum of Understanding ("MOU") with Tony's Playhouse Discovery Center, LLC for a term of one (1) year with the option to renew for three (3) additional one (1) year terms. On June 14, 2021 the Board of Trustees approved the amended and restated MOU, which superseded the original MOU to include program requirements as set by the Texas Education Agency. Thereafter, on March 22, 2022 renewal one (1) of three (3) was signed.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The McAllen Independent School District ("District") and Tony's Playhouse Discovery Center, LLC would like to amend this MOU, beginning with renewal one (1), effective July 1, 2022 through June 30, 2023.

LEGAL REVIEW:

The Amendment has been approval by legal counsel.

BUDGETARY CONSIDERATIONS:

The teacher assigned to this daycare is paid by the District through General Funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the Second Amendment to the Amended and Restated Memorandum of Understanding No. 2020-275 Tony's Playhouse Discovery Center, LLC.

SUBMITTED BY: Elizabeth Cavazos **SUPERVISOR:** Rosalba De Hoyos

For further information contact:
Name: Elizabeth Cavazos
Office: 956-687-6473
Email: elizabeth.cavazos@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

SECOND AMENDMENT TO

Memorandum of Understanding NO. 2020-275 Tony's Playhouse Discovery Center, LLC

This Second Amendment to Memorandum of Understanding No. 2020-275 ("MOU") effective this 1st day of July, 2022 by and between McAllen Independent School District ("MISD") and Tony's Playhouse Discovery Center, LLC, a Community-Based Prekindergarten Provider ("CBPP") as follows:

WHEREAS, MISD and CBPP entered into MOU No. 2020-275 dated March 4, 2020;

WHEREAS, MISD and CBPP entered a amended and restated MOU on June 15, 2021, which superseded that MOU dated March 4, 2020;

WHEREAS, both parties agreed to renew said MOU in accordance with the renewal terms, for a term of one (1) year beginning July 1, 2022 through June 30, 2023;

WHEREAS, MISD and CBPP desire to amend the revised and restated MOU dated June 15, 2021; and

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

1. The paragraph titled "Program Description" has been deleted in its entirety and substituted with the following:
    a. Children that are 3 or 4 years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP**. Collaboratively, the children attending **CBPP** will receive six (6) hours of instruction daily, in cognitive development by a certified **MISD** teacher, funded by **MISD**, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designed facility meeting Child Care licensing and **MISD** requirement.
2. The paragraph titled "Responsibilities" Exhibit A-3 has been deleted in its entirety and substituted with the following:
    a. Provide certified early childhood teachers to deliver six (6) hours of instruction in cognitive development daily by a certified **MISD** teacher to participating children;
3. The paragraph titled "Responsibilities" Exhibit A-6 has been deleted in its entirety and substituted with the following:
    a. Provide special education services to children who are identified in need of special services through the **MISD** Special Education Program;
4. The paragraph titled "Responsibilities" Exhibit B-1 has been deleted in its entirety and substituted with the following:
    a. Provide six (6) hours of daily instruction, in cognitive development to the **CPBB** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-year-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
5. Except as modified herein, all terms and conditions of the MOU, as amended, remain in full force and effect. MISD and CBPP ratify and confirm the terms and provisions of the MOU as amended.

Signature page to follow.

EXECUTED IN DUPLICATE ORIGINALS and effective as of _____.
Date

McAllen Independent School District
By: _____
Tony Forina
Board of Trustees, President

Tony's Playhouse Discovery Center, LLC

By: Evon Ibarra
Evon Ibarra (May 27, 2022 17:26 CDT)
Name: Evon Ibarra
Title: Director

Approved as to form:
Atlas, Hall, & Rodriguez LLP
by: Stephen L. Crain
Stephen L. Crain (May 25, 2022 12:43 CDT)
Stephen Crain

Alejandra Gonzalez
Director of Purchasing Services

March 9, 2022

Evon Ibarra
Tony's Playhouse Discovery Center, LLC
1929 Pecan Blvd
McAllen, TX 78501
Tonysplayhouse@yahoo.com

RE: Contract 2020-275 Community Based Prekindergarten Provider (Tony's Playhouse Discovery Center, LLC)

Ms. Ibarra,

Please accept this letter as our notice of intent to exercise the option to renew the referenced contract as allowed by the term of the Contract, for one (1) additional year, July 1, 2022 through June 30, 2023. This is renewal one (1) out of three (3) renewals.

Please indicate your preference in the appropriate checkbox, affix required signature, and return the signed document via email to krystal.mercado@mcallenisd.net no later than March 23, 2022.

If you have any questions regarding this matter, please contact Krystal Mercado, Senior Buyer at (956) 657-4484 or via e-mail at krystal.mercado@mcallenisd.net

Sincerely,

Alejandra Gonzalez
Director of Purchasing Services

☑ My company WILL renew the agreement for one (1) additional year, as indicated above. Please affix signature below.

☐ My company WILL renew the agreement for one (1) additional year WITH EXCEPTIONS as noted below. Please affix signature below.
Exceptions: _____

☐ My company WILL NOT renew the agreement for one (1) additional year, as indicated above.

Evon Ibarra Evon Ibarra (Mar 22, 2022 18:09 CDT) Authorized Signature	Evon Ibarra Type/Print Name
Owner/Director Title	Evon Ibarra Phone
tonys_playhouse@yahoo.com E-mail address	Mar 22, 2022 Date

2020-275
MEMORANDUM OF UNDERSTANDING BETWEEN McALLEN INDEPENDENT SCHOOL DISTRICT AND TONY'S PLAYHOUSE DISCOVERY CENTER, LLC
2021-2022

This Memorandum of Understanding ("MOU") is by and between **Tony's Playhouse Discovery Center, LLC**, a Community-Based Prekindergarten Provider ("CBPP") and the McAllen Independent School District ("MISD") to provide services to age-eligible and criteria-eligible prekindergarten children as per the guidelines established by the Department of Health and Human Services (DHHS) and the Texas Education Agency (TEA).

Whereas CBPP and MISD have executed an MOU providing for same or similar services to prekindergarten children as per guidelines established by the Department of Human Services ("DHHS") and ("TEA");

Whereas CBPP and MISD desire to amend and restate their existing MOU and have this MOU supersede and replace any existing MOU in effect between the parties hereto as of the date of execution of this MOU; and

Whereas CBPP meets component number four (4) Texas School ready participant, as described in subparagraph 1 of Program Requirements herein below.

The purpose of the Memorandum of Understanding is to develop and foster a cohesive working relationship with prekindergarten education providers to establish high quality early childhood programs in the community; to ensure that each party hereto assumes the responsibility to communicate with the other and share leadership responsibilities to maximize resources; and to ensure that these working relationships between MISD and the CBPP are developed, implemented, and reviewed annually to improve quality of services.

Each party hereto has received information regarding the nature and scope of the proposed working relationship and have approved and granted signatory authority to the individuals designated as authorized to bind their respective organizations. Signatory authorities are listed at the end of this MOU. Each designee shall ensure that their respective Board of Directors, Owners or Board of Trustees as applicable are informed of the various aspects and elements of this MOU.

The terms and conditions set forth in this MOU shall constitute the entire MOU between MISD and CBPP and may not be amended except by a written document signed by both entities.

Program Requirements:

This program can be provided at the childcare site as long as the following conditions are met:

1. the site meets at least one of the following high-quality components set by the Texas Education Agency: (1) is nationally accredited; or (2) is a Texas Rising Star program 3 or higher; or (3) is a Head Start provider; or (4) is a Texas School ready participant; or (5) meets the prekindergarten program requirements under TEC 29.1532
2. the site maintains a minimum of 15 students that meet prekindergarten eligibility rules and requirements set by the Texas Education Agency. The site has up to 60 days from the first day of school or from the date of this MOU to reach the minimum of 15 students.
   The CBPP and MISD agree that a fundamental requirement of this MOU obligation is to

ensure the CBPP PreK classroom meets the minimum requirement of 15 eligible students. This may be accomplished by: 1.) a homogenous Pk3 or Pk4 enrollment at the center, or 2.) combined PK3 and PK4 students who are eligible to be served by MISD into one classroom for the purposes of meeting minimum requirements to continue providing a full-day teacher on-site.

Term:

The Term of this Memorandum of Understanding commences July 1, 2021 and ends on June 30, 2022 (the "Term") unless earlier terminated as herein provided. If this MOU is not terminated as herein provided, then MISD and CBPP may by mutual agreement extend the term for three (3) additional one-year terms on the same terms and conditions stated herein.

Program Description:

Children that are 3 or 4-years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP.** Collaboratively, the children attending **CBPP** will receive three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher, funded by MISD, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designated facility meeting Child Care Licensing and **MISD** requirements.

Days and Hours of Operation:

Days of operation shall not be less than one-hundred eighty-seven (187) days, during the months of August through May ("Days of Operation"). The daily operations will be from 7:45 am to 4:15 pm. (Note: District Calendar will be developed and approved by both entities).

Center Sites:

The name and address of the **CBPP** site that will be serviced by **MISD** is:

Tony's Playhouse Discovery Center, LLC
Evon Ibarra
929 Pecan Blvd.
McAllen, TX 78501

Responsibilities:

A. **MISD** will:

- **Provide** appropriate educational and supportive services to ensure children and families are school ready per guidelines set by the Texas Education Agency (TEA);
- Assign a **MISD** principal, and/or program specialist, to the **CBPP** to provide

supervision, oversight, support and evaluation of the **MISD** teachers;

- Provide certified early childhood teachers to deliver three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher to participating children;
- Implement MISD's state adopted curriculum;
- Supplement health services, educational services, parental training and other services as required by the children and their families;
- Assign special education teachers to provide services to children who are identified in need of special services through the **MISD** Special Education Program;
- Provide instructional technology and resources that are essential to implement a high quality comprehensive early childhood education program. Any instructional technology and/or resources that are provided for use at the CBPP for PreK classrooms shall remain the sole property of MISD. Such MISD provided instructional technology and resources may not be altered, used for purposes other than those for which they are intended, or removed. This includes, but is not limited to monitors, computers, iPads, and hotspot devices;
- Meet monthly or on a regular basis with designated personnel of **CBPP** to facilitate the instructional process and other services provided; and
- Provide an overview of the academic program with the participating Administrators.

B. The **MISD** Teacher/Staff will:

- Provide three (3) to six (6) hours of daily instruction, depending on enrollment, in cognitive development to the **CBPP** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-yrea-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
- Attend and/or assist in delivery of collaborative Professional Development for **MISD** and **CBPP** as deemed appropriate;
- Participate with the **CBPP** staff in the student recruitment process;
- Implement a curriculum which is planned, purposeful, playful and engaging designed to support the child's social, emotional, cognitive, and physical development;
- Attend **CBPP** meetings as deemed necessary during the school year;
- Complete and fulfill the required documentation for **MISD** and **CBPP** with the assistance of **MISD** and **CBPP**'s respective human resource departments;
- Work together with the **CBPP** teachers to provide high quality early childhood instruction and prevent a duplication of efforts;
- Inform **CBPP** when she/he is going to be absent;
- Follow established protocol with any issues or concerns which may arise;
- Follow **MISD** requirements, policies and procedures as well as the Texas Child Care Licensing Minimum Standards;
- Comply with any other responsibilities assigned by the teacher's immediate supervisor;
- Coordinate efforts with the **CBPP** staff to register the children online;
- Assigned **MISD** school teachers will travel to the **CBPP** site and provide

instruction to students at such locations;

C. **CBPP** will:

- Provide classroom space in a state childcare licensed facility which meets the state guidelines and MISD's requirements, and is appropriately staffed and furnished to deliver **CBPP** services based on the qualifying standards set forth by the Texas Education Agency (TEA), Child Care Licensing and district, local, and state and MISD requirements;
- Provide a CBPP assistant teacher with the credentials required by CBPP;
- Coordinate efforts with **MISD** to identify children with special needs and follow the **MISD** referral process for identification and services;
- Identify personnel who will attend the ARDs conducted by **MISD;**
- Assist with the distribution, completion, and submission of the required **MISD** student enrollment documents within the first week of a child's enrollment;
- Provide assistance with daily attendance reporting and meeting attendance goals;
- Meet monthly or as needed with the designated **MISD** personnel;
- Schedule a time for the **CBPP** teacher and **MISD** teacher to plan weekly to implement a high-quality early childhood instruction and prevent a duplication of effort;
- Ensure that the classroom size meets the adult/child ratio as required by state and federal standards; and
- Coordinate with MISD staff to transition children to the public schools at the end of each school year.

D. Collaboratively **MISD** and **CBPP** will:

- Implement an early childhood program utilizing best early childhood practices;
- Coordinate and partner to plan for instruction, and share resources to meet the needs of eligible four-year- old (Pre-K children) and three- year-old children;
- Schedule a weekly planning time for lesson planning and preparation;
- Share information on upcoming workshops and conferences on Early Childhood Education;
- Review program operations to avoid duplication of efforts;
- Meet on a regular basis to discuss the progress of the program;
- Perform children's assessment and evaluation, and collaborative program evaluation, to meet **MISD** and **CBPP** requirements;
- Analyze and share data for program planning and improvement;
- Work together to meet attendance goals;
- Inform all stakeholders of the working relationship of the parties hereto and this Memorandum of Understanding (MOU);
- Provide family services, parent engagement activities and home visits;
- Support all events which promote the shared goals of MISD and CBPP;
- Organize and plan to sustain the program and promote a collaborative culture;

General Conditions:

- This Agreement shall not serve to create a principal agent relationship, partnership or joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party shall have any right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied or in the name of or on behalf of the other party, except as agreed in this MOU. It is expressly understood and agreed that, in the execution of this Agreement, **MISD** and any other governmental entities named herein do not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.
- Each party at their own expense, shall provide and maintain, during the term of the Agreement, General Liability insurance of $1,000,000.00 per occurrence for bodily injury, personal injury and property damage; Automobile insurance of $1,000,000.00 combined single limit per accident for bodily injury, personal injury and property damage and statutory Worker's Compensation and Employees' Liability insurance with policy limits of $1,000.000.00 for each accident, $100,000.00 policy limit -disease, $100,000.00 each employee disease, or in the case of MISD, MISD may self-insure.
- CBPP shall furnish the MISD Certificates of Insurance evidencing such coverage and **MISD** must be named as an additional insured on the Certificate of Insurance.
- This Agreement shall be governed by and construed by the laws of the State of Texas and is performable in Hidalgo County, Texas and shall constitute the complete understanding of **MISD** and **CBPP,** and may not be modified in any manner without the express written consent of all parties.
    - Notwithstanding those rules and regulations or standards set by both laws and regulatory agencies, the parties agree that if a dispute arises related to this MOU, the parties will not be required to submit the dispute to arbitration, but to non-binding mediation in Hidalgo County, Texas.
    - This Memorandum of Understanding is performable in Hidalgo County, Texas.
- Either party may terminate this Memorandum of Understanding, with or without cause by providing 30 days' written notice to the other party.
- Each party shall, to the extent allowed by law, hold harmless and indemnify the other party on claims or losses sustained by individuals directly or indirectly involved with performance of services in connection with this MOU.

Indemnification:

To the extent allowed by law, **CBPP** will and does hereby agree to indemnify, protect, defend with counsel approved by the Board of Trustees of MISD, and hold harmless **MISD** and their respective elected officials, employees, representatives and agents (collectively "**MISD Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**MISD Claims**") by any person or entity, arising out of, caused by, or resulting from **CBPP** performance under or breach of this MOU and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct

of **CBPP**, anyone directly employed by **CBPP** or anyone for whose acts **CBPP** may be liable. The provisions of this section will not be construed to eliminate or reduce any other indemnification or right which any **MISD** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

To the extent allowed by law, **MISD** will and does hereby agree to indemnify, protect, defend with counsel approved by **CBPP** from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively **"CBPP claims")** by any person or entity, arising out of, caused by, or resulting from **MISD's** performance under or breach of this MOU and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **MISD** employees, anyone directly employed by the **MISD** or anyone for whose acts **MISD** may be liable. The provisions of this paragraph will not be construed to eliminate or reduce any other indemnification or right which any **CBPP** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

The below signed authorities agree to the statements in this document in order to develop a strong working relationship and an open communication system at all levels which will enable both **MISD** and **CBPP** to provide the children the best services available. The date of this MOU shall be the later of the dates of the execution by the signatories shown below.

This MOU shall supersede and replace any previous MOU in effect between the parties as of the date hereof regarding the subject matter hereof.

Executed effective as of 15th date of June, 2021.

McAllen Independent School District

By: Sam Saldivar, Jr.
Sam Saldivar, Jr. (Jun 15, 2021 09:12 CDT)
Sam Saldivar Jr., President, Board of Trustees

CBPP
Tony's Playhouse Discovery Center, LLC

By: Evon Ibarra
Evon Ibarra (Jun 3, 2021 20:39 CDT)
Evon Ibarra, Owner/Director

APPROVED AS TO FORM:
Atlas, Hall & Rodriguez, LLP

By: Stephen L. Crain
Stephen L. Crain (Jun 3, 2021 13:30 CDT)
Stephen L. Crain

MEMORANDUM OF UNDERSTANDING BETWEEN McALLEN INDEPENDENT SCHOOL DISTRICT AND COMMUNITY-BASED PREKINDERGARTEN PROVIDER
2019-2020

This Memorandum of Understanding is by and between, Tony's Playhouse Discovery Center, LLC., a Texas Limited Liability Company, a Community-Based Prekindergarten Provider ("CBPP") and the McAllen Independent School District ("MISD") to provide services to age-eligible and criteria-eligible prekindergarten children as per the guidelines established by the Department of Health and Human Services (DHHS) and the Texas Education Agency (TEA).

The purpose of the Memorandum of Understanding is to develop and foster a cohesive working relationship with prekindergarten providers to establish high quality early childhood programs in the community; to ensure that each party hereto assumes the responsibility to communicate with the other and share leadership responsibilities to maximize resources; and to ensure that these working relationships between MISD and the CBPP are developed, implemented, and reviewed annually to improve quality of services.

Each party hereto has received information regarding the nature and scope of the proposed working relationship and have approved and granted signatory authority to the individuals designated as authorized to bind their respective organizations. Signatory authorities are listed at the end of this Agreement. Each designee shall ensure that their respective Board of Directors, Owners or Board of Trustees are informed of the various aspects and elements of this Agreement.

The terms and conditions set forth in this Agreement shall constitute the entire agreement between MISD and CBPP and may not be amended except by a written document signed by both entities.

Program Requirements:

This program can be provided at the childcare site as long as the following conditions are met:

1. the site meets at least one of the following high-quality components set by the Texas Education Agency: (1) is nationally accredited; or (2) is a Texas Rising Star program 3 or higher; or (3) is a Head Start provider; or (4) is a Texas School ready participant; or (5) meets the prekindergarten program requirements under TEC 29.1532
2. the site maintains a minimum of 15 students that meet prekindergarten eligibility rules and requirements set by the Texas Education Agency. The site has up to 60 days from the first day of school or from the date of this agreement to reach the minimum of 15 students.

Term:

The Term of this Memorandum of Understanding commences February 11, 2020 and ends on June 30, 2020 (the "Term") unless earlier terminated as herein provided. If this MOU is not terminated as herein provided, then MISD and CBPP may by mutual agreement extend the term for two (2) additional one-year terms on the same terms and conditions stated herein.

Program Description

Children that are 3 or 4-years old as of September 1, of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP.** Collaboratively, the children attending **CBPP** will receive three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher, funded by MISD, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designated facility meeting Child Care Licensing and **MISD** requirements.

Days and Hours of Operation:

Days of operation shall not be less than one-hundred eighty-seven (187) days, during the months of August through May ("Days of Operation"). The daily operations will be from 7:45 am to 4:15 pm. (Note: District Calendar will be developed and approved by both entities).

Center Sites:

The name and address of the **CBPP** site that will be serviced by **MISD** is:

Tony's Playhouse Discovery Center, LLC
929 Pecan Blvd.
McAllen, Texas 78501

Responsibilities:

A. **MISD** will:

- **Provide** appropriate educational and supportive services to ensure children and families are school ready per guidelines set by the Texas Education Agency (TEA)..
- Assign a **MISD** principal, and/or program specialist, to the **CBPP** to provide supervision, oversight, support and evaluation of the **MISD** teachers.
- Provide certified early childhood teachers to deliver three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher to participating children.
- Supplement health services, educational services, parental training and other services as required by the children and their families.
- Assign special education teachers to provide services to children who are identified in need of special services through the **MISD** Special Education Program.
- Provide instructional resources essential to implement a high quality comprehensive early childhood education program.
- Meet monthly or on a regular basis with designated personnel of **CBPP** to facilitate the instructional process and other services.
- Provide an overview of the academic program with the participating Administrators.

B. The **MISD** Teacher/Staff will:

- Provide three (3) to six (6) hours of daily instruction, depending on enrollment, in cognitive development to the **CBPP** children utilizing the State Adopted Curriculum (4 year olds), Pre-K Guidelines (4 yr. olds), and Three-Year-Old Early Learning Guidelines (3 year olds).
- Attend and/or assist in delivery of collaborative Professional Development for **MISD** and **CBPP** as deemed appropriate.
- Participate with the **CBPP** staff in the student recruitment process.
- Implement a curriculum which is planned, purposeful, playful and engaging designed to support the child's social, emotional, cognitive, and physical development.
- Attend **CBPP** meetings as deemed necessary during the school year.
- Complete and fulfill the required documentation for **MISD** and **CBPP** with the assistance of **MISD** and **CBPP**'s respective human resource departments.
- Work together with the **CBPP** teachers to provide high quality early childhood instruction and prevent a duplication of efforts.
- Inform **CBPP** when she/he is going to be absent.
- Follow established protocol with any issues/concerns which may arise.
- Follow **MISD** requirements, policies and procedures as well as the Texas Child Care Licensing Minimum Standards.
- Comply with any other responsibilities assigned by the teacher's immediate supervisor.
- Coordinate efforts with the **CBPP** staff to register the children online.
- Assigned **MISD** school teachers will travel to the **CBPP** site and provide instruction to students at such locations.

C. **CBPP** will:

- Provide classroom space in a state childcare licensed facility which meets the state guidelines and school districts requirements, and is appropriately staffed and furnished to deliver **CBPP** services based on the qualifying standards set forth by the Texas Education Agency (TEA), Child Care Licensing and district, local, and state requirements.
- Coordinate efforts with **MISD** to identify children with special needs and follow the **MISD** referral process for identification and services.
- Identify personnel who will attend the ARDs conducted by **MISD**.
- Assist with the distribution, completion, and submission of the required **MISD** student enrollment documents within the first week of a child's enrollment.

- Provide assistance with daily attendance reporting and meeting attendance goals
- Meet monthly or as needed with the designated **MISD** personnel.
- Schedule a time for the **CBPP** teacher and **MISD** teacher to plan weekly to implement a high-quality early childhood instruction and prevent a duplication of effort.
- Ensure that the classroom size meets the adult/child ratio as required by state and federal standards.
- Coordinate with district staff to transition children to the public schools at the end of each school year.

D. Collaboratively **MISD** and **CBPP** will:

- Implement an early childhood program utilizing best early childhood practices.
- Coordinate and partner to plan for instruction, share resources and intensify services to meet the needs of eligible four-year- old (Pre-K children) and three- year-old children.
- Schedule a weekly planning time for lesson planning and preparation.
- Share information on upcoming workshops and conferences on Early Childhood Education.
- Review program operations to avoid duplication of efforts.
- Meet on a regular basis to discuss the progress of the program.
- Perform children's assessment and evaluation, and collaborative program evaluation, to meet **MISD** and **CBPP** requirements.
- Analyze and share data for program planning and improvement.
- Work together to meet attendance goals.
- Inform all stakeholders of the working relationship and Memorandum of Understanding (MOU).
- Provide family services, parent engagement activities and home visits.
- Support all events which promote the shared goals of MISD and CBPP.
- Organize and plan to sustain the program and promote a collaborative culture.

General Conditions:

- This Agreement shall not serve to create a principal agent relationship, partnership or joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party shall have any right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied or in the name of or on behalf of the other party, except as agreed in this MOU.

- It is expressly understood and agreed that, in the execution of this Agreement, **MISD** and any other governmental entities named herein do not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.
- Each party, at their own expense, shall provide and maintain, during the term of this Agreement, insurance, without retention, or self-insurance program, which shall provide general liability coverage for liability, property damage, and bodily injury. The certificate of insurance for commercial general liability, i) Bodily Injury and Property Damage $300,000 each Occurrence, and ii) General Aggregate $600,000. **CBPP and MISD** must be named as an additional insured, respectively.
- This Agreement shall be governed by and construed by the laws of the State of Texas and is performable in Hidalgo County, Texas and shall constitute the complete understanding of **MISD** and **CBPP,** and may not be modified in any manner without the express written consent of all parties.
    - Notwithstanding those rules and regulations or standards set by both laws and regulatory agencies, the parties agree that if a dispute arises related to this MOU, the parties will not be required to submit the dispute to arbitration, but to non-binding mediation in Hidalgo County, Texas.
    - This Memorandum of Understanding is performable in Hidalgo County, Texas.
- Either party may terminate this Memorandum of Understanding, with or without cause by providing 30 days' written notice to the other party.
- Each party shall, to the extent allowed by law, hold harmless and indemnify the other party on claims or losses sustained by individuals directly or indirectly involved with performance of services in connection with this Agreement.

Indemnification:

CBPP will and does hereby agree to indemnify, protect, defend with counsel approved by the Board of Trustees of MISD, and hold harmless **MISD** and their respective elected officials, employees, representatives and agents (collectively "**MISD Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**MISD Claims**") by any person or entity, arising out of, caused by, or resulting from **CBPP** performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **CBPP**, anyone directly employed by **CBPP** or anyone for whose acts **CBPP** may be liable. The provisions of this section will not be construed to eliminate or reduce any other indemnification or right which any **MISD** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

To the extent allowed by law, **MISD** will and does hereby agree to indemnify, protect, defend with counsel approved by **CBPP** from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively

"CBPP claims") by any person or entity, arising out of, caused by, or resulting from **MISD's** performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **MISD** employees, anyone directly employed by the **MISD** or anyone for whose acts the **MISD** may be liable. The provisions of this Section will not be construed to eliminate or reduce any other indemnification or right which any **CBPP** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

The below signed authorities agree to the statements in this document in order to develop a strong working relationship and an open communication system at all levels which will enable both **MISD** and **CBPP** to provide the children the best services available. The date of this MOU shall be the later of the dates of the execution by the signatories shown below.

McAllen Independent School District

By: _____ February 18, 2020
Jose A. Gonzalez, Ed. D. Date
Superintendent of Schools
McAllen Independent School District

By: _____ February 17, 2020
Marco Suarez Date
McAllen ISD Board of Trustees

CBPP

By: _____ 2-4-2020
Its: Evon Ibarra Date
Owner/Director, Tony's Playhouse
Discovery Center, LLC
CBPP

APPROVED AS TO FORM:

Atlas, Hall & Rodriguez, LLP

By: Stephen L. Crain
Stephen L. Crain (Jan 30, 2020)
Stephen L. Crain

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of First Amendment to Memorandum of Understanding No. 2022-093 R. Barrera Group, LLC dba New Horizons Learning Academy

REFERENCE: Goal 1 - Student Achievement/Student Focus; Strategy 3 - Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On August 9, 2021 the Board of Trustees approved the Memorandum of Understanding ("MOU") with R. Barrera Group, LLC dba New Horizons Learning Academy for a term of one (1) year with the option to renew for three (3) additional one (1) year terms. Thereafter, on March 11, 2022 renewal one (1) of three (3) was signed.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The McAllen Independent School District ("District") and R. Barrera Group, LLC dba New Horizons Learning Academy would like to amend this MOU, beginning with renewal one (1), effective July 1, 2022 through June 30, 2023.

LEGAL REVIEW:

The Amendment has been approval by legal counsel.

BUDGETARY CONSIDERATIONS:

The teacher assigned to this daycare is paid by the District through General Funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the First Amendment to Memorandum of Understanding No. 2022-093 R. Barrera Group, LLC dba New Horizons Learning Academy.

SUBMITTED BY: _____ **SUPERVISOR:** Rosalba De Hoyos

For further information contact:
Name: Elizabeth Cavazos
Office: 956-687-6473
Email: elizabeth.cavazos@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

FIRST AMENDMENT TO

Memorandum of Understanding NO. 2022-093 R. Barrera Group, LLC dba New Horizons Learning Academy

This First Amendment to Memorandum of Understanding No. 2022-093 ("MOU") effective this 1st day of July, 2022 by and between McAllen Independent School District ("MISD") and New Horizons Learning Academy, a Community-Based Prekindergarten Provider ("CBPP") as follows:

WHEREAS, MISD entered into MOU No. 2022-093 dated August 10, 2021;

WHEREAS, both parties agreed to renew said MOU in accordance with the renewal terms, for a term of one (1) year beginning July 1, 2022 through June 30, 2023;

WHEREAS, MISD and CBPP desire to amend the MOU; and

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

1. The paragraph titled "Program Description" has been deleted in its entirety and substituted with the following:
    a. Children that are 3 or 4 years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP**. Collaboratively, the children attending **CBPP** will receive six (6) hours of instruction daily, in cognitive development by a certified **MISD** teacher, funded by **MISD**, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designed facility meeting Child Care licensing and **MISD** requirement.
2. The paragraph titled "Responsibilities" Exhibit A-3 has been deleted in its entirety and substituted with the following:
    a. Provide certified early childhood teachers to deliver six (6) hours of instruction in cognitive development daily by a certified **MISD** teacher to participating children;
3. The paragraph titled "Responsibilities" Exhibit A-6 has been deleted in its entirety and substituted with the following:
    a. Provide special education services to children who are identified in need of special services through the **MISD** Special Education Program;
4. The paragraph titled "Responsibilities" Exhibit B-1 has been deleted in its entirety and substituted with the following:
    a. Provide six (6) hours of daily instruction, in cognitive development to the **CPBB** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-year-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
5. Except as modified herein, all terms and conditions of the MOU, as amended, remain in full force and effect. MISD and CBPP ratify and confirm the terms and provisions of the MOU as amended.

Signature page to follow.

EXECUTED IN DUPLICATE ORIGINALS and effective as of _____.
Date

McAllen Independent School District
By:_____
Tony Forina
Board of Trustees, President

R. Barrera Group, LLC dba New Horizons Learning Academy
By: Raisa Barrera
Raisa Barrera (May 27, 2022 12:34 CDT)
Name: Raisa Barrera
Title: Administrator

Approved as to form:
Atlas, Hall, & Rodriguez LLP
by: Stephen L. Crain
Stephen L. Crain (May 25, 2022 10:51 CDT)
Stephen Crain

Alejandra Gonzalez
Director of Purchasing Services

March 9, 2022

Raisa Barrera
New Horizons Learning Academy
5253 N 23rd St
McAllen, TX 78504
Raisita88@gmail.com

RE: Contract 2022-093 Community Based Prekindergarten Provider (New Horizons Learning Academy)

Ms. Barrera,

Please accept this letter as our notice of intent to exercise the option to renew the referenced contract as allowed by the term of the Contract, for one (1) additional year, July 1, 2022 through June 30, 2023. This is renewal one (1) out of three (3) renewals.

Please indicate your preference in the appropriate checkbox, affix required signature, and return the signed document via email to krystal.mercado@mcallenisd.net no later than March 23, 2022.

If you have any questions regarding this matter, please contact Krystal Mercado, Senior Buyer at (956) 657-4484 or via e-mail at krystal.mercado@mcallenisd.net

Sincerely,

Alejandra Gonzalez
Director of Purchasing Services

☑ My company WILL renew the agreement for one (1) additional year, as indicated above. Please affix signature below.

☐ My company WILL renew the agreement for one (1) additional year WITH EXCEPTIONS as noted below. Please affix signature below.
Exceptions: _____

☐ My company WILL NOT renew the agreement for one (1) additional year, as indicated above.

Raisa Barrera (Mar 11, 2022 11:13 CST)
Authorized Signature

Raisa Barrera
Type/Print Name

Director
Title

9569971004
Phone

raisita88@gmail.com
E-mail address

Mar 11, 2022
Date

2022-093
MEMORANDUM OF UNDERSTANDING BETWEEN McALLEN INDEPENDENT SCHOOL DISTRICT AND R. BARRERA GROUP, LLC, DBA NEW HORIZONS LEARNING ACADEMY
2021-2022

This Memorandum of Understanding ("MOU") is by and between **R. Barrera Group, LLC dba New Horizon Learning Academy**, a Community-Based Prekindergarten Provider ("CBPP") and the McAllen Independent School District ("MISD") to provide services to age-eligible and criteria-eligible prekindergarten children as per the guidelines established by the Department of Health and Human Services (DHHS) and the Texas Education Agency (TEA).

Whereas CBPP meets component number two (2) is a Texas Rising Star program, as described in subparagraph 1 of Program Requirements herein below.

The purpose of the Memorandum of Understanding is to develop and foster a cohesive working relationship with prekindergarten education providers to establish high quality early childhood programs in the community; to ensure that each party hereto assumes the responsibility to communicate with the other and share leadership responsibilities to maximize resources; and to ensure that these working relationships between MISD and the CBPP are developed, implemented, and reviewed annually to improve quality of services.

Each party hereto has received information regarding the nature and scope of the proposed working relationship and have approved and granted signatory authority to the individuals designated as authorized to bind their respective organizations. Signatory authorities are listed at the end of this MOU. Each designee shall ensure that their respective Board of Directors, Owners or Board of Trustees as applicable are informed of the various aspects and elements of thisMOU.

The terms and conditions set forth in this MOU shall constitute the entire MOU between MISD and CBPP and may not be amended except by a written document signed by both entities.

Program Requirements:

This program can be provided at the childcare site as long as the following conditions are met:

1. the site meets at least one of the following high-quality components set by the Texas Education Agency: (1) is nationally accredited; or (2) is a Texas Rising Star program 3 or higher; or (3) is a Head Start provider; or (4) is a Texas School ready participant; or (5) meets the prekindergarten program requirements under TEC 29.1532
2. the site maintains a minimum of 15 students that meet prekindergarten eligibility rules and requirements set by the Texas Education Agency. The site has up to 60 days from the first day of school or from the date of this MOU to reach the minimum of 15 students.
   The CBPP and MISD agree that a fundamental requirement of this MOU obligation is to ensure the CBPP PreK classroom meets the minimum requirement of 15 eligible students. This may be accomplished by: 1.) a homogenous Pk3 or Pk4 enrollment at the center, or 2.) combined PK3 and PK4 students who are eligible to be served by MISD into one classroom for the purposes of meeting minimum requirements to continue providing a full-day teacher on-site.

Term:

The Term of this Memorandum of Understanding commences August 10, 2021 and ends on June 30, 2022 (the "Term") unless earlier terminated as herein provided. If this MOU is not terminated as herein provided, then MISD and CBPP may by mutual agreement extend the term for three (3) additional one-year terms on the same terms and conditions stated herein.

Program Description:

Children that are 3 or 4-years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP.** Collaboratively, the children attending **CBPP** will receive three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher, funded by MISD, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designated facility meeting Child Care Licensing and **MISD** requirements.

Days and Hours of Operation:

Days of operation shall not be less than one-hundred eighty-seven (187) days, during the months of August through May ("Days of Operation"). The daily operations will be from 7:45 am to 4:15 pm. (Note: District Calendar will be developed and approved by both entities).

Center Sites:

The name and address of the **CBPP** site that will be serviced by **MISD** is:

R. Barrera Group, LLC dba New Horizon Learning Academy
Raisa Barrera
5253 N. 23rd St.
McAllen, TX 78504

Responsibilities:

A. **MISD** will:

- **Provide** appropriate educational and supportive services to ensure children and families are school ready per guidelines set by the Texas Education Agency (TEA);
- Assign a **MISD** principal, and/or program specialist, to the **CBPP** to provide supervision, oversight, support and evaluation of the **MISD** teachers;
- Provide certified early childhood teachers to deliver three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher to participating children;
- Implement MISD's state adopted curriculum;
- Supplement health services, educational services, parental training and other

services as required by the children and their families;

- Assign special education teachers to provide services to children who are identified in need of special services through the **MISD** Special Education Program;
- Provide instructional technology and resources that are essential to implement a high quality comprehensive early childhood education program. Any instructional technology and/or resources that are provided for use at the CBPP for PreK classrooms shall remain the sole property of MISD. Such MISD provided instructional technology and resources may not be altered, used for purposes other than those for which they are intended, or removed. This includes, but is not limited to monitors, computers, iPads, and hotspot devices;
- Meet monthly or on a regular basis with designated personnel of **CBPP** to facilitate the instructional process and other services provided; and
- Provide an overview of the academic program with the participating Administrators.

B. The **MISD** Teacher/Staff will:

- Provide three (3) to six (6) hours of daily instruction, depending on enrollment, in cognitive development to the **CBPP** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-yrea-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
- Attend and/or assist in delivery of collaborative Professional Development for **MISD** and **CBPP** as deemed appropriate;
- Participate with the **CBPP** staff in the student recruitment process;
- Implement a curriculum which is planned, purposeful, playful and engaging designed to support the child's social, emotional, cognitive, and physical development;
- Attend **CBPP** meetings as deemed necessary during the school year;
- Complete and fulfill the required documentation for **MISD** and **CBPP** with the assistance of **MISD** and **CBPP**'s respective human resource departments;
- Work together with the **CBPP** teachers to provide high quality early childhood instruction and prevent a duplication of efforts;
- Inform **CBPP** when she/he is going to be absent;
- Follow established protocol with any issues or concerns which may arise;
- Follow **MISD** requirements, policies and procedures as well as the Texas Child Care Licensing Minimum Standards;
- Comply with any other responsibilities assigned by the teacher's immediate supervisor;
- Coordinate efforts with the **CBPP** staff to register the children online;
- Assigned **MISD** school teachers will travel to the **CBPP** site and provide instruction to students at such locations;

C. **CBPP** will:

- Provide classroom space in a state childcare licensed facility which meets the state guidelines and MISD's requirements, and is appropriately staffed and furnished to deliver **CBPP** services based on the qualifying standards set forth by the Texas

Education Agency (TEA), Child Care Licensing and district, local, and state and MISD requirements;

- Provide a CBPP assistant teacher with the credentials required by CBPP;
- Coordinate efforts with **MISD** to identify children with special needs and follow the **MISD** referral process for identification and services;
- Identify personnel who will attend the ARDs conducted by **MISD;**
- Assist with the distribution, completion, and submission of the required **MISD** student enrollment documents within the first week of a child's enrollment;
- Provide assistance with daily attendance reporting and meeting attendance goals;
- Meet monthly or as needed with the designated **MISD** personnel;
- Schedule a time for the **CBPP** teacher and **MISD** teacher to plan weekly to implement a high-quality early childhood instruction and prevent a duplication of effort;
- Ensure that the classroom size meets the adult/child ratio as required by state and federal standards; and
- Coordinate with MISD staff to transition children to the public schools at the end of each school year.

D. Collaboratively **MISD** and **CBPP** will:

- Implement an early childhood program utilizing best early childhood practices;
- Coordinate and partner to plan for instruction, and share resources to meet the needs of eligible four-year- old (Pre-K children) and three- year-old children;
- Schedule a weekly planning time for lesson planning and preparation;
- Share information on upcoming workshops and conferences on Early Childhood Education;
- Review program operations to avoid duplication of efforts;
- Meet on a regular basis to discuss the progress of the program;
- Perform children's assessment and evaluation, and collaborative program evaluation, to meet **MISD** and **CBPP** requirements;
- Analyze and share data for program planning and improvement;
- Work together to meet attendance goals;
- Inform all stakeholders of the working relationship of the parties hereto and this Memorandum of Understanding (MOU);
- Provide family services, parent engagement activities and home visits;
- Support all events which promote the shared goals of MISD and CBPP;
- Organize and plan to sustain the program and promote a collaborative culture;

General Conditions:

- This Agreement shall not serve to create a principal agent relationship, partnership or joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party shall have any right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied or in the name of or on behalf of the other party, except as

agreed in this MOU. It is expressly understood and agreed that, in the execution of this Agreement, **MISD** and any other governmental entities named herein do not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.

- Each party at their own expense, shall provide and maintain, during the term of the Agreement, General Liability insurance of $1,000,000.00 per occurrence for bodily injury, personal injury and property damage; Automobile insurance of $1,000,000.00 combined single limit per accident for bodily injury, personal injury and property damage and statutory Worker's Compensation and Employees' Liability insurance with policy limits of $1,000.000.00 for each accident, $100,000.00 policy limit -disease, $100,000.00 each employee disease, or in the case of MISD, MISD may self-insure.
- CBPP shall furnish the MISD Certificates of Insurance evidencing such coverage and **MISD** must be named as an additional insured on the Certificate of Insurance.
- This Agreement shall be governed by and construed by the laws of the State of Texas and is performable in Hidalgo County, Texas and shall constitute the complete understanding of **MISD** and **CBPP,** and may not be modified in any manner without the express written consent of all parties.
    - Notwithstanding those rules and regulations or standards set by both laws and regulatory agencies, the parties agree that if a dispute arises related to this MOU, the parties will not be required to submit the dispute to arbitration, but to non-binding mediation in Hidalgo County, Texas.
    - This Memorandum of Understanding is performable in Hidalgo County, Texas.
- Either party may terminate this Memorandum of Understanding, with or without cause by providing 30 days' written notice to the other party.
- Each party shall, to the extent allowed by law, hold harmless and indemnify the other party on claims or losses sustained by individuals directly or indirectly involved with performance of services in connection with this MOU.

Indemnification:

To the extent allowed by law, **CBPP** will and does hereby agree to indemnify, protect, defend with counsel approved by the Board of Trustees of MISD, and hold harmless **MISD** and their respective elected officials, employees, representatives and agents (collectively "**MISD Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**MISD Claims**") by any person or entity, arising out of, caused by, or resulting from **CBPP** performance under or breach of this MOU and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **CBPP**, anyone directly employed by **CBPP** or anyone for whose acts **CBPP** may be liable. The provisions of this section will not be construed to eliminate or reduce any other indemnification or right which any **MISD** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

To the extent allowed by law, **MISD** will and does hereby agree to indemnify, protect, defend with

counsel approved by **CBPP** from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively **"CBPP claims")** by any person or entity, arising out of, caused by, or resulting from **MISD's** performance under or breach of this MOU and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **MISD** employees, anyone directly employed by the **MISD** or anyone for whose acts **MISD** may be liable. The provisions of this paragraph will not be construed to eliminate or reduce any other indemnification or right which any **CBPP** Indemnitee has by law or equity. All parties will be entitled to be representedby counsel at their own expense.

The below signed authorities agree to the statements in this document in order to develop a strong working relationship and an open communication system at all levels which will enable both **MISD** and **CBPP** to provide the children the best services available. The date of this MOU shall be the later of the dates of the execution by the signatories shown below.

Executed effective as of 10th date of August, 2021.

McAllen Independent School District

Sam Saldivar, Jr.
By: Sam Saldivar, Jr. (Aug 9, 2021 22:22 CDT)
Sam Saldivar Jr., President, Board of Trustees

CBPP
R. Barrera Group, LLC dba New Horizon Learning Academy

By: Raise br (Aug 3, 2021 11:35 CDT)
Raisa Barrera, Owner/Director

APPROVED AS TO FORM:
Atlas, Hall & Rodriguez, LLP
Stephen L. Crain
By: Stephen L. Crain (Aug 3, 2021 08:55 CDT)
Stephen L. Crain

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of First Amendment to Memorandum of Understanding No. 2022-129 Adventureland Academy, LLC

REFERENCE: Goal 1 - Student Achievement/Student Focus; Strategy 3 - Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On October 25, 2021, the Board of Trustees approved the Memorandum of Understanding ("MOU") with Adventureland Academy, LLC for a term of one (1) year with the option to renew for three (3) additional one (1) year terms. Thereafter, on March 11, 2022 renewal one (1) of three (3) was signed.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The McAllen Independent School District ("District") and Adventureland Academy, LLC would like to amend this MOU, beginning with renewal one (1), effective July 1, 2022 through June 30, 2023.

LEGAL REVIEW:

The Amendment has been approval by legal counsel.

BUDGETARY CONSIDERATIONS:

The teacher assigned to this daycare is paid by the District through General Funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the First Amendment to Memorandum of Understanding No. 2022-129 Adventureland Academy, LLC.

SUBMITTED BY: _____ **SUPERVISOR:** Rosalba De Hoyos

For further information contact:
Name: Elizabeth Cavazos
Office: 956-687-6473
Email: elizabeth.cavazos@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

FIRST AMENDMENT TO

Memorandum of Understanding NO. 2022-129 Adventureland Academy, LLC

This First Amendment to Memorandum of Understanding No. 2022-129 ("MOU") effective this 1st day of July, 2022 by and between McAllen Independent School District ("MISD") and Adventureland Academy, LLC, a Community-Based Prekindergarten Provider ("CBPP") as follows:

WHEREAS, MISD entered into MOU No. 2022-129 dated October 26, 2021;

WHEREAS, both parties agreed to renew said MOU in accordance with the renewal terms, for a term of one (1) year beginning July 1, 2022 through June 30, 2023;

WHEREAS, MISD and CBPP desire to amend the MOU; and

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

1. The paragraph titled "Program Description" has been deleted in its entirety and substituted with the following:
    a. Children that are 3 or 4 years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP**. Collaboratively, the children attending **CBPP** will receive six (6) hours of instruction daily, in cognitive development by a certified **MISD** teacher, funded by **MISD**, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designed facility meeting Child Care licensing and **MISD** requirement.
2. The paragraph titled "Responsibilities" Exhibit A-3 has been deleted in its entirety and substituted with the following:
    a. Provide certified early childhood teachers to deliver six (6) hours of instruction in cognitive development daily by a certified **MISD** teacher to participating children;
3. The paragraph titled "Responsibilities" Exhibit A-6 has been deleted in its entirety and substituted with the following:
    a. Provide special education services to children who are identified in need of special services through the **MISD** Special Education Program;
4. The paragraph titled "Responsibilities" Exhibit B-1 has been deleted in its entirety and substituted with the following:
    a. Provide six (6) hours of daily instruction, in cognitive development to the **CPBB** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-year-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
5. Except as modified herein, all terms and conditions of the MOU, as amended, remain in full force and effect. MISD and CBPP ratify and confirm the terms and provisions of the MOU as amended.

Signature page to follow.

EXECUTED IN DUPLICATE ORIGINALS and effective as of _____.
Date

McAllen Independent School District
By: _____
Tony Forina
Board of Trustees, President

Adventureland Academy, LLC

By: _____
Name: Amelia Cepeda
Title: Owner

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

Alejandra Gonzalez
Director of Purchasing Services

March 9, 2022

Amelia Cepeda
Adventureland Academy, LLC
7824 N Ware Rd Unit 1
McAllen, TX 78504
Adventureland2019@gmail.com

RE: Contract 2022-129 Community Based Prekindergarten Provider (Adventureland Academy, LLC)

Ms. Cepeda,

Please accept this letter as our notice of intent to exercise the option to renew the referenced contract as allowed by the term of the Contract, for one (1) additional year, July 1, 2022 through June 30, 2023. This is renewal one (1) out of three (3) renewals.

Please indicate your preference in the appropriate checkbox, affix required signature, and return the signed document via email to krystal.mercado@mcallenisd.net no later than March 23, 2022.

If you have any questions regarding this matter, please contact Krystal Mercado, Senior Buyer at (956) 657-4484 or via e-mail at krystal.mercado@mcallenisd.net

Sincerely,

Alejandra Gonzalez
Director of Purchasing Services

☑ My company WILL renew the agreement for one (1) additional year, as indicated above. Please affix signature below.

☐ My company WILL renew the agreement for one (1) additional year WITH EXCEPTIONS as noted below. Please affix signature below.
Exceptions: _____

☐ My company WILL NOT renew the agreement for one (1) additional year, as indicated above.

Amelia Cepeda (Mar 11, 2022 12:24 CST)	Amelia Cepeda
Authorized Signature	Type/Print Name
Owner	Amelia Cepeda
Title	Phone
adventureland2019@gmail.com	Mar 11, 2022
E-mail address	Date

2022-129
MEMORANDUM OF UNDERSTANDING BETWEEN McALLEN INDEPENDENT SCHOOL DISTRICT AND ADVENTURELAND ACADEMY, LLC
2021-2022

This Memorandum of Understanding ("MOU") is by and between Adventureland Academy, LLC, a Community-Based Prekindergarten Provider ("CBPP") and the McAllen Independent School District ("MISD") to provide services to age-eligible and criteria-eligible prekindergarten children as per the guidelines established by the Department of Health and Human Services (DHHS) and the Texas Education Agency (TEA).

Whereas CBPP meets component number five (5) meets the prekindergarten program requirements under TEC 29.1532, as described in subparagraph 1 of Program Requirements herein below.

The purpose of the Memorandum of Understanding is to develop and foster a cohesive working relationship with prekindergarten education providers to establish high quality early childhood programs in the community; to ensure that each party hereto assumes the responsibility to communicate with the other and share leadership responsibilities to maximize resources; and to ensure that these working relationships between MISD and the CBPP are developed, implemented, and reviewed annually to improve quality of services.

Each party hereto has received information regarding the nature and scope of the proposed working relationship and have approved and granted signatory authority to the individuals designated as authorized to bind their respective organizations. Signatory authorities are listed at the end of this MOU. Each designee shall ensure that their respective Board of Directors, Owners or Board of Trustees as applicable are informed of the various aspects and elements of this MOU.

The terms and conditions set forth in this MOU shall constitute the entire MOU between MISD and CBPP and may not be amended except by a written document signed by both entities.

Program Requirements:

This program can be provided at the childcare site as long as the following conditions are met:

1. the site meets at least one of the following high-quality components set by the Texas Education Agency: (1) is nationally accredited; or (2) is a Texas Rising Star program 3 or higher; or (3) is a Head Start provider; or (4) is a Texas School ready participant; or (5) meets the prekindergarten program requirements under TEC 29.1532
2. the site maintains a minimum of 15 students that meet prekindergarten eligibility rules and requirements set by the Texas Education Agency. The site has up to 60 days from the first day of school or from the date of this MOU to reach the minimum of 15 students.
   The CBPP and MISD agree that a fundamental requirement of this MOU obligation is to ensure the CBPP PreK classroom meets the minimum requirement of 15 eligible students. This may be accomplished by: 1.) a homogenous Pk3 or Pk4 enrollment at the center, or 2.) combined PK3 and PK4 students who are eligible to be served by MISD into one classroom for the purposes of meeting minimum requirements to continue providing a full-day teacher on-site.

Term:

The Term of this Memorandum of Understanding commences October 26, 2021 and ends on June 30, 2022 (the "Term") unless earlier terminated as herein provided. If this MOU is not terminated as herein provided, then MISD and CBPP may by mutual agreement extend the term for three (3) additional one-year terms on the same terms and conditions stated herein.

Program Description:

Children that are 3 or 4-years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP.** Collaboratively, the children attending **CBPP** will receive three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher, funded by MISD, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designated facility meeting Child Care Licensing and **MISD** requirements.

Days and Hours of Operation:

Days of operation shall not be less than one-hundred eighty-seven (187) days, during the months of August through May ("Days of Operation"). The daily operations will be from 7:45 am to 4:15 pm. (Note: District Calendar will be developed and approved by both entities).

Center Sites:

The name and address of the **CBPP** site that will be serviced by **MISD** is:

Adventureland Academy, LLC
Amelia Cepeda
7824 N Ware Rd. Unit 1
McAllen, TX 78504

Responsibilities:

A. **MISD** will:

- **Provide** appropriate educational and supportive services to ensure children and families are school ready per guidelines set by the Texas Education Agency (TEA);
- Assign a **MISD** principal, and/or program specialist, to the **CBPP** to provide supervision, oversight, support and evaluation of the **MISD** teachers;
- Provide certified early childhood teachers to deliver three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher to participating children;
- Implement MISD's state adopted curriculum;
- Supplement health services, educational services, parental training and other

services as required by the children and their families;

- Assign special education teachers to provide services to children who are identified in need of special services through the **MISD** Special Education Program;
- Provide instructional technology and resources that are essential to implement a high quality comprehensive early childhood education program. Any instructional technology and/or resources that are provided for use at the CBPP for PreK classrooms shall remain the sole property of MISD. Such MISD provided instructional technology and resources may not be altered, used for purposes other than those for which they are intended, or removed. This includes, but is not limited to monitors, computers, iPads, and hotspot devices;
- Meet monthly or on a regular basis with designated personnel of **CBPP** to facilitate the instructional process and other services provided; and
- Provide an overview of the academic program with the participating Administrators.

B. The **MISD** Teacher/Staff will:

- Provide three (3) to six (6) hours of daily instruction, depending on enrollment, in cognitive development to the **CBPP** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-yrea-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
- Attend and/or assist in delivery of collaborative Professional Development for **MISD** and **CBPP** as deemed appropriate;
- Participate with the **CBPP** staff in the student recruitment process;
- Implement a curriculum which is planned, purposeful, playful and engaging designed to support the child's social, emotional, cognitive, and physical development;
- Attend **CBPP** meetings as deemed necessary during the school year;
- Complete and fulfill the required documentation for **MISD** and **CBPP** with the assistance of **MISD** and **CBPP**'s respective human resource departments;
- Work together with the **CBPP** teachers to provide high quality early childhood instruction and prevent a duplication of efforts;
- Inform **CBPP** when she/he is going to be absent;
- Follow established protocol with any issues or concerns which may arise;
- Follow **MISD** requirements, policies and procedures as well as the Texas Child Care Licensing Minimum Standards;
- Comply with any other responsibilities assigned by the teacher's immediate supervisor;
- Coordinate efforts with the **CBPP** staff to register the children online;
- Assigned **MISD** school teachers will travel to the **CBPP** site and provide instruction to students at such locations;

C. **CBPP** will:

- Provide classroom space in a state childcare licensed facility which meets the state guidelines and MISD's requirements, and is appropriately staffed and furnished to deliver **CBPP** services based on the qualifying standards set forth by the Texas

Education Agency (TEA), Child Care Licensing and district, local, and state and MISD requirements;

- Provide a CBPP assistant teacher with the credentials required by CBPP;
- Coordinate efforts with **MISD** to identify children with special needs and follow the **MISD** referral process for identification and services;
- Identify personnel who will attend the ARDs conducted by **MISD;**
- Assist with the distribution, completion, and submission of the required **MISD** student enrollment documents within the first week of a child's enrollment;
- Provide assistance with daily attendance reporting and meeting attendance goals;
- Meet monthly or as needed with the designated **MISD** personnel;
- Schedule a time for the **CBPP** teacher and **MISD** teacher to plan weekly to implement a high-quality early childhood instruction and prevent a duplication of effort;
- Ensure that the classroom size meets the adult/child ratio as required by state and federal standards; and
- Coordinate with MISD staff to transition children to the public schools at the end of each school year.

D. Collaboratively **MISD** and **CBPP** will:

- Implement an early childhood program utilizing best early childhood practices;
- Coordinate and partner to plan for instruction, and share resources to meet the needs of eligible four-year- old (Pre-K children) and three- year-old children;
- Schedule a weekly planning time for lesson planning and preparation;
- Share information on upcoming workshops and conferences on Early Childhood Education;
- Review program operations to avoid duplication of efforts;
- Meet on a regular basis to discuss the progress of the program;
- Perform children's assessment and evaluation, and collaborative program evaluation, to meet **MISD** and **CBPP** requirements;
- Analyze and share data for program planning and improvement;
- Work together to meet attendance goals;
- Inform all stakeholders of the working relationship of the parties hereto and this Memorandum of Understanding (MOU);
- Provide family services, parent engagement activities and home visits;
- Support all events which promote the shared goals of MISD and CBPP;
- Organize and plan to sustain the program and promote a collaborative culture;

General Conditions:

- This Agreement shall not serve to create a principal agent relationship, partnership or joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party shall have any right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied or in the name of or on behalf of the other party, except as

agreed in this MOU. It is expressly understood and agreed that, in the execution of this Agreement, **MISD** and any other governmental entities named herein do not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.

- Each party at their own expense, shall provide and maintain, during the term of the Agreement, General Liability insurance of $1,000,000.00 per occurrence for bodily injury, personal injury and property damage; Automobile insurance of $1,000,000.00 combined single limit per accident for bodily injury, personal injury and property damage and statutory Worker's Compensation and Employees' Liability insurance with policy limits of $1,000.000.00 for each accident, $100,000.00 policy limit -disease, $100,000.00 each employee disease, or in the case of MISD, MISD may self-insure.
- CBPP shall furnish the MISD Certificates of Insurance evidencing such coverage and **MISD** must be named as an additional insured on the Certificate of Insurance.
- This Agreement shall be governed by and construed by the laws of the State of Texas and is performable in Hidalgo County, Texas and shall constitute the complete understanding of **MISD** and **CBPP,** and may not be modified in any manner without the express written consent of all parties.
    - Notwithstanding those rules and regulations or standards set by both laws and regulatory agencies, the parties agree that if a dispute arises related to this MOU, the parties will not be required to submit the dispute to arbitration, but to non-binding mediation in Hidalgo County, Texas.
    - This Memorandum of Understanding is performable in Hidalgo County, Texas.
- Either party may terminate this Memorandum of Understanding, with or without cause by providing 30 days' written notice to the other party.
- Each party shall, to the extent allowed by law, hold harmless and indemnify the other party on claims or losses sustained by individuals directly or indirectly involved with performance of services in connection with this MOU.

Indemnification:

To the extent allowed by law, **CBPP** will and does hereby agree to indemnify, protect, defend with counsel approved by the Board of Trustees of MISD, and hold harmless **MISD** and their respective elected officials, employees, representatives and agents (collectively "**MISD Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**MISD Claims**") by any person or entity, arising out of, caused by, or resulting from **CBPP** performance under or breach of this MOU and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **CBPP**, anyone directly employed by **CBPP** or anyone for whose acts **CBPP** may be liable. The provisions of this section will not be construed to eliminate or reduce any other indemnification or right which any **MISD** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

To the extent allowed by law, **MISD** will and does hereby agree to indemnify, protect, defend with

counsel approved by **CBPP** from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively **"CBPP claims")** by any person or entity, arising out of, caused by, or resulting from **MISD's** performance under or breach of this MOU and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **MISD** employees, anyone directly employed by the **MISD** or anyone for whose acts **MISD** may be liable. The provisions of this paragraph will not be construed to eliminate or reduce any other indemnification or right which any **CBPP** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

The below signed authorities agree to the statements in this document in order to develop a strong working relationship and an open communication system at all levels which will enable both **MISD** and **CBPP** to provide the children the best services available. The date of this MOU shall be the later of the dates of the execution by the signatories shown below.

Executed effective as of 26th date of October, 2021.

McAllen Independent School District

By: Sam Saldivar, Jr.
Sam Saldivar, Jr. (Oct 27, 2021 20:26 CDT)
Sam Saldivar Jr., President, Board of Trustees

CBPP
Adventureland Academy, LLC

By: AC Cepeda
Amelia Cepeda (Oct 28, 2021 11:01 CDT)
Amelia Cepeda

APPROVED AS TO FORM:
Atlas, Hall & Rodriguez, LLP

By: Stephen L. Crain
Stephen L. Crain (Oct 18, 2021 16:06 CDT)
Stephen L. Crain

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of First Amendment to Memorandum of Understanding No. 2022-131 Little Paradise Academy, LLC

REFERENCE: Goal 1 - Student Achievement/Student Focus; Strategy 3 - Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On October 25, 2021 the Board of Trustees approved the Memorandum of Understanding ("MOU") with Little Paradise Academy, LLC for a term of one (1) year with the option to renew for three (3) additional one (1) year terms. Thereafter, on March 13, 2022 renewal one (1) of three (3) was signed.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The McAllen Independent School District ("District") and Little Paradise Academy, LLC would like to amend this MOU, beginning with renewal one (1), effective July 1, 2022 through June 30, 2023.

LEGAL REVIEW:

The Amendment has been approval by legal counsel.

BUDGETARY CONSIDERATIONS:

The teacher assigned to this daycare is paid by the District through General Funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the First Amendment to Memorandum of Understanding No. 2022-131 Little Paradise Academy, LLC.

SUBMITTED BY: Elizabeth Cavazos **SUPERVISOR:** Rosalba De Hoyos

For further information contact:
Name: Elizabeth Cavazos
Office: 956-687-6473
Email: elizabeth.cavazos@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

FIRST AMENDMENT TO

Memorandum of Understanding NO. 2022-131 Little Paradise Academy, LLC

This First Amendment to Memorandum of Understanding No. 2022-131 ("MOU") effective this 1st day of July, 2022 by and between McAllen Independent School District ("MISD") and Little Paradise Academy, LLC, a Community-Based Prekindergarten Provider ("CBPP") as follows:

WHEREAS, MISD entered into MOU No. 2022-131 dated October 26, 2021;

WHEREAS, both parties agreed to renew said MOU in accordance with the renewal terms, for a term of one (1) year beginning July 1, 2022 through June 30, 2023;

WHEREAS, MISD and CBPP desire to amend the MOU; and

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

1. The paragraph titled "Program Description" has been deleted in its entirety and substituted with the following:
    a. Children that are 3 or 4 years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP**. Collaboratively, the children attending **CBPP** will receive six (6) hours of instruction daily, in cognitive development by a certified **MISD** teacher, funded by **MISD**, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designed facility meeting Child Care licensing and **MISD** requirement.
2. The paragraph titled "Responsibilities" Exhibit A-3 has been deleted in its entirety and substituted with the following:
    a. Provide certified early childhood teachers to deliver six (6) hours of instruction in cognitive development daily by a certified **MISD** teacher to participating children;
3. The paragraph titled "Responsibilities" Exhibit A-6 has been deleted in its entirety and substituted with the following:
    a. Provide special education services to children who are identified in need of special services through the **MISD** Special Education Program;
4. The paragraph titled "Responsibilities" Exhibit B-1 has been deleted in its entirety and substituted with the following:
    a. Provide six (6) hours of daily instruction, in cognitive development to the **CPBB** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-year-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
5. Except as modified herein, all terms and conditions of the MOU, as amended, remain in full force and effect. MISD and CBPP ratify and confirm the terms and provisions of the MOU as amended.

Signature page to follow.

EXECUTED IN DUPLICATE ORIGINALS and effective as of _____.
Date

McAllen Independent School District
By:_____
Tony Forina
Board of Trustees, President

Little Paradise Academy, LLC

By: _____
Name: _____
Title: _____

Approved as to form:
Atlas, Hall, & Rodriguez LLP
by: Stephen L. Crain
Stephen L. Crain (May 25, 2022 10:32 CDT)
Stephen Crain

Alejandra Gonzalez
Director of Purchasing Services

March 9, 2022

Erica Lopez
Little Paradise Academy, LLC
5516 N McColl Rd
McAllen, TX 78504
Littleparadiseacademy@hotmail.com

RE: Contract 2022-131 Community Based Prekindergarten Provider (Little Paradise Academy, LLC)

Ms. Lopez,

Please accept this letter as our notice of intent to exercise the option to renew the referenced contract as allowed by the term of the Contract, for one (1) additional year, July 1, 2022 through June 30, 2023. This is renewal one (1) out of three (3) renewals.

Please indicate your preference in the appropriate checkbox, affix required signature, and return the signed document via email to krystal.mercado@mcallenisd.net no later than March 23, 2022.

If you have any questions regarding this matter, please contact Krystal Mercado, Senior Buyer at (956) 657-4484 or via e-mail at krystal.mercado@mcallenisd.net

Sincerely,

Alejandra Gonzalez
Director of Purchasing Services

☑ My company WILL renew the agreement for one (1) additional year, as indicated above. Please affix signature below.

☐ My company WILL renew the agreement for one (1) additional year WITH EXCEPTIONS as noted below. Please affix signature below.
Exceptions: _____

☐ My company WILL NOT renew the agreement for one (1) additional year, as indicated above.

Erica Lopez (Mar 13, 2022 12:18 CDT)	Erica Lopez
Authorized Signature	Type/Print Name
CEO	9562241251
Title	Phone
littleparadiseacademy@hotmail.com	Mar 13, 2022
E-mail address	Date

2022-131
MEMORANDUM OF UNDERSTANDING BETWEEN McALLEN INDEPENDENT SCHOOL DISTRICT AND LITTLE PARADISE ACADEMY, LLC
2021-2022

This Memorandum of Understanding ("MOU") is by and between **Little Paradise Academy, LLC**, a Community-Based Prekindergarten Provider ("CBPP") and the McAllen Independent School District ("MISD") to provide services to age-eligible and criteria-eligible prekindergarten children as per the guidelines established by the Department of Health and Human Services (DHHS) and the Texas Education Agency (TEA).

Whereas CBPP meets component number two (2) is a Texas Rising Star program, as described in subparagraph 1 of Program Requirements herein below.

The purpose of the Memorandum of Understanding is to develop and foster a cohesive working relationship with prekindergarten education providers to establish high quality early childhood programs in the community; to ensure that each party hereto assumes the responsibility to communicate with the other and share leadership responsibilities to maximize resources; and to ensure that these working relationships between MISD and the CBPP are developed, implemented, and reviewed annually to improve quality of services.

Each party hereto has received information regarding the nature and scope of the proposed working relationship and have approved and granted signatory authority to the individuals designated as authorized to bind their respective organizations. Signatory authorities are listed at the end of this MOU. Each designee shall ensure that their respective Board of Directors, Owners or Board of Trustees as applicable are informed of the various aspects and elements of this MOU.

The terms and conditions set forth in this MOU shall constitute the entire MOU between MISD and CBPP and may not be amended except by a written document signed by both entities.

Program Requirements:

This program can be provided at the childcare site as long as the following conditions are met:

1. the site meets at least one of the following high-quality components set by the Texas Education Agency: (1) is nationally accredited; or (2) is a Texas Rising Star program 3 or higher; or (3) is a Head Start provider; or (4) is a Texas School ready participant; or (5) meets the prekindergarten program requirements under TEC 29.1532
2. the site maintains a minimum of 15 students that meet prekindergarten eligibility rules and requirements set by the Texas Education Agency. The site has up to 60 days from the first day of school or from the date of this MOU to reach the minimum of 15 students.
   The CBPP and MISD agree that a fundamental requirement of this MOU obligation is to ensure the CBPP PreK classroom meets the minimum requirement of 15 eligible students. This may be accomplished by: 1.) a homogenous Pk3 or Pk4 enrollment at the center, or 2.) combined PK3 and PK4 students who are eligible to be served by MISD into one classroom for the purposes of meeting minimum requirements to continue providing a full-day teacher on-site.

Term:

The Term of this Memorandum of Understanding commences October 26, 2021 and ends on June 30, 2022 (the "Term") unless earlier terminated as herein provided. If this MOU is not terminated as herein provided, then MISD and CBPP may by mutual agreement extend the term for three (3) additional one-year terms on the same terms and conditions stated herein.

Program Description:

Children that are 3 or 4-years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP.** Collaboratively, the children attending **CBPP** will receive three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher, funded by MISD, in each classroom, and full day services by a **MISD** teacher and a **CBPP** assistant teacher with credentials required by **CBPP** in a designated facility meeting Child Care Licensing and **MISD** requirements.

Days and Hours of Operation:

Days of operation shall not be less than one-hundred eighty-seven (187) days, during the months of August through May ("Days of Operation"). The daily operations will be from 7:45 am to 4:15 pm. (Note: District Calendar will be developed and approved by both entities).

Center Sites:

The name and address of the **CBPP** site that will be serviced by **MISD** is:

Little Paradise Academy, LLC
Erica Lopez
5516 N McColl Rd.
McAllen, TX 78504

Responsibilities:

A. **MISD** will:

- **Provide** appropriate educational and supportive services to ensure children and families are school ready per guidelines set by the Texas Education Agency (TEA);
- Assign a **MISD** principal, and/or program specialist, to the **CBPP** to provide supervision, oversight, support and evaluation of the **MISD** teachers;
- Provide certified early childhood teachers to deliver three (3) to six (6) hours of instruction, depending on enrollment, in cognitive development by a certified **MISD** teacher to participating children;
- Implement MISD's state adopted curriculum;
- Supplement health services, educational services, parental training and other services as required by the children and their families;

- Assign special education teachers to provide services to children who are identified in need of special services through the **MISD** Special Education Program;
- Provide instructional technology and resources that are essential to implement a high quality comprehensive early childhood education program. Any instructional technology and/or resources that are provided for use at the CBPP for PreK classrooms shall remain the sole property of MISD. Such MISD provided instructional technology and resources may not be altered, used for purposes other than those for which they are intended, or removed. This includes, but is not limited to monitors, computers, iPads, and hotspot devices;
- Meet monthly or on a regular basis with designated personnel of **CBPP** to facilitate the instructional process and other services provided; and
- Provide an overview of the academic program with the participating Administrators.

B. The **MISD** Teacher/Staff will:
- Provide three (3) to six (6) hours of daily instruction, depending on enrollment, in cognitive development to the **CBPP** children utilizing the State Adopted Curriculum (4-year-old), Pre-K Guidelines (4-yrea-old), and Three-Year-Old Early Learning Guidelines (3-year-old);
- Attend and/or assist in delivery of collaborative Professional Development for **MISD** and **CBPP** as deemed appropriate;
- Participate with the **CBPP** staff in the student recruitment process;
- Implement a curriculum which is planned, purposeful, playful and engaging designed to support the child's social, emotional, cognitive, and physical development;
- Attend **CBPP** meetings as deemed necessary during the school year;
- Complete and fulfill the required documentation for **MISD** and **CBPP** with the assistance of **MISD** and **CBPP**'s respective human resource departments;
- Work together with the **CBPP** teachers to provide high quality early childhood instruction and prevent a duplication of efforts;
- Inform **CBPP** when she/he is going to be absent;
- Follow established protocol with any issues or concerns which may arise;
- Follow **MISD** requirements, policies and procedures as well as the Texas Child Care Licensing Minimum Standards;
- Comply with any other responsibilities assigned by the teacher's immediate supervisor;
- Coordinate efforts with the **CBPP** staff to register the children online;
- Assigned **MISD** school teachers will travel to the **CBPP** site and provide instruction to students at such locations;

C. **CBPP** will:
- Provide classroom space in a state childcare licensed facility which meets the state guidelines and MISD's requirements, and is appropriately staffed and furnished to deliver **CBPP** services based on the qualifying standards set forth by the Texas Education Agency (TEA), Child Care Licensing and district, local, and state and

MISD requirements;

- Provide a CBPP assistant teacher with the credentials required by CBPP;
- Coordinate efforts with **MISD** to identify children with special needs and follow the **MISD** referral process for identification and services;
- Identify personnel who will attend the ARDs conducted by **MISD;**
- Assist with the distribution, completion, and submission of the required **MISD** student enrollment documents within the first week of a child's enrollment;
- Provide assistance with daily attendance reporting and meeting attendance goals;
- Meet monthly or as needed with the designated **MISD** personnel;
- Schedule a time for the **CBPP** teacher and **MISD** teacher to plan weekly to implement a high-quality early childhood instruction and prevent a duplication of effort;
- Ensure that the classroom size meets the adult/child ratio as required by state and federal standards; and
- Coordinate with MISD staff to transition children to the public schools at the end of each school year.

D. Collaboratively **MISD** and **CBPP** will:

- Implement an early childhood program utilizing best early childhood practices;
- Coordinate and partner to plan for instruction, and share resources to meet the needs of eligible four-year- old (Pre-K children) and three- year-old children;
- Schedule a weekly planning time for lesson planning and preparation;
- Share information on upcoming workshops and conferences on Early Childhood Education;
- Review program operations to avoid duplication of efforts;
- Meet on a regular basis to discuss the progress of the program;
- Perform children's assessment and evaluation, and collaborative program evaluation, to meet **MISD** and **CBPP** requirements;
- Analyze and share data for program planning and improvement;
- Work together to meet attendance goals;
- Inform all stakeholders of the working relationship of the parties hereto and this Memorandum of Understanding (MOU);
- Provide family services, parent engagement activities and home visits;
- Support all events which promote the shared goals of MISD and CBPP;
- Organize and plan to sustain the program and promote a collaborative culture;

General Conditions:

- This Agreement shall not serve to create a principal agent relationship, partnership or joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party shall have any right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied or in the name of or on behalf of the other party, except as agreed in this MOU. It is expressly understood and agreed that, in the execution of

this Agreement, **MISD** and any other governmental entities named herein do not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.

- Each party at their own expense, shall provide and maintain, during the term of the Agreement, General Liability insurance of $1,000,000.00 per occurrence for bodily injury, personal injury and property damage; Automobile insurance of $1,000,000.00 combined single limit per accident for bodily injury, personal injury and property damage and statutory Worker's Compensation and Employees' Liability insurance with policy limits of $1,000.000.00 for each accident, $100,000.00 policy limit -disease, $100,000.00 each employee disease, or in the case of MISD, MISD may self-insure.
- CBPP shall furnish the MISD Certificates of Insurance evidencing such coverage and **MISD** must be named as an additional insured on the Certificate of Insurance.
- This Agreement shall be governed by and construed by the laws of the State of Texas and is performable in Hidalgo County, Texas and shall constitute the complete understanding of **MISD** and **CBPP,** and may not be modified in any manner without the express written consent of all parties.
    - Notwithstanding those rules and regulations or standards set by both laws and regulatory agencies, the parties agree that if a dispute arises related to this MOU, the parties will not be required to submit the dispute to arbitration, but to non-binding mediation in Hidalgo County, Texas.
    - This Memorandum of Understanding is performable in Hidalgo County, Texas.
- Either party may terminate this Memorandum of Understanding, with or without cause by providing 30 days' written notice to the other party.
- Each party shall, to the extent allowed by law, hold harmless and indemnify the other party on claims or losses sustained by individuals directly or indirectly involved with performance of services in connection with this MOU.

Indemnification:

To the extent allowed by law, **CBPP** will and does hereby agree to indemnify, protect, defend with counsel approved by the Board of Trustees of MISD, and hold harmless **MISD** and their respective elected officials, employees, representatives and agents (collectively "**MISD Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**MISD Claims**") by any person or entity, arising out of, caused by, or resulting from **CBPP** performance under or breach of this MOU and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **CBPP**, anyone directly employed by **CBPP** or anyone for whose acts **CBPP** may be liable. The provisions of this section will not be construed to eliminate or reduce any other indemnification or right which any **MISD** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

To the extent allowed by law, **MISD** will and does hereby agree to indemnify, protect, defend with counsel approved by **CBPP** from and against all damages, losses, liens, causes of action, suits,

judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively **"CBPP claims")** by any person or entity, arising out of, caused by, or resulting from **MISD's** performance under or breach of this MOU and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **MISD** employees, anyone directly employed by the **MISD** or anyone for whose acts **MISD** may be liable. The provisions of this paragraph will not be construed to eliminate or reduce any other indemnification or right which any **CBPP** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

The below signed authorities agree to the statements in this document in order to develop a strong working relationship and an open communication system at all levels which will enable both **MISD** and **CBPP** to provide the children the best services available. The date of this MOU shall be the later of the dates of the execution by the signatories shown below.

Executed effective as of 26th date of October, 2021.

McAllen Independent School District

By: Sam Saldivar, Jr.
Sam Saldivar, Jr. (Oct 27, 2021 20:25 CDT)
Sam Saldivar Jr., President, Board of Trustees

CBPP
Little Paradise Academy, LLC

By: Erica Lopez (Oct 27, 2021 20:57 CDT)
Erica Lopez

APPROVED AS TO FORM:
Atlas, Hall & Rodriguez, LLP

By: Stephen L. Crain
Stephen L. Crain (Oct 20, 2021 15:53 CDT)
Stephen L. Crain

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Addendum Two to Contract No. 2018-216 Agreement with Insight Public Sector Inc. for District-Wide eRate Firewall Project through Texas Department of Information Resources (DIR)

REFERENCE: Goal 4 - Financial Priorities; Strategy 7: Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On April 8, 2019, the Board of Trustees approved Agreement No. 2018-216 with Insight Public Sector Inc., through DIR for a district-wide firewall.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Through this Addendum, Insight Public Sector Inc. and the McAllen Independent School District would like to extend the contract for one (1) year, through June 30, 2023. The agreement may be subsequently renewed one (1) additional year upon mutual, written agreement.

LEGAL REVIEW:

The Addendum has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

Funds for these purchases are budgeted through the General Fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Addendum Two to Contract No. 2018-216 Agreement with Insight Public Sector Inc. for District-Wide eRate Firewall Project through Texas Department of Information Resources (DIR) through June 30, 2023.

SUBMITTED BY: Judith Escamilla

SUPERVISOR: Adel Pulido

For further information contact:
Name: Judith Escamilla
Office: (956) 632-3238
email: judith.escamilla@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

Addendum TWO: Contract Renewal

Insight is providing this Contract Renewal form to McAllen Independent School District for any future E-Rate opportunities. Signature of this Contract Renewal constitutes a renewal of the binding agreement previously executed between Insight Public Sector, Inc. ("Insight") and McAllen Independent School District ("Customer") dated 3/8/2019, Contract No. 201902014-erfp (the "Contract") in accordance with the requirements of the Schools and Libraries Division (SLD) of the USAC, pertaining to
E-Rate funding.

By executing this Contract Renewal, the parties agree:

- That McAllen Independent School District has selected Insight Public Sector, Inc. ("Insight") (SPIN # 143030052) as its E-Rate service provider pursuant to the SLD's requirements for filing Form 471.
- The Contract, including all terms, conditions, and specifications thereof, is hereby renewed for an additional 1-year term, and may be subsequently renewed annually for one (1) additional year upon mutual, written agreement of both parties at least 30 days prior to the end of the then-current term.
- Either party may terminate the Contract for its convenience upon 30 days written notice to the other.
- The individual signing this Contract Renewal represents he/she has actual authority to execute this instrument and therefore binds their respective party to the requirements of this Contract Renewal as well as the Contract.

Except as otherwise expressly provided in this Contract Renewal, the Contract shall remain unchanged and in full force and effect.

Customer Reference Number: MISD Contract 2018-216

Insight Reference Number: 201902014-erfp

MCALLEN INDEPENDENT SCHOOL DISTRICT

By: _____
Authorized Signature

Name: Tony Forina
Printed or Typed

Title: Board President

Date: _____

INSIGHT PUBLIC SECTOR, INC.

By: _____
Authorized Signature

Name: Lisanne Steinheiser
Printed or Typed

Title: Global Compliance Officer

Date: May 13, 2022

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

by: Stephen L. Crain
Stephen L. Crain (May 20, 2022 10:00 CDT)
Stephen L. Crain

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Competitive Sealed Proposal No. 2023-1007 William B. Travis Middle School Re-Roof and Mechanical Upgrades Re-Bid

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited proposals for re-roof and mechanical upgrades for William B. Travis Middle School.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

One hundred fifty-one (151) contractors were invited to submit proposals, and six (6) contractors responded, including three (3) no-bids. Out of the three (3) contractors who submitted a proposal, only one (1) contractor submitted the correct bid bond. On June 9, 2022, the evaluation committee, comprised of Ruben Trevino, Executive Director of Facilities Maintenance & Operations; Melissa Ortiz, Project Manager for Facilities Maintenance & Operations; Alejandra Gonzalez, Director of Purchasing Services; Elizabeth Cabrera, Purchasing Services Coordinator; Carolina Quintanilla, Senior Buyer; and Gracie Garza, Senior Buyer, evaluated the proposals and is recommending that the Board award this contract to American Contracting USA, Inc., from Rio Hondo, TX, the sole contractor.

LEGAL REVIEW:

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

BUDGETARY CONSIDERATIONS:

Funds for this project are budgeted through the Capital Projects Fund. The contract price for this project is $1,998,777.00 plus contingency of $250,000.00, for a total price of $2,248,777.00. Administration is currently in negotiations for the Best and Final Offer.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Competitive Sealed Proposal No. 2023-1007 William B. Travis Middle School Re-Roof and Mechanical Upgrades Re-bid and award American Contracting USA, Inc.

SUBMITTED BY: _____ **SUPERVISOR:** _____

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

Approved for presentation to the Board of Education:

_____
Superintendent of Schools

McAllen Independent School District
CSP 2023-1007 William B. Travis Middle School Re-roof and Mechanical Upgrades Re-Bid
Evaluation Matrix

Vendor Names		American Contracting USA, Inc.
Rank		**1**
Maximum points	**100.00**	**98.50**
Price	**55**	**55**
Base Bid (Includes Contingency) (LI1 and LI2)		$2,248,777.00
Offeror's experience and reputation	**22**	**21.5**
Three (3) Supplier Reference Letters (LI29)	1.5	1
0.5 pts per reference		*2 out of 3*
Claims, judgments, arbitration proceedings or suits (LI24)	1	1
Three (3) K-12 projects/ref check (LI20)	15	15
(Reference Checks) = 5 pts per scope/size		*3 out of 3*
Three (3) Non K-12 projects/ref. check (LI21)	4.5	4.5
(Reference Checks) - 1.5 pts per scope/size		*3 out of 3*
Quality of the offeror's goods or services	**3**	**3**
Repeat business for similar scope/size (LI22)	2	2
MISD projects (LI19)	1	1
The impact on the ability of the district to comply with rules relating to historically underutilized businesses - HUB (A32)	**1**	**0**
		not active
Offeror's safety record	**7**	**7**
"OSHA Form 300 Log (LI31)	1.5	1.5
1.5 pts per year		
Safety program manual and/or procedures. (LI32)	2	2
Provided = 2; not provided = 0		
Drug/alcohol prevention policy and/or procedures. (LI33)	1	1
Provided = 2; not provided = 0		
"Workers Compensation Experience Rating" (LI30)	1.5	1.5
0.5 pts per year		
Frequency of safety inspections (LI23)	1	1
provided = 1; not provided = 0		
Offeror's Proposed Personnel	**8**	**8**
Staff experience (industry) (LI26)	4	4
Avg 10+yrs = 4; <10=weighted scale		
Staff experience (firm) (LI26)	4	4
Avg 3+yrs = 4; <3=weighted scale		
Whether the offeror's financial capability is appropriate to the size and scope of the project	**2**	**2**
Financial Statement (LI35)	1	1
Surety Letter (LI34)	1	1
Any other relevant factors specifically listed in the CSP	**2**	**2**
On-time project completion (LI 19-21)	1	1
Projects currently in progress (LI27)	1	1

AIA® Document A101™ – 2017

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

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

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

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

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

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

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

The Owner and Contractor agree as follows.

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

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

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

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User Notes: (1413695541)

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.

[X] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

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

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User Notes: (1413695541)

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

§ 3.3 Substantial Completion

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

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

[ ] By the following date:

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

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

Portion of Work	Substantial Completion Date

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

ARTICLE 4 CONTRACT SUM

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

§ 4.2 Alternates

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

Item	Price

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

Item	Price	Conditions for Acceptance

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

Item	Price
Contingency	$[ ]

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

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User Notes: (1413695541)

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

Item	Units and Limitations	Price per Unit ($0.00)

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

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

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

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

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

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

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

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

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

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

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

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

.1 That portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;

.2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified to the extent approved by the Owner in writing, as provided in Section 7.3.9 of AIA Document A201.

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

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201 or amounts certified by the Architect and disputed by the Owner; and

.5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

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

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

(Paragraphs deleted)

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

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

None.

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

Retainage on any incomplete Work and Unsettled claims.
(Paragraph deleted)
§ 5.1.9 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

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

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

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct nonconformingWork as provided in Article 12 of AIA Document A201, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201;

.3 the Contractor has provided the following documents:

.1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;

.2 Final list of subcontractors (AIA Document G705);

.3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at: www.tea.state.tx.us/school.finance/facilities/cert_2004. pdf;

.4 Contractor's warranties, organized as required elsewhere in the Contract Documents;

.5 Maintenance and Instruction Manuals;

.6 Owner's Final Completion Certificate; and

.7 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the

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

.4 a final Certificate for Payment has been issued by the Architect; and

.5 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

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

§ 5.3 Interest

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

%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

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

§ 6.2 Binding Dispute Resolution

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

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

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

ARTICLE 7 TERMINATION OR SUSPENSION

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

(Paragraphs deleted)

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

(Paragraphs deleted)
§ 8.7 Other provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 This executed AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

.2 AIA Document A201™–2007, General Conditions of the Contract for Construction

(Paragraphs deleted)

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

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(Paragraph deleted)

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

Number	Title	Date

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

Section	Title	Date	Pages

.5 Addenda, if any:

Number	Date	Pages

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

.6 The following Exhibits, which are attached hereto:

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

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

OWNER:

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____

CONTRACTOR:

[ ]

By: _____
Printer Name:
Title:

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

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EXHIBIT A

to

(Paragraph deleted)

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

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

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EXHIBIT B

to

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

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EXHIBIT C

to

(Table deleted)

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

Payment Bond

and

Performance Bond

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(Table deleted)

EXHIBIT D

to

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

Contractor's Insurance Certificates

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EXHIBIT E

to

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

Plans and/or Specifications

(Table deleted)

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AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

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

THE OWNER:
(Name, legal status and address)

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

THE ARCHITECT:
(Name, legal status and address)

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 OWNER

3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

8 TIME

9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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

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

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User Notes: (1194743394)

INDEX
(Topics and numbers in bold are section headings.)

Acceptance of Nonconforming Work
9.6.6, 9.9.3, **12.3**
Acceptance of Work
9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3
Access to Work
3.16, 6.2.1, 12.1
Accident Prevention
10
Acts and Omissions
3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, 13.7, 14.1, 15.2
Addenda
1.1.1, 3.11.1
Additional Costs, Claims for
3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4
Additional Inspections and Testing
9.4.2, 9.8.3, 12.2.1, **13.5**
Additional Insured
11.1.4
Additional Time, Claims for
3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**
Administration of the Contract
3.1.3, **4.2**, 9.4, 9.5
Advertisement or Invitation to Bid
1.1.1
Aesthetic Effect
4.2.13
Allowances
3.8, 7.3.8
All-risk Insurance
11.3.1, 11.3.1.1
Applications for Payment
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10, 11.1.3
Approvals
2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, 13.5.1
Arbitration
8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4**
ARCHITECT
4
Architect, Definition of
4.1.1
Architect, Extent of Authority
2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1
Architect, Limitations of Authority and Responsibility
2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2
Architect's Additional Services and Expenses
2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4
Architect's Administration of the Contract
3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5
Architect's Approvals
2.4.1, 3.1.3, 3.5, 3.10.2, 4.2.7
Architect's Authority to Reject Work
3.5, 4.2.6, 12.1.2, 12.2.1
Architect's Copyright
1.1.7, 1.5
Architect's Decisions
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.5.2, 15.2, 15.3
Architect's Inspections
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5
Architect's Instructions
3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2
Architect's Interpretations
4.2.11, 4.2.12
Architect's Project Representative
4.2.10
Architect's Relationship with Contractor
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2
Architect's Relationship with Subcontractors
1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7
Architect's Representations
9.4.2, 9.5.1, 9.10.1
Architect's Site Visits
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5
Asbestos
10.3.1
Attorneys' Fees
3.18.1, 9.10.2, 10.3.3
Award of Separate Contracts
6.1.1, 6.1.2
Award of Subcontracts and Other Contracts for Portions of the Work
5.2
Basic Definitions
1.1
Bidding Requirements
1.1.1, 5.2.1, 11.4.1
Binding Dispute Resolution
9.7, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1
Boiler and Machinery Insurance
11.3.2
Bonds, Lien
7.3.7.4, 9.10.2, 9.10.3
Bonds, Performance, and Payment
7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**
Building Permit
3.7.1

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User Notes: (1194743394)

Capitalization
1.3
Certificate of Substantial Completion
9.8.3, 9.8.4, 9.8.5
Certificates for Payment
4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3
Certificates of Inspection, Testing or Approval
13.5.4
Certificates of Insurance
9.10.2, 11.1.3
Change Orders
1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3
Change Orders, Definition of
7.2.1
CHANGES IN THE WORK
2.2.1, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.3.9
Claims, Definition of
15.1.1
CLAIMS AND DISPUTES
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1
Claims for Additional Cost
3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, **15.1.4**
Claims for Additional Time
3.2.4, 3.7.46.1.1, 8.3.2, 10.3.2, **15.1.5**
Concealed or Unknown Conditions, Claims for
3.7.4
Claims for Damages
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Claims Subject to Arbitration
15.3.1, 15.4.1
Cleaning Up
3.15, 6.3
Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4
Commencement of the Work, Definition of
8.1.2
Communications Facilitating Contract Administration
3.9.1, **4.2.4**
Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2
COMPLETION, PAYMENTS AND
9
Completion, Substantial
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7
Compliance with Laws
1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3
Concealed or Unknown Conditions
3.7.4, 4.2.8, 8.3.1, 10.3
Conditions of the Contract
1.1.1, 6.1.1, 6.1.4
Consent, Written
3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2
Consolidation or Joinder
15.4.4
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
1.1.4, **6**
Construction Change Directive, Definition of
7.3.1
Construction Change Directives
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1
Construction Schedules, Contractor's
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Contingent Assignment of Subcontracts
5.4, 14.2.2.2
Continuing Contract Performance
15.1.3
Contract, Definition of
1.1.2
CONTRACT, TERMINATION OR SUSPENSION OF THE
5.4.1.1, 11.3.9, **14**
Contract Administration
3.1.3, 4, 9.4, 9.5
Contract Award and Execution, Conditions Relating to
3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1
Contract Documents, Copies Furnished and Use of
1.5.2, 2.2.5, 5.3
Contract Documents, Definition of
1.1.1
Contract Sum
3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, **9.1**, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5
Contract Sum, Definition of
9.1
Contract Time
3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5
Contract Time, Definition of
8.1.1
CONTRACTOR
3
Contractor, Definition of
3.1, 6.1.2

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User Notes: (1194743394)

Contractor's Construction Schedules
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Contractor's Employees
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1
Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8
Contractor's Relationship with the Architect
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
9.7
Contractor's Right to Terminate the Contract
14.1, 15.1.6
Contractor's Submittals
3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3
Contractual Liability Insurance
11.1.1.8, 11.2
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.2.5, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.7
Costs
2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14
Cutting and Patching
3.14, 6.2.5
Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Damages for Delay
6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1
Delays and Extensions of Time
3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2, 11.1.2
Emergencies
10.4, 14.1.1.2, 15.1.4
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1
Equipment, Labor, Materials or
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5,

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3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3
Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3, 15.1.5, 15.2.5
Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Faulty Work
(See Defective or Nonconforming Work)
Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3.1, 14.2.4, 14.4.3
Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4
Fire and Extended Coverage Insurance
11.3.1.1
GENERAL PROVISIONS
1
Governing Law
13.1
Guarantees (See Warranty)
Hazardous Materials
10.2.4, **10.3**
Identification of Subcontractors and Suppliers
5.2.1
Indemnification
3.17, **3.18**, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7
Information and Services Required of the Owner
2.1.2, **2.2**, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Injury or Damage to Person or Property
10.2.8, 10.4.1
Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5
Instructions to Bidders
1.1.1
Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2
Instruments of Service, Definition of
1.1.7
Insurance
3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, **11**
Insurance, Boiler and Machinery
11.3.2
Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 11.1.2
Insurance, Loss of Use
11.3.3
Insurance, Owner's Liability
11.2
Insurance, Property
10.2.5, **11.3**
Insurance, Stored Materials
9.3.2
INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4
Interest
13.6
Interpretation
1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12, 15.1.4
Judgment on Final Award
15.4.2
Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2, 13.6.1, 14, 15.2.8, 15.4
Liens
2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 13.7, 15.4.1.1
Limitations of Liability
2.3.1, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2
Limitations of Time
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15
Loss of Use Insurance
11.3.3
Material Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5
Materials, Hazardous
10.2.4, **10.3**

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Materials, Labor, Equipment and
1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 15.2.8
Mediation
8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1
Minor Changes in the Work
1.1.1, 3.12.8, 4.2.8, 7.1, **7.4**
MISCELLANEOUS PROVISIONS
13
Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2, 11.3.1
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, **12.3**
Nonconforming Work, Rejection and Correction of
2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Notice
2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7, 9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1
Notice, Written
2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1
Notice of Claims
3.7.4, 10.2.8, **15.1.2**, 15.4
Notice of Testing and Inspections
13.5.1, 13.5.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.2.2, 9.6.6, 9.8, 11.3.1.5
Orders, Written
1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Information and Services Required of the
2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Owner's Authority
1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7
Owner's Financial Capability
2.2.1, 13.2.2, 14.1.1.4
Owner's Liability Insurance
11.2
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.4, 14.2.2
Owner's Right to Clean Up
6.3
Owner's Right to Perform Construction and to Award Separate Contracts
6.1
Owner's Right to Stop the Work
2.3
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2
Ownership and Use of Drawings, Specifications and Other Instruments of Service
1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11.1, 3.17, 4.2.12, 5.3.1
Partial Occupancy or Use
9.6.6, **9.9**, 11.3.1.5
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Payment, Final
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3.1, 13.7, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.7.4, 9.6.7, 9.10.3, **11.4**
Payments, Progress
9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
PCB
10.3.1

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User Notes: (1194743394)

Performance Bond and Payment Bond
7.3.7.4, 9.6.7, 9.10.3, **11.4**
Permits, Fees, Notices and Compliance with Laws
2.2.2, **3.7**, 3.13, 7.3.7.4, 10.2.2
PERSONS AND PROPERTY, PROTECTION OF
10
Polychlorinated Biphenyl
10.3.1
Product Data, Definition of
3.12.2
Product Data and Samples, Shop Drawings
3.11, **3.12**, 4.2.7
Progress and Completion
4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.3
Progress Payments
9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
Project, Definition of
1.1.4
Project Representatives
4.2.10
Property Insurance
10.2.5, **11.3**
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4
Rejection of Work
3.5, 4.2.6, 12.2.1
Releases and Waivers of Liens
9.10.2
Representations
3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples by Contractor
3.12
Rights and Remedies
1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, **13.4**, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3.1, **10.1**, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, **3.12**, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, **3.12**, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5
Special Inspections and Testing
4.2.6, 12.2.1, 13.5
Specifications, Definition of
1.1.6
Specifications
1.1.1, **1.1.6**, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14
Statute of Limitations
13.7, 15.4.1.1
Stopping the Work
2.3, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, **11.3.7**

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User Notes: (1194743394)

Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
4.1.3
Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3
Surety
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7
Surety, Consent of
9.10.2, 9.10.3
Surveys
2.2.3
Suspension by the Owner for Convenience
14.3
Suspension of the Work
5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 14
Taxes
3.6, 3.8.2.1, 7.3.7.4
Termination by the Contractor
14.1, 15.1.6
Termination by the Owner for Cause
5.4.1.1, **14.2,** 15.1.6
Termination by the Owner for Convenience
14.4
Termination of the Architect
4.1.3
Termination of the Contractor
14.2.2
TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, **13.5**
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5
Time Limits
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4
Time Limits on Claims
3.7.4, 10.2.8, **13.7**, 15.1.2
Title to Work
9.3.2, 9.3.3
Transmission of Data in Digital Form
1.6
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 7.3.4
Use of Documents
1.1.1, 1.5, 2.2.5, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.4.2
Waiver of Claims by the Contractor
9.10.5, 13.4.2, 15.1.6
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6
Waiver of Consequential Damages
14.2.4, 15.1.6
Waiver of Liens
9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, **11.3.7**
Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7
Weather Delays
15.1.5.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Notice
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1
Written Orders
1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

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§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

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

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

§ 2.1.2 DELETED.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

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

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

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

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

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

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

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

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

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

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.4 LABOR AND MATERIALS

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

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

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

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

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

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

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

§ 3.5 WARRANTY

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

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

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

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

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

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

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

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

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

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

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

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

a. The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar utility connection charges.

b. The Contractor shall be responsible for obtaining and paying for all City and County Building Permits, Inspection Fees and Plan Checking Fees; temporary utility charges, tap charges and water meter charges and any other similar fees assessed by jurisdictional authorities having control over the Project.

c. The Owner shall pay fees payable to the Texas Department of Licensing and Regulations (TDLR) for document review relative to the Elimination of Architectural Barriers Act and the Architect will submit the documents to the TDLR for review and approval.

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

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

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

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

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

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

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

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

§ 3.9.3 DELETED.

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§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

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

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

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

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

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§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.13 USE OF SITE

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

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

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

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

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

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§ 3.18 INDEMNIFICATION

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

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

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

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

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

§3.20 RECORD DRAWINGS

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

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

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

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

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

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

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

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

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

§ 4.2.13 DELETED.

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

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

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

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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§ 6.2.3 DELETED.

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

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

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation in writing between the Owner and the Contractor;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon in writing between the Owner and the Contractor;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, in each case in writing between the Owner and the Contractor; or

.4 As provided in Section 7.3.7.

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

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

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

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

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

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

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

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

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

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

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

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

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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

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

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

§ 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

§ 9.6.7 DELETED.

§ 9.7 FAILURE OF PAYMENT

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

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

§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

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

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

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

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

§ 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

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

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

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

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

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

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

§ 10.3.3 DELETED.

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

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

§ 10.3.6 DELETED.

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

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

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

§ 11.1.5 SCHEDULE OF INSURANCE COVERAGES

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

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

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

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

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

§11.1.5.2 All policies shall contain special endorsements to include:

.1 The Owner as an additional insured (except for Worker's Compensation) and all other parties identified in Section 3.18 (Indemnified Parties);

.2 Wavier of Subrogation in favor of Owner under the Worker's Compensation and Employer's Liability policies.

.3 A statement that a notice shall be given to Owner by certified mail thirty (30) days prior to cancellation or upon any material changes in coverage.

4. Contain cross-liability and severability of interest endorsements;

5. state that this insurance is primary insurance in regard to any other insurance carried by an Indemnified Party (see Section 3.18);

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.6 the following coverage:

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

§11.1.5.6 Umbrella Excess Liability Insurance

Bodily Injury and	$2,000,000.00 per occurrence
Property Damage	$2,000,000.00 aggregate

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

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

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

§11.1.8 Workers' Compensation Insurance Coverage.

§11.1.8.1 Definitions:

.1 Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

.2 Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

.3 Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

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

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

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

.1 a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

.2 no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

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

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

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

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

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

.2 provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

.3 provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

.4 obtain from each other person with whom it contracts, and provide to the contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

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.5 retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

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

.7 contractually require each person with whom it contracts, to perform as required by paragraphs .1 - .7, with the certificates of coverage to be provided to the person for whom they are providing services.

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

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

§ 11.2 OWNER'S LIABILITY INSURANCE

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

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

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

§ 11.3 PROPERTY INSURANCE

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

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

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

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

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

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

§ 11.3.1.2 DELETED.

§ 11.3.1.3 DELETED.

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

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE DELETED.

§ 11.3.3 LOSS OF USE INSURANCE DELETED.

§ 11.3.4 DELETED.

§ 11.3.5 DELETED.

§ 11.3.6 DELETED.

§ 11.3.7 WAIVERS OF SUBROGATION

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

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

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

§ 11.3.9 DELETED.

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

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

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

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

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

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

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

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

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

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

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

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§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

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

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

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

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

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

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

§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

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

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

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

§13.9 CERTIFICATION OF ASBESTOS-FREE PROJECT

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

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

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

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ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or

.2 An act of government, such as a declaration of national emergency that requires all Work to be

(Paragraphs deleted)

stopped.

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

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

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 refuses or fails to supply enough properly skilled workers or proper materials and equipment;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 disregards the instructions of Architect or Owner (when such instructions are based on the requirements of the Contract Documents);

.5 is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law; or

.6 otherwise does not fully comply with the Contract Documents**.**

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

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

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

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

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

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

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

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

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

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

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

(Paragraph deleted)

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

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

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

§ 15.2 INITIAL DECISION

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

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

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

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

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

§ 15.2.6 DELETED.

§ 15.2.6.1 DELETED.

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

§ 15.2.8 DELETED.

§ 15.3 MEDIATION

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

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

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

§ 15.4 ARBITRATION

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

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

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

(Paragraphs deleted)

DRAFT

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Competitive Sealed Proposal No. 2022-1047 Homer J. Morris Middle School and Alonzo De Leon Middle School New Surveillance Camera System

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District solicited proposals for new surveillance camera system for Homer J. Morris Middle School and Alonzo De Leon Middle School.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

One thousand forty-eight (1048) contractors were invited to submit proposals, and nine (9) contractors responded, including seven (7) no-bids. On June 9, 2022, the evaluation committee, comprised of Ruben Trevino, Executive Director of Facilities, Maintenance, and Operations; Melissa Ortiz, Project Manager for Facilities, Maintenance, and Operations; Alejandra Gonzalez, Director of Purchasing Services; Elizabeth Cabrera, Purchasing Services Coordinator; Carolina Quintanilla, Senior Buyer; and Gracie Garza, Senior Buyer, evaluated the proposals and is recommending that the Board of Trustees award this contract to JSJ Rodriguez Inc dba Tele-Pro Communications, from Mission, TX, the highest ranked contractor for this project.

LEGAL REVIEW:

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

BUDGETARY CONSIDERATIONS:

Funds for this project are budgeted through the Capital Projects Fund. The contract price for this project is $489,840.00 plus a contingency of $30,000.00, for a total price of $519,840.00. Administration is currently in negotiations for the Best and Final Offer.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Competitive Sealed Proposal No. 2022-1047 Homer J. Morris Middle School and Alonzo De Leon Middle School New Surveillance Camera System, and award JSJ Rodriguez Inc dba Tele-Pro Communications.

SUBMITTED BY: _____ **SUPERVISOR:** _____

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

Approved for presentation to the Board of Education:

Superintendent of Schools

McAllen Independent School District
CSP No. 2022-1047 Homer J. Morris Middle School And Alonzo De Leon Middle School New Surveillance Camera System
Evaluation Matrix

Vendor Names		Insight Physical Security Solutions, LLC	Telepro Communications (JSJ Rodriguez Inc)
Price	**55**	**48**	**55**
Base Bid (Includes Contingency) (LI1, LI2, LI3 and LI4)		$598,869.38	$519,840.00
Offeror's experience and reputation	**22**	**20.5**	**13.25**
Three (3) Supplier Reference Letters (LI24)	1.5	1.5	1.5
0.5 pts per reference			
Claims, judgments, arbitration proceedings or suits (LI19)	1	1	1
Three (3) K-12 projects/ref check (LI15)	15	15	10
(Reference Checks) - 2.5 pts per scope/size		*3 scope; 3 size*	*3 scope; 1 size*
Three (3) Non K-12 projects/ref. check (LI16)	4.5	3	0.75
(Reference Checks) - 0.75 pts per scope/size		*2 scope; 2 size*	*1 scope*
Quality of the offeror's goods or services	**3**	**3**	**3**
Repeat business for similar scope/size (LI17)	2	2	2
MISD projects (LI14)	1	1	1
The impact on the ability of the district to comply with rules relating to historically underutilized businesses - HUB (A32)	**1**	**0**	**1**
Offeror's safety record	**7**	**5.5**	**7**
"OSHA Form 300 Log (LI26)	1.5	0	1.5
0.5 pts per year		*none provided*	*3 out of 3*
Safety program manual and/or procedures. (LI27)	2	2	2
Provided = 2; not provided = 0			
Drug/alcohol prevention policy and/or procedures. (LI28)	1	1	1
Provided = 1; not provided = 0			
"Workers Compensation Experience Rating" (LI25)	1.5	1.5	1.5
0.5 pts per year			
Frequency of safety inspections (LI18)	1	1	1
Provided = 1; not provided = 0			
Offeror's Proposed Personnel	**8**	**8**	**8**
Staff experience (industry) (LI21)	4	4	4
Avg 10 yrs+ = 4; <10 = weighted scale			
Staff experience (firm) (LI21)	4	4	4
Avg 3 yrs+ = 4; <3 = weighted scale			
Whether the offeror's financial capability is appropriate to the size and scope of the project	**2**	**2**	**2**
Financial Statement (LI30)	1	1	1
Surety Letter (LI28)	1	1	1
Any other relevant factors specifically listed in the CSP	**2**	**2**	**2**
On-time project completion (LI 14-16)	1	1	1
Projects currently in progress (LI22)	1	1	1

AIA® Document A101™ – 2017

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

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

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

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

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

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

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

The Owner and Contractor agree as follows.

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

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

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

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TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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.

[X] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

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

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

§ 3.3 Substantial Completion

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

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

[ ] By the following date:

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

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

Portion of Work	Substantial Completion Date

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

ARTICLE 4 CONTRACT SUM

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

§ 4.2 Alternates

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

Item	Price

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

Item	Price	Conditions for Acceptance

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

Item	Price
Contingency	$[ ]

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

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

Item	Units and Limitations	Price per Unit ($0.00)

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

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

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

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

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

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

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

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

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

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

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

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

.1 That portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;

.2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified to the extent approved by the Owner in writing, as provided in Section 7.3.9 of AIA Document A201.

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

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201 or amounts certified by the Architect and disputed by the Owner; and

.5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

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

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

(Paragraphs deleted)

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

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

None.

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

Retainage on any incomplete Work and Unsettled claims.
(Paragraph deleted)
§ 5.1.9 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

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

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

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct nonconformingWork as provided in Article 12 of AIA Document A201, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201;

.3 the Contractor has provided the following documents:

.1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;

.2 Final list of subcontractors (AIA Document G705);

.3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at: www.tea.state.tx.us/school.finance/facilities/cert_2004. pdf;

.4 Contractor's warranties, organized as required elsewhere in the Contract Documents;

.5 Maintenance and Instruction Manuals;

.6 Owner's Final Completion Certificate; and

.7 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the

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

.4 a final Certificate for Payment has been issued by the Architect; and

.5 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

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

§ 5.3 Interest

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

%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

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

§ 6.2 Binding Dispute Resolution

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

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

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

ARTICLE 7 TERMINATION OR SUSPENSION

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

(Paragraphs deleted)

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

(Paragraphs deleted)
§ 8.7 Other provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 This executed AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

.2 AIA Document A201™–2007, General Conditions of the Contract for Construction

(Paragraphs deleted)

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

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(Paragraph deleted)

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

Number	Title	Date

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

Section	Title	Date	Pages

.5 Addenda, if any:

Number	Date	Pages

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

.6 The following Exhibits, which are attached hereto:

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

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

OWNER:

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____

CONTRACTOR:

[ ]

By: _____
Printer Name:
Title:

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

DRAFT

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EXHIBIT A

to

(Paragraph deleted)

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

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

DRAFT

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EXHIBIT B

to

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

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EXHIBIT C

to

(Table deleted)

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

Payment Bond

and

Performance Bond

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(Table deleted)

EXHIBIT D

to

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

Contractor's Insurance Certificates

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EXHIBIT E

to

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

Plans and/or Specifications

(Table deleted)

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AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

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

THE OWNER:
(Name, legal status and address)

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

THE ARCHITECT:
(Name, legal status and address)

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 OWNER

3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

8 TIME

9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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

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INDEX
(Topics and numbers in bold are section headings.)

Acceptance of Nonconforming Work
9.6.6, 9.9.3, **12.3**
Acceptance of Work
9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3
Access to Work
3.16, 6.2.1, 12.1
Accident Prevention
10
Acts and Omissions
3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, 13.7, 14.1, 15.2
Addenda
1.1.1, 3.11.1
Additional Costs, Claims for
3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4
Additional Inspections and Testing
9.4.2, 9.8.3, 12.2.1, **13.5**
Additional Insured
11.1.4
Additional Time, Claims for
3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**
Administration of the Contract
3.1.3, **4.2**, 9.4, 9.5
Advertisement or Invitation to Bid
1.1.1
Aesthetic Effect
4.2.13
Allowances
3.8, 7.3.8
All-risk Insurance
11.3.1, 11.3.1.1
Applications for Payment
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10, 11.1.3
Approvals
2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, 13.5.1
Arbitration
8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4**
ARCHITECT
4
Architect, Definition of
4.1.1
Architect, Extent of Authority
2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1
Architect, Limitations of Authority and Responsibility
2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2
Architect's Additional Services and Expenses
2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4
Architect's Administration of the Contract
3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5
Architect's Approvals
2.4.1, 3.1.3, 3.5, 3.10.2, 4.2.7
Architect's Authority to Reject Work
3.5, 4.2.6, 12.1.2, 12.2.1
Architect's Copyright
1.1.7, 1.5
Architect's Decisions
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.5.2, 15.2, 15.3
Architect's Inspections
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5
Architect's Instructions
3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2
Architect's Interpretations
4.2.11, 4.2.12
Architect's Project Representative
4.2.10
Architect's Relationship with Contractor
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2
Architect's Relationship with Subcontractors
1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7
Architect's Representations
9.4.2, 9.5.1, 9.10.1
Architect's Site Visits
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5
Asbestos
10.3.1
Attorneys' Fees
3.18.1, 9.10.2, 10.3.3
Award of Separate Contracts
6.1.1, 6.1.2
Award of Subcontracts and Other Contracts for Portions of the Work
5.2
Basic Definitions
1.1
Bidding Requirements
1.1.1, 5.2.1, 11.4.1
Binding Dispute Resolution
9.7, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1
Boiler and Machinery Insurance
11.3.2
Bonds, Lien
7.3.7.4, 9.10.2, 9.10.3
Bonds, Performance, and Payment
7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**
Building Permit
3.7.1

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Capitalization
1.3
Certificate of Substantial Completion
9.8.3, 9.8.4, 9.8.5
Certificates for Payment
4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3
Certificates of Inspection, Testing or Approval
13.5.4
Certificates of Insurance
9.10.2, 11.1.3
Change Orders
1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3
Change Orders, Definition of
7.2.1
CHANGES IN THE WORK
2.2.1, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.3.9
Claims, Definition of
15.1.1
CLAIMS AND DISPUTES
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1
Claims for Additional Cost
3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, **15.1.4**
Claims for Additional Time
3.2.4, 3.7.46.1.1, 8.3.2, 10.3.2, **15.1.5**
Concealed or Unknown Conditions, Claims for
3.7.4
Claims for Damages
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Claims Subject to Arbitration
15.3.1, 15.4.1
Cleaning Up
3.15, 6.3
Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4
Commencement of the Work, Definition of
8.1.2
Communications Facilitating Contract Administration
3.9.1, **4.2.4**
Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2
COMPLETION, PAYMENTS AND
9
Completion, Substantial
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7
Compliance with Laws
1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3
Concealed or Unknown Conditions
3.7.4, 4.2.8, 8.3.1, 10.3
Conditions of the Contract
1.1.1, 6.1.1, 6.1.4
Consent, Written
3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2
Consolidation or Joinder
15.4.4
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
1.1.4, **6**
Construction Change Directive, Definition of
7.3.1
Construction Change Directives
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1
Construction Schedules, Contractor's
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Contingent Assignment of Subcontracts
5.4, 14.2.2.2
Continuing Contract Performance
15.1.3
Contract, Definition of
1.1.2
CONTRACT, TERMINATION OR SUSPENSION OF THE
5.4.1.1, 11.3.9, **14**
Contract Administration
3.1.3, 4, 9.4, 9.5
Contract Award and Execution, Conditions Relating to
3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1
Contract Documents, Copies Furnished and Use of
1.5.2, 2.2.5, 5.3
Contract Documents, Definition of
1.1.1
Contract Sum
3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, **9.1**, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5
Contract Sum, Definition of
9.1
Contract Time
3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5
Contract Time, Definition of
8.1.1
CONTRACTOR
3
Contractor, Definition of
3.1, 6.1.2

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Contractor's Construction Schedules
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Contractor's Employees
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1
Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8
Contractor's Relationship with the Architect
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
9.7
Contractor's Right to Terminate the Contract
14.1, 15.1.6
Contractor's Submittals
3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3
Contractual Liability Insurance
11.1.1.8, 11.2
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.2.5, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.7
Costs
2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14
Cutting and Patching
3.14, 6.2.5
Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Damages for Delay
6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1
Delays and Extensions of Time
3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2, 11.1.2
Emergencies
10.4, 14.1.1.2, 15.1.4
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1
Equipment, Labor, Materials or
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5,

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User Notes: (1194743394)

3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3
Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3, 15.1.5, 15.2.5
Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Faulty Work
(See Defective or Nonconforming Work)
Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3.1, 14.2.4, 14.4.3
Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4
Fire and Extended Coverage Insurance
11.3.1.1
GENERAL PROVISIONS
1
Governing Law
13.1
Guarantees (See Warranty)
Hazardous Materials
10.2.4, **10.3**
Identification of Subcontractors and Suppliers
5.2.1
Indemnification
3.17, **3.18**, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7
Information and Services Required of the Owner
2.1.2, **2.2**, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Injury or Damage to Person or Property
10.2.8, 10.4.1
Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5
Instructions to Bidders
1.1.1
Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2
Instruments of Service, Definition of
1.1.7
Insurance
3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, **11**
Insurance, Boiler and Machinery
11.3.2
Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 11.1.2
Insurance, Loss of Use
11.3.3
Insurance, Owner's Liability
11.2
Insurance, Property
10.2.5, **11.3**
Insurance, Stored Materials
9.3.2
INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4
Interest
13.6
Interpretation
1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12, 15.1.4
Judgment on Final Award
15.4.2
Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2, 13.6.1, 14, 15.2.8, 15.4
Liens
2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 13.7, 15.4.1.1
Limitations of Liability
2.3.1, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2
Limitations of Time
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15
Loss of Use Insurance
11.3.3
Material Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5
Materials, Hazardous
10.2.4, **10.3**

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Materials, Labor, Equipment and
1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 15.2.8
Mediation
8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1
Minor Changes in the Work
1.1.1, 3.12.8, 4.2.8, 7.1, **7.4**
MISCELLANEOUS PROVISIONS
13
Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2, 11.3.1
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, **12.3**
Nonconforming Work, Rejection and Correction of
2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Notice
2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7, 9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1
Notice, Written
2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1
Notice of Claims
3.7.4, 10.2.8, **15.1.2**, 15.4
Notice of Testing and Inspections
13.5.1, 13.5.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.2.2, 9.6.6, 9.8, 11.3.1.5
Orders, Written
1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Information and Services Required of the
2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Owner's Authority
1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7
Owner's Financial Capability
2.2.1, 13.2.2, 14.1.1.4
Owner's Liability Insurance
11.2
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.4, 14.2.2
Owner's Right to Clean Up
6.3
Owner's Right to Perform Construction and to Award Separate Contracts
6.1
Owner's Right to Stop the Work
2.3
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2
Ownership and Use of Drawings, Specifications and Other Instruments of Service
1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11.1, 3.17, 4.2.12, 5.3.1
Partial Occupancy or Use
9.6.6, **9.9**, 11.3.1.5
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Payment, Final
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3.1, 13.7, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.7.4, 9.6.7, 9.10.3, **11.4**
Payments, Progress
9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
PCB
10.3.1

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User Notes: (1194743394)

Performance Bond and Payment Bond
7.3.7.4, 9.6.7, 9.10.3, **11.4**
Permits, Fees, Notices and Compliance with Laws
2.2.2, **3.7**, 3.13, 7.3.7.4, 10.2.2
PERSONS AND PROPERTY, PROTECTION OF
10
Polychlorinated Biphenyl
10.3.1
Product Data, Definition of
3.12.2
Product Data and Samples, Shop Drawings
3.11, **3.12**, 4.2.7
Progress and Completion
4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.3
Progress Payments
9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
Project, Definition of
1.1.4
Project Representatives
4.2.10
Property Insurance
10.2.5, **11.3**
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4
Rejection of Work
3.5, 4.2.6, 12.2.1
Releases and Waivers of Liens
9.10.2
Representations
3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples by Contractor
3.12
Rights and Remedies
1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, **13.4**, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3.1, **10.1**, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, **3.12**, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, **3.12**, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5
Special Inspections and Testing
4.2.6, 12.2.1, 13.5
Specifications, Definition of
1.1.6
Specifications
1.1.1, **1.1.6**, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14
Statute of Limitations
13.7, 15.4.1.1
Stopping the Work
2.3, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, **11.3.7**

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Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
4.1.3
Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3
Surety
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7
Surety, Consent of
9.10.2, 9.10.3
Surveys
2.2.3
Suspension by the Owner for Convenience
14.3
Suspension of the Work
5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 14
Taxes
3.6, 3.8.2.1, 7.3.7.4
Termination by the Contractor
14.1, 15.1.6
Termination by the Owner for Cause
5.4.1.1, **14.2,** 15.1.6
Termination by the Owner for Convenience
14.4
Termination of the Architect
4.1.3
Termination of the Contractor
14.2.2
TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, **13.5**
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5
Time Limits
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4
Time Limits on Claims
3.7.4, 10.2.8, **13.7**, 15.1.2
Title to Work
9.3.2, 9.3.3
Transmission of Data in Digital Form
1.6
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 7.3.4
Use of Documents
1.1.1, 1.5, 2.2.5, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.4.2
Waiver of Claims by the Contractor
9.10.5, 13.4.2, 15.1.6
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6
Waiver of Consequential Damages
14.2.4, 15.1.6
Waiver of Liens
9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, **11.3.7**
Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7
Weather Delays
15.1.5.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Notice
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1
Written Orders
1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

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§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

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

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

§ 2.1.2 DELETED.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

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

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

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

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

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

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

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

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

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

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

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

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.4 LABOR AND MATERIALS

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

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

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

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

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

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

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

§ 3.5 WARRANTY

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

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

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

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

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

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

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

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

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

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

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

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

a. The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar utility connection charges.

b. The Contractor shall be responsible for obtaining and paying for all City and County Building Permits, Inspection Fees and Plan Checking Fees; temporary utility charges, tap charges and water meter charges and any other similar fees assessed by jurisdictional authorities having control over the Project.

c. The Owner shall pay fees payable to the Texas Department of Licensing and Regulations (TDLR) for document review relative to the Elimination of Architectural Barriers Act and the Architect will submit the documents to the TDLR for review and approval.

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

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

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

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

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

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

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

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

§ 3.9.3 DELETED.

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§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

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

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

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

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

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

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§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.13 USE OF SITE

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

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

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

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

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

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§ 3.18 INDEMNIFICATION

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

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

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

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

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

§3.20 RECORD DRAWINGS

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

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

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

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

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

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

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

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

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

§ 4.2.13 DELETED.

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

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

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

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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§ 6.2.3 DELETED.

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

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

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation in writing between the Owner and the Contractor;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon in writing between the Owner and the Contractor;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, in each case in writing between the Owner and the Contractor; or

.4 As provided in Section 7.3.7.

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

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

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

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

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

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

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

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

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beyond the Contractor's control; or by delay authorized by Owner pending mediation, or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of Contractor or that are otherwise the responsibility of Contractor and shall also be net of any contingency or "float" time allowance included in Contractor's construction schedule. Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Contactor shall not be entitled to damages of any type for delays caused by Owner, his servant, agents, employees, or separate Contractors hired or retained by Owner. Contractor may receive an extension or extensions for additional time in which to complete the Contract but shall not receive any damages of any type for such delays. Changes in the Work, regardless of the extent or number of such Changes or Owner's exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the Work.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.1 Commitment of Current Revenues Only. As reflected in Section 4.5 of the modified AIA document A101 – 2017 Edition by and between Owner and Contractor to which this document is attached as Exhibit A, in the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Contract, then any party may terminate this Contract upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to Subcontractors, supported by such evidence of correctness as Architect may direct or as required by Owner. This schedule, when approved by Architect and Owner, shall be used to monitor the progress of the Work and as a basis for Certificates for Payment. All items with entered values will be transferred by Contractor to the "Application and Certificate for Payment," and shall include the latest approved Change Orders and Construction Change Directives. Change Order values and Construction Change Directives values shall be broken down to show the various subcontracts. The Application for Payment shall be on a form as provided by Architect and approved by Owner. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed, and value yet to be completed. All blanks and columns must be filled in, including every percentage complete figure. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Any

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allowances included in the Application for Payment shall be separately itemized with supporting data attached. The Application for Payment shall be accompanied by a certification by an office of Contractor to the effect that:

> There are no known mechanics', materialman's or laborers' liens or claims, or any other liens or claims, legal or equitable, contractual, statutory, or constitutional, outstanding or known to exist at the date of this Application; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application and there is no known basis for the filing of any mechanics', materialman's or laborers' lien or claim, or any other lien or claim, legal or equitable, contractual, statutory, or constitutional, on the Work; and waivers and releases from all Subcontractors, laborers, and material men for Work done and materials furnished have been obtained in such form as to constitute an effective waiver and release of all such liens and claims under the laws of the state within which the Project is located and shall be delivered to Architect together with Contractor's waiver and release of liens and claims at the time of submission of the Application for Payment.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing by the Owner and Surety. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, that Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and on all other information available to Architect including, without limitation, the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and

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inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified and that the aggregate amount theretofore paid to Contractor plus any applicable retention does not exceed the value of the completed portion of the Work. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a separate contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- **.7** failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion within the Contract Time, subject to extensions of time allowed under these Conditions, Architect may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of the Application for Payment and to the time it is reasonably anticipated that Substantial Completion will be achieved.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner may refuse to make payment on any Certificate for Payment for any default of the Contract, including, but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7. Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 DELETED.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not, for reasons other than a default of the Contract, including but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7 pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or if Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Sum and may, in Owner sole discretion, elect either to (i) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (ii) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof (which Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of issuance of the certificate of final payment by Architect unless otherwise provided in the Certificate of Substantial Completion. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract are in place. In general, the only remaining Work shall be minor in nature, so that Owner and/or Owner's employees and if applicable, the public, could occupy the building on that date and the completing of the Work by Contractor would not materially interfere or hamper Owner's or Owner's employees and if applicable, the public, (or those claiming by, through, or under Owner) from normal County operations. As a further condition of Substantial Completion acceptance, Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the Date of Substantial Completion. If Contractor requests a Substantial Completion review, and Architect, after performing the Substantial Completion review, finds that the Project was not ready for the Substantial Completion review, then Contractor shall pay the Architect's fees for any additional Substantial Completion reviews.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§9.8.6 In order for the project or a major portion thereof to be considered substantially complete, the following conditions must be met: (1) All inspections by governmental authorities have jurisdiction over the project must have been finalized, any remedial work required by those authorities must have been completed, and Certificates of Occupancy and similar governmental approval forms must have been issued and copies delivered to the Owner and Architect. (2) All work, both interior and exterior, shall have been completed and cleaned except minor items which if completed after occupancy, will not, in the Owner's opinion, cause interference to the Owner's use of the building or any portion thereof. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be the sole judge of what constitutes a significantly large number of items.

§9.8.7 After the date of Substantial Completion of the Project is evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of thirty (30) days, unless extended by mutual agreement or provision of the Contract, within which to correct all deficiencies attached to the Certificate of Substantial Completion. Failure of the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In this report, the Contactor and surety will be informed that, should correction remain incomplete for fifteen (15) days, the Owner may initiate action to complete corrective work out of the remaining Contract funds in accordance with Article 14.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any portion of the Work authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- .4 faulty or defective Work appearing after Substantial Completion.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

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.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons

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or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 DELETED.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 DELETED.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor and Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- **.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- **.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- **.3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- **.4** Claims for damages insured by usual personal injury liability coverage;
- **.5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- **.6** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- **.7** Claims for bodily injury or property damage arising out of completed operations; and
- **.8** Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 SCHEDULE OF INSURANCE COVERAGES

§ 11.1.5.1 Contractor shall carry and keep in full force for the duration of the project the following Coverage.

Coverage	**Minimum Amounts and Limits**
Worker's Compensation	
Employer's Liability:	Statutory Limits
Bodily Injury by Accident	$500,000.00/each accident
Bodily Injury by Disease	$500,000.00/each employee
Bodily Injury by Disease	$500,000.00/Policy Limit
Commercial General Liability	
Bodily Injury/Property Damage	$1,000,000.00 per occurrence $2,000,000.00 aggregate

(Premises Operations, Independent Contractors, Product/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage).

Comprehensive Automobile Liability	$1,000,000.00 Combined Single Limit per Occurrence

Auto liability insurance shall be on a standard form written to cover all owned, hired, and non-owned automobiles. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insured, contain cross-liability and severability of interest endorsements, and state that this insurance is primary insurance as regards to any other insurance carried by the Indemnified Parties (see Section 3.18).

§11.1.5.2 All policies shall contain special endorsements to include:

.1 The Owner as an additional insured (except for Worker's Compensation) and all other parties identified in Section 3.18 (Indemnified Parties);

.2 Wavier of Subrogation in favor of Owner under the Worker's Compensation and Employer's Liability policies.

.3 A statement that a notice shall be given to Owner by certified mail thirty (30) days prior to cancellation or upon any material changes in coverage.

4. Contain cross-liability and severability of interest endorsements;

5. state that this insurance is primary insurance in regard to any other insurance carried by an Indemnified Party (see Section 3.18);

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.6 the following coverage:

a. Premises/Operations;
b. Independent Contractors;
c. Completed Operations for a period of two years following the acceptance of Contractor's Work;
d. Comprehensive General Liability Endorsement to include Blanket Contractual Liability (specifically covering, but not limited to, the contractual obligations assumed by Contractor, Broad Form Property Damage, and Personal Injury Liability with employee and contractual exclusions removed);
e. Deletion of exclusions relative to Collapse, Explosion, and Underground Property Damage Hazards;
f. Personal Injury Liability with the contractual exclusions removed;
g. Cross Liability Endorsement.

§11.1.5.6 Umbrella Excess Liability Insurance

Bodily Injury and	$2,000,000.00 per occurrence
Property Damage	$2,000,000.00 aggregate

This policy shall be written on an umbrella excess basis above, the coverage described in this Article 11. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insureds. The policy shall contain cross-liability and severability of interest endorsements and shall state, as regard the Indemnified Parties that the insurance is primary insurance as to any other insurance carried by any Indemnified Party. The policy shall be endorsed to provide the defense coverage obligation.

§11.1.6 Further, Contractor shall require all Subcontractors to carry similar insurance coverage and limits of liability as required under this Article 11, adjusted to the nature of Subcontractor's operations and submit same to Owner for approval before any Work commences.

§11.1.7 In the event Contractor fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, Contractor shall indemnify, defend, and hold harmless the indemnified parties from any and all claims for which the required insurance would have provided coverage.

§11.1.8 Workers' Compensation Insurance Coverage.

§11.1.8.1 Definitions:

.1 Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

.2 Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

.3 Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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§11.1.8.2 The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

§11.1.8.3 The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

§11.1.8.4 If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

§11.1.8.5 The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

.1 a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

.2 no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

§11.1.8.6 The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

§11.1.8.7 The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

§11.1.8.8 The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

§11.1.8.9 The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

.2 provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

.3 provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

.4 obtain from each other person with whom it contracts, and provide to the contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

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.5 retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

.6 notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

.7 contractually require each person with whom it contracts, to perform as required by paragraphs .1 - .7, with the certificates of coverage to be provided to the person for whom they are providing services.

§11.1.8.10 By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§11.1.8.11 The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.2.1 By signing the Contract or providing or causing to be provided a Certificate of Coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that coverage will be based on proper reporting or classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§11.2.2 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Article 11.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Contractor shall obtain a builder's risk "all-risk" or equivalent policy in the amount of the initial Contract Sum (or if applicable Guaranteed Maximum Price), plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. The policy must also name its subcontractors and the Owner as additional insured, as their respective interests may appear. Coverage shall include material stored on-site and in transit. Such insurance will be with a company or companies lawfully authorized to do business in Texas. The policy must have the following endorsement: "This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises."

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework,

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testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.1.1 For any claim made against Contractor's Builder's Risk Insurance, the deductible shall not exceed $2,500.00 for a Contract Sum of less than $4 million. For a Contract Sum of $4 million or more, the deductible shall not exceed $5,000.00.

§11.3.1.1.2 The Contractor waives all rights against (1) Owner, the Subcontractors, Sub-subcontractors, agents, and employees, and (2) the Architect, Architect's consultants, separate contractors, if any, and any of their Subcontractors, Sub-subcontractors, agents, and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as a fiduciary. The Contractor, as appropriate, shall require of any separate contractors, Subcontractors, Sub-subcontractors, agents, and employees of any of them by appropriate written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§11.3.1.1.3 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers. The Contractor shall pay all Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements shall require Subcontractors to make payment to their Sub-subcontractors in similar manner. If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor under the insurance proceeds.

§ 11.3.1.2 DELETED.

§ 11.3.1.3 DELETED.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use shall not affect the validity or coverage of property insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE DELETED.

§ 11.3.3 LOSS OF USE INSURANCE DELETED.

§ 11.3.4 DELETED.

§ 11.3.5 DELETED.

§ 11.3.6 DELETED.

§ 11.3.7 WAIVERS OF SUBROGATION

Contractor waives all rights against (1) Owner, the Subcontractors, Sub-subcontractors, agents and employees, and (2) the Architect, Architect's consultants, separate contractors if any, and any of their Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Article 11or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as fiduciary. The Contractor, as appropriate, shall require of any separate contractors, Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate

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written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 DELETED.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Sum, as security for the faithful performance of the Contract and also a one hundred percent (100%) Payment Bond, as security for the payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with the Contract. The Performance Bond and the Payment Bond may be in one or in separate instruments in accordance with local law. Surety companies must be authorized to write surety bonds in Texas and any such surety bond must comply with the requirements of Subchapter A of Chapter 3503 of the Texas Insurance Code.

§11.4.1.1 The Contractor shall deliver the required Bonds to the Owner not later than the date of the preconstruction meeting. All Bonds will be reviewed by the Architect for compliance with the Contract Documents prior to the execution of the Contract. In the event that Architect has any questions concerning the sufficiency of the bonds, Architect shall refer the bonds to Owner or Owner's representative for decision.

§11.4.1.2 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the Bonding Company shall be provided.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Bonds shall be provided to comply with the terms and provisions of Chapter 2253 of the Texas Government Code. Bonds shall be signed by an agent resident in the State of Texas and date of bond shall be on or after the date of execution of the Contract but prior to the date of the notice to proceed. If at any time during the continuance of the Contract, the surety of the Contractor's bonds becomes insufficient, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld until sufficient bonds are provided by Contractor.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs

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and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect as incomplete, defective, or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the entire Work (unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties), or within such longer period of time as may be prescribed by law or in equity, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be defective or otherwise not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This corrective period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. Corrective Work shall be warranted to be free from defects for a period equal to the longer of six (6) months after the completion of the corrective Work or one (1) year after the Date of Substantial Completion (subject to extension as previously described) or such longer period of time as may be prescribed by law or in equity, or expiration of the term of any applicable special warranty, if applicable, required by the Contract Documents. Any defect in such Work shall be corrected again by Contractor promptly upon notice of the defect from Owner. This obligation under this Section 12.2.2.1 shall survive acceptance of the Work under the Contract and termination of the Contract by the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§12.2.2.4 Just before the termination of the various guarantee periods, Contractor shall accompany Owner's agent and Architect on an inspection tour of the building and shall note any defects and shall start remedying these defects within ten (10) days of the inspection tour and shall prosecute the Work without interruption until accepted by Owner and Architect, even though such prosecution should extend beyond the limit of the guarantee period.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused in whole or in part by the Contractor's correction or removal of Work that is defective or otherwise not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents or under law or in equity. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is defective or otherwise not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

§13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice or if delivered by facsimile to the offices of the person or corporation for which it was intended. Facsimiles received after 5:00 p.m. on a business day, or on a weekend or legal holiday on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next business day.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or in equity or by any other agreement, and any such rights and remedies shall survive the acceptance of the Work and/or any termination of the Contract Documents.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Architect, Owner and Contractor shall be afforded a reasonable opportunity to attend, observe, and witness all inspections and tests of the Work. Architect or Owner may at any time request and receive from Contractor satisfactory evidence that materials, supplies, or equipment are in conformance with the Contract Documents. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve Contractor from its obligations under the Contract Documents unless specifically so stated by Owner in writing.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

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§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, or reveal faulty or otherwise defective Work, or if the necessity of any such testing, inspection, or approval procedures arises out of the fault, neglect, or omission of Contractor, Contractor shall bear all costs of such testing, inspection, and approval procedures and all other costs made necessary by Contractor's failures, including, without limitation, those costs of repeated and additional procedures and compensation for Architect's services and expenses of Owner's personnel and consultant fees and expenses. Such costs shall be paid by Contractor within ten (10) days of receipt of invoice from Owner with supporting data attached.

§ 13.5.4 Required certificates of testing, inspection or approval shall, be secured by the Contractor and delivered to the Owner, unless such testing or inspection services are arranged by Owner.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

An overdue payment bears interest at the legal rate established by the Texas Government Code, currently in Section 2251.025, or in the event no rate is so established, at the rate of one percent (1%) each month. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives an invoice from Contractor.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law.

§ 13.8.1 The Contractor shall maintain policies of employment as follows: "The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment, or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies."

§13.8.1.1 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

§13.9 CERTIFICATION OF ASBESTOS-FREE PROJECT

§13.9.1 Contractor shall submit to the Architect a letter addressed to the Owner certifying that all materials used in the construction of this Project contain less than 0.10 by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. Certification letters shall be dated, shall reference this specific Project, and shall be signed by not less than two (2) officers of the construction company.

§13.9.2 Certification shall further state that should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, that Contractor shall be responsible for determining which materials contain asbestos fibers and shall take corrective action to remove those materials from the Project at no additional cost to the Owner.

§13.9.3 Final payment shall not be made until this letter of certification has been received.

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ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or

.2 An act of government, such as a declaration of national emergency that requires all Work to be

(Paragraphs deleted)

stopped.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed in accordance with the Contract Documents.

§ 14.1.4 Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Sections 14.1.1 and 14.1.2.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 refuses or fails to supply enough properly skilled workers or proper materials and equipment;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 disregards the instructions of Architect or Owner (when such instructions are based on the requirements of the Contract Documents);

.5 is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law; or

.6 otherwise does not fully comply with the Contract Documents**.**

§ 14.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 To the extent the costs of completing Work, including compensation for additional professional services and expenses, exceed those costs that would have been payable to Contractor to complete the Work except for

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Contractor's default, Contractor will pay the difference to Owner, and this obligation for payment shall survive termination of the Contract. Such costs incurred by Owner will be determined by Owner and confirmed by Architect.

§14.2.5 In addition to Owner's right to remove Contractor from any part of Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, terminate any part of Work or any subcontract or all remaining Work for any reason whatsoever by giving seven (7) days' prior written notice to Contractor specifying the part of Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of Work not terminated. If any part of Work or subcontract is so terminated, Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) and for costs directly related to Work thereafter performed by Contractor in terminating such Work or subcontract including reasonable demobilization and cancellation charges provided said Work is authorized in advance by Architect and Owner. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such termination, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the Date of Substantial Completion and/or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

§14.2.6 Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Section 14.2.5.

§14.2.7 Upon a determination by a court of competent jurisdiction that termination of Contractor pursuant to Section 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.2.5 and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.2.5.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- **.1** that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, without any overhead or profit on the Work not executed.

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right adjustment, or interpretation of the Contract Terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims must be by written notice.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Said written notice of claims shall state specifically the reason for the claim, the date or dates of the cause or causes of the claim, and if any extension of time is requested, the number of days of extension requested.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Architect. No such claim shall be value unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Extensions of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if Architect determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

(Paragraph deleted)

Contractor shall not be entitled to claims for additional time and/or increase in Contract Price due to a problem or non-performance of a subcontractor.

§ 15.1.7 In the event the Contractor fails to achieve substantial completion by the date indicated in the Contract, and extended by approved Change Order, the Owner shall be entitled to liquidated damages in the amount as stated in Section 3.1.1 of the modified AIA document A 101 – 2007 Edition by and between Owner and Contractor to which this document is attached as Exhibit A per day until the Work is substantially completed. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult and in no sense be considered a penalty.

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This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim in whole or in part, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to litigation.

§ 15.2.6 DELETED.

§ 15.2.6.1 DELETED.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 DELETED.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract may be subject to mediation as a condition precedent to litigation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

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§ 15.3.3 The parties shall share the mediator's fee. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

The parties expressly agree that disputes or claims arising under the Contract Documents shall not be subject to arbitration unless mutually agreed by the parties in writing.

OWNER:	**CONTRACTOR:**
McALLEN INDEPENDENT SCHOOL DISTRICT	[_____]
By: _____	By: _____ Printed Name: _____ Title: _____
_____ Date	_____ Date

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

(Paragraphs deleted)

DRAFT

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Competitive Sealed Proposal No. 2023-1006 McAllen Memorial High School Heating, Ventilation, and Air Conditioning ("HVAC") Improvements

REFERENCE: Goal 3 - Facility Priorities; Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District solicited proposals for HVAC improvements for McAllen Memorial High School.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

One hundred eighty-eight (188) contractors were invited to submit proposals. Nine (9) contractors submitted an "intent to submit" a proposal; however, Administration received nine (9) proposals, including six (6) no-bids. On June 9, 2022, the evaluation committee, comprised of Ruben Trevino, Executive Director of Facilities, Maintenance, and Operations; Melissa Ortiz, Project Manager for Facilities, Maintenance, and Operations; Alejandra Gonzalez, Director of Purchasing Services; Elizabeth Cabrera, Purchasing Services Coordinator; Carolina Quintanilla, Senior Buyer; and Gracie Garza, Senior Buyer, evaluated the proposals and is recommending that the Board of Trustees award this contract to NM Contracting, LLC from McAllen, TX, the highest ranked contractor.

LEGAL REVIEW:

A draft copy of the AIA contract is attached. The AIA contract is pending receipt of payment and performance bonds and final legal review.

BUDGETARY CONSIDERATIONS:

Funds for this project are budgeted through the Capital Projects Fund. The contract price for this project is $5,966,800.00 plus a contingency of $200,000.00, for a total price of $6,166,800.00. Administration is currently in negotiations for the Best and Final Offer.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Competitive Sealed Proposal No. 2023-1006 McAllen Memorial High School Heating, Ventilation, and Air Conditioning ("HVAC") Improvements and award NM Contracting, LLC.

SUBMITTED BY: _____ **SUPERVISOR:** _____

For further information contact:
Name: Ruben Treviño
Office: (956) 632-3200
email: ruben.trevino@mcallenisd.net

Approved for presentation to the Board of Education:

_____
Superintendent of Schools

McAllen Independent School District
CSP No. 2023-1006 McAllen Memorial High School Heating, Ventilation, and Air Conditioning ("HVAC") Improvements
Evaluation Matrix

Vendor Names		Victoria Air Conditioning, LTD	NM Contracting, LLC	Holchemont, Ltd.
Rank		**2**	**1**	**3**
Maximum points	**100.00**	**86.00**	**89.81**	**67.28**
Price	**55**	**55**	**54**	**33**
Base Bid (Includes Contingency) (LI1, LI2 and LI3)		$6,024,140.00	$6,166,800.00	$10,184,050.00
Offeror's experience and reputation	**22**	**9**	**14.75**	**13.25**
Three (3) Supplier Reference Letters (LI18)	1.5	1.5	1.5	1.5
0.5 per reference				
Claims, judgments, arbitration proceedings or suits (LI3)	1	1	1	1
Three (3) K-12 projects/ref check (LI9)	15	5	10	10
(Reference Checks) - 2.5 pts per scope/size		*2 scope; 0 size*	*1 scope & 3 size*	*2 scope & 2 size*
Three (3) Non K-12 projects/ref. check (LI10)	4.5	1.5	2.25	0.75
(Reference Checks) - 0.75 pts per scope/size		*2 scope; 0 size*	*3 scope; 0 size*	*1 scope; 0 size*
Quality of the offeror's goods or services	**3**	**3**	**3**	**3**
Repeat business for similar scope/size (LI10)	2	2	2	2
MISD projects (LI8)	1	1	1	1
The impact on the ability of the district to comply with rules relating to historically underutilized businesses - HUB (A32)	**1**	**0**	**1**	**1**
Offeror's safety record	**7**	**7**	**7**	**5.5**
"OSHA Form 300 Log (LI19)	1.5	1.5	1.5	1.5
1.5 pts per year				
Safety program manual and/or procedures. (LI20)	2	2	2	2
Provided = 2; not provided = 0				
Drug/alcohol prevention policy and/or procedures. (LI21)	1	1	1	1
Provided = 2; not provided = 0				
"Workers Compensation Experience Rating" (LI18)	1.5	1.5	1.5	0
0.5 pts per year				*none provided*
Frequency of safety inspections (LI11)	1	1	1	1
Provided = 1; not provided = 0				
Offeror's Proposed Personnel	**8**	**8**	**6.33**	**8**
Staff experience (industry) (LI14)	4	4	4	4
Avg 10+ years = 4; <10 = weighted scale				
Staff experience (firm) (LI14)	4	4	2.33	4
Avg 3+ years = 4; <3 = weighted scale				
Whether the offeror's financial capability is appropriate to the size and scope of the project	**2**	**2**	**2**	**2**
Financial Statement (LI23)	1	1	1	1
Surety Letter (LI23)	1	1	1	1
Any other relevant factors specifically listed in the CSP	**2**	**2**	**2**	**2**
On-time project completion (LI 8-10)	1	1	1	1
Projects currently in progress (LI15)	1	1	1	1

AIA® Document A101™ – 2017

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is a Stipulated Sum*

AGREEMENT made as of the day of in the year 202__
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

McALLEN INDEPENDENT SCHOOL DISTRICT
2000 North 23rd Street
McAllen, Texas 78501

and the Contractor:
(Name, legal status, address and other information)

for the following Project:
(Name, location and detailed description)

The Architect:
(Name, legal status, address and other information)

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101™–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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.

[X] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

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§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute and achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[ ] By the following date:

Final Completion shall be 30 calendar days after the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Contract Documents.

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be ($), subject to additions and deductions as provided in the Contract Documents. The Contract Sum consists of two portions, the budgeted amount of [ ] Dollars and [ ] Cents ($[ ]) and a contingency of [ ] Dollars ($[ ]) as specified in Section 4.3 below. This contingency is for the sole use of the Owner to be used for changes in the scope of the Work and for the betterment of the Project. Contractor acknowledges and agrees that the contingency portion of the Contract Sum set forth in Section 4.3 shall not be due or payable unless and to the extent that Owner authorizes such expenditure in writing If the Owner's Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating final payment.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
Contingency	$[ ]

§ 4.4 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

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[Unit prices for certain components are specified in the bidding form attached hereto as part of Exhibit B. Such prices are only applicable in the event Owner opts to increase or decrease the number of required components.]

Item	Units and Limitations	Price per Unit ($0.00)

§ 4.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

§ 4.5.1 Substantial Completion. Owner and Contractor recognize that time is of the essence in this Agreement and that Owner will suffer financial loss if the Work is not completed within the time specified in Article 3, plus any extension thereof in accordance with Article 8 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner [ ] Dollars and Zero Cents ($[ ].00) per calendar day for each day after the Substantial Completion date noted in Article 3 until the Work is substantially complete.

§ 4.5.2 Final Completion. In addition, timely Final Completion is an essential condition of this Agreement. Contractor agrees to achieve Final Completion of the Work within 30 calendar days of the Substantial Completion date (subject to adjustment of such date in accordance with the terms hereof). It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Final Completion of the Project and Owner shall sustain additional damages as a result of Contractor's failure, neglect or refusal to achieve said deadline. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Contractor and Owner also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner [ ] Dollars and Zero Cents ($[ ].00) per calendar day for each day after the Final Completion date noted in Article 3 until the Work is substantially complete.

§ 4.5.3 ***It is expressly understood that the said sum per day set forth in this Section 4.5 is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult, and in no sense shall be considered a penalty.*** It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from any Payment made to the Contractor any sums due from Contractor to Owner pursuant to Section 4.5 above.

§ 4.6 Other:
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

§ 4.6.1 Commitment of Current Revenues Only. In the event that during any term hereof, the governing body of any local government party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each government party hereto pursuant to the provisions of Texas Local Governmentt Code §271.903.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

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§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the fifth day following approval by the Board of Trustees or as otherwise required by applicable law .
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum less any unused Owner's contingency among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Owner and the Architect may require. This schedule of values, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

.1 That portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;

.2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified to the extent approved by the Owner in writing, as provided in Section 7.3.9 of AIA Document A201.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201 or amounts certified by the Architect and disputed by the Owner; and

.5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner shall withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five percent (5%) if the amount set forth in Section 4.1 above for the Contract Sum is at least Four Hundred Thousand Dollars ($400,000.00) and ten percent (10%) if such amount is less than Four Hundred Thousand Dollars ($400,000.00).

(Paragraphs deleted)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

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(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

None.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

Retainage on any incomplete Work and Unsettled claims.
(Paragraph deleted)
§ 5.1.9 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.10 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.

§ 5.1.11 If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any payment to Contractor shall be subject to deduction for such amounts as the Architect if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claim.

§ 5.2 Final Payment
§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum minus disputed sums, authorized deductions and liquidated damages, shall be made by the Owner to the Contractor after

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct nonconformingWork as provided in Article 12 of AIA Document A201, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201;

.3 the Contractor has provided the following documents:

.1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;

.2 Final list of subcontractors (AIA Document G705);

.3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at: www.tea.state.tx.us/school.finance/facilities/cert_2004. pdf;

.4 Contractor's warranties, organized as required elsewhere in the Contract Documents;

.5 Maintenance and Instruction Manuals;

.6 Owner's Final Completion Certificate; and

.7 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the

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Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes;

.4 a final Certificate for Payment has been issued by the Architect; and

.5 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, and upon acceptance by the Owner and Architect, and after satisfactory evidence has been given by the Contractor that all of the Contractor's bills have been paid and the entire Project is free from liens.

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest pursuant to Texas Government Code §2251.025.
(Insert rate of interest agreed upon, if any.)

%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201.

(Paragraphs deleted)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 All references to AIA Document A201-2017, AIA Document A201-2007, AIA Document A201 or the A201, shall mean to the modified A201-2007 attached hereto as Exhibit "A". Similarly, references to AIA Document A101-2017, AIA Document A101-2007 or to the A101 shall mean to this A101-2017. Where reference is made in this

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Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:
(Name, address, email address, and other information)

Mr. Ruben Trevino
McAllen Independent School District
20000 N. 23rd St.
McAllen, TX 78501-6126

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds
§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in Article II of the AIA Document A201. The Contractor's insurance certificates are attached hereto as Exhibit "D".

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A201. The original bonds required pursuant to Section 11.4 of the A201 and this Section 8.5 are attached to the Owner's execution original of this Agreement as Exhibit "C" with a copy of the bonds attached as Exhibit "C" to the Contractor's execution original.

(Paragraphs deleted)
§ 8.7 Other provisions:

§ 8.7.1 The Agreement shall be governed by the laws of the State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue shall be in Hidalgo County, Texas.

§ 8.7.2 As a material consideration of the making of this Agreement, the modifications to this Agreement shall not be construed against the maker of said modifications.

§ 8.7.3 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. As part of that responsibility, Contractor shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, subcontractors, and all other persons carrying out the Contract.

§ 8.7.4 Contractor acknowledges that the Owner retained the party set forth above under "Architect" above to provide certain design, contract administration and/or other services for the Project, and may not have used an AIA document for the contract with such party. All references in the Contract Documents to the Architect shall be to the entity named on the first page as the "Architect". The parties acknowledge and agree that, notwithstanding any other provision in the Contract Documents, the Owner is not obligated to retain an architect for the Project and the Owner makes no representations about the party set forth above under "Architect" being an architect.

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§ 8.7.5 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall contain a current photograph and the worker's full name in a typeface large enough to be seen from a reasonable distance.

§ 8.7.6 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner's campus principal. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§ 8.7.7 Contractor shall institute a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Contractor's and Contractor's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property of Owner.

§ 8.7.8 The Contractor may not assign its responsibilities, duties, obligations and rights under this Agreement, without the express written consent of the Owner. This does not prevent Contractor from engaging subcontractors to perform various phases of the Project, but Contractor shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 8.7.9 This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement.

§ 8.7.10 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.

§ 8.7.11 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by Contractor of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by Owner of any of the covenants, conditions or agreements hereof to be performed by Contractor shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 8.7.12 Contractor stipulates that Owner is a political subdivision of the State of the Texas, and, as such, enjoys immunities from suit and liability as provided by the constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein, and as specifically authorized by law.

§ 8.7.13 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract.

§ 8.7.14 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 This executed AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

.2 AIA Document A201™–2007, General Conditions of the Contract for Construction

(Paragraphs deleted)

(as modified and attached hereto as Exhibit "A")

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(Paragraph deleted)

.3 Drawings attached hereto as part of Exhibit "E".

Number	Title	Date

.4 Specifications attached hereto as part of Exhibit "E".

Section	Title	Date	Pages

.5 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.6 The following Exhibits, which are attached hereto:

.1	Exhibit A	The modified AIA Document A201–2007, General Conditions of the Contract for Construction.
.2	Exhibit B	Contractor's Proposal
.3	Exhibits C	Payment and Performance Bonds
.4	Exhibit D	Contractor's Insurance Certificates
.5	Exhibit E	Plans and Specifications

This Agreement entered into as of the day and year first written above.

OWNER:

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

CONTRACTOR:

[ ]

By: _____
Printer Name:
Title:

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EXHIBIT A

to

(Paragraph deleted)

Agreement dated [, 20], between
McAllen Independent School District and [ ]
(CSP 20__-__ [ ])

Modified AIA Document A201-2007 General Conditions of the Contract for Construction

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User Notes: (1413695541)

EXHIBIT B

to

Agreement dated [, 20], between
McAllen Independent School District and [ ]
(CSP 20__-__ [ ])
Contractor's Proposal

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EXHIBIT C

to

(Table deleted)

Agreement dated [, 20], between
McAllen Independent School District and [ ]
(CSP 20__-__ [ ])

Payment Bond

and

Performance Bond

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(Table deleted)

EXHIBIT D

to

Agreement dated [, 20], between
McAllen Independent School District and [ ]
(CSP 20__-__ [ ])

Contractor's Insurance Certificates

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EXHIBIT E

to

Agreement dated [, 20], between
McAllen Independent School District and [ ]
(CSP 20__-__ [ ])

Plans and/or Specifications

(Table deleted)

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AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

THE OWNER:
(Name, legal status and address)

McALLEN INDEPENDENT SCHOOL DISTRICT
2000 North 23rd Street
McAllen, Texas 78501

THE ARCHITECT:
(Name, legal status and address)

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 OWNER

3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

8 TIME

9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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User Notes: (1194743394)

INDEX
(Topics and numbers in bold are section headings.)

Acceptance of Nonconforming Work
9.6.6, 9.9.3, **12.3**
Acceptance of Work
9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3
Access to Work
3.16, 6.2.1, 12.1
Accident Prevention
10
Acts and Omissions
3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, 13.7, 14.1, 15.2
Addenda
1.1.1, 3.11.1
Additional Costs, Claims for
3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4
Additional Inspections and Testing
9.4.2, 9.8.3, 12.2.1, **13.5**
Additional Insured
11.1.4
Additional Time, Claims for
3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**
Administration of the Contract
3.1.3, **4.2**, 9.4, 9.5
Advertisement or Invitation to Bid
1.1.1
Aesthetic Effect
4.2.13
Allowances
3.8, 7.3.8
All-risk Insurance
11.3.1, 11.3.1.1
Applications for Payment
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10, 11.1.3
Approvals
2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, 13.5.1
Arbitration
8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4**
ARCHITECT
4
Architect, Definition of
4.1.1
Architect, Extent of Authority
2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1
Architect, Limitations of Authority and Responsibility
2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2
Architect's Additional Services and Expenses
2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4
Architect's Administration of the Contract
3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5
Architect's Approvals
2.4.1, 3.1.3, 3.5, 3.10.2, 4.2.7
Architect's Authority to Reject Work
3.5, 4.2.6, 12.1.2, 12.2.1
Architect's Copyright
1.1.7, 1.5
Architect's Decisions
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.5.2, 15.2, 15.3
Architect's Inspections
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5
Architect's Instructions
3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2
Architect's Interpretations
4.2.11, 4.2.12
Architect's Project Representative
4.2.10
Architect's Relationship with Contractor
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2
Architect's Relationship with Subcontractors
1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7
Architect's Representations
9.4.2, 9.5.1, 9.10.1
Architect's Site Visits
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5
Asbestos
10.3.1
Attorneys' Fees
3.18.1, 9.10.2, 10.3.3
Award of Separate Contracts
6.1.1, 6.1.2
Award of Subcontracts and Other Contracts for Portions of the Work
5.2
Basic Definitions
1.1
Bidding Requirements
1.1.1, 5.2.1, 11.4.1
Binding Dispute Resolution
9.7, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1
Boiler and Machinery Insurance
11.3.2
Bonds, Lien
7.3.7.4, 9.10.2, 9.10.3
Bonds, Performance, and Payment
7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**
Building Permit
3.7.1

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Capitalization
1.3
Certificate of Substantial Completion
9.8.3, 9.8.4, 9.8.5
Certificates for Payment
4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3
Certificates of Inspection, Testing or Approval
13.5.4
Certificates of Insurance
9.10.2, 11.1.3
Change Orders
1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3
Change Orders, Definition of
7.2.1
CHANGES IN THE WORK
2.2.1, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.3.9
Claims, Definition of
15.1.1
CLAIMS AND DISPUTES
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1
Claims for Additional Cost
3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, **15.1.4**
Claims for Additional Time
3.2.4, 3.7.46.1.1, 8.3.2, 10.3.2, **15.1.5**
Concealed or Unknown Conditions, Claims for
3.7.4
Claims for Damages
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Claims Subject to Arbitration
15.3.1, 15.4.1
Cleaning Up
3.15, 6.3
Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4
Commencement of the Work, Definition of
8.1.2
Communications Facilitating Contract Administration
3.9.1, **4.2.4**
Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2
COMPLETION, PAYMENTS AND
9
Completion, Substantial
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7
Compliance with Laws
1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3
Concealed or Unknown Conditions
3.7.4, 4.2.8, 8.3.1, 10.3
Conditions of the Contract
1.1.1, 6.1.1, 6.1.4
Consent, Written
3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2
Consolidation or Joinder
15.4.4
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
1.1.4, **6**
Construction Change Directive, Definition of
7.3.1
Construction Change Directives
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1
Construction Schedules, Contractor's
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Contingent Assignment of Subcontracts
5.4, 14.2.2.2
Continuing Contract Performance
15.1.3
Contract, Definition of
1.1.2
CONTRACT, TERMINATION OR SUSPENSION OF THE
5.4.1.1, 11.3.9, **14**
Contract Administration
3.1.3, 4, 9.4, 9.5
Contract Award and Execution, Conditions Relating to
3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1
Contract Documents, Copies Furnished and Use of
1.5.2, 2.2.5, 5.3
Contract Documents, Definition of
1.1.1
Contract Sum
3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, **9.1**, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5
Contract Sum, Definition of
9.1
Contract Time
3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5
Contract Time, Definition of
8.1.1
CONTRACTOR
3
Contractor, Definition of
3.1, 6.1.2

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Contractor's Construction Schedules
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Contractor's Employees
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1
Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8
Contractor's Relationship with the Architect
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
9.7
Contractor's Right to Terminate the Contract
14.1, 15.1.6
Contractor's Submittals
3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3
Contractual Liability Insurance
11.1.1.8, 11.2
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.2.5, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.7
Costs
2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14
Cutting and Patching
3.14, 6.2.5
Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Damages for Delay
6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1
Delays and Extensions of Time
3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2, 11.1.2
Emergencies
10.4, 14.1.1.2, 15.1.4
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1
Equipment, Labor, Materials or
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5,

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3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3
Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3, 15.1.5, 15.2.5
Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Faulty Work
(See Defective or Nonconforming Work)
Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3.1, 14.2.4, 14.4.3
Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4
Fire and Extended Coverage Insurance
11.3.1.1
GENERAL PROVISIONS
1
Governing Law
13.1
Guarantees (See Warranty)
Hazardous Materials
10.2.4, **10.3**
Identification of Subcontractors and Suppliers
5.2.1
Indemnification
3.17, **3.18**, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7
Information and Services Required of the Owner
2.1.2, **2.2**, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Injury or Damage to Person or Property
10.2.8, 10.4.1
Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5
Instructions to Bidders
1.1.1
Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2
Instruments of Service, Definition of
1.1.7
Insurance
3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, **11**
Insurance, Boiler and Machinery
11.3.2
Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 11.1.2
Insurance, Loss of Use
11.3.3
Insurance, Owner's Liability
11.2
Insurance, Property
10.2.5, **11.3**
Insurance, Stored Materials
9.3.2
INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4
Interest
13.6
Interpretation
1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12, 15.1.4
Judgment on Final Award
15.4.2
Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2, 13.6.1, 14, 15.2.8, 15.4
Liens
2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 13.7, 15.4.1.1
Limitations of Liability
2.3.1, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2
Limitations of Time
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15
Loss of Use Insurance
11.3.3
Material Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5
Materials, Hazardous
10.2.4, **10.3**

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Materials, Labor, Equipment and
1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 15.2.8
Mediation
8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1
Minor Changes in the Work
1.1.1, 3.12.8, 4.2.8, 7.1, **7.4**
MISCELLANEOUS PROVISIONS
13
Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2, 11.3.1
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, **12.3**
Nonconforming Work, Rejection and Correction of
2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Notice
2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7, 9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1
Notice, Written
2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1
Notice of Claims
3.7.4, 10.2.8, **15.1.2**, 15.4
Notice of Testing and Inspections
13.5.1, 13.5.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.2.2, 9.6.6, 9.8, 11.3.1.5
Orders, Written
1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Information and Services Required of the
2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Owner's Authority
1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7
Owner's Financial Capability
2.2.1, 13.2.2, 14.1.1.4
Owner's Liability Insurance
11.2
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.4, 14.2.2
Owner's Right to Clean Up
6.3
Owner's Right to Perform Construction and to Award Separate Contracts
6.1
Owner's Right to Stop the Work
2.3
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2
Ownership and Use of Drawings, Specifications and Other Instruments of Service
1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11.1, 3.17, 4.2.12, 5.3.1
Partial Occupancy or Use
9.6.6, **9.9**, 11.3.1.5
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Payment, Final
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3.1, 13.7, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.7.4, 9.6.7, 9.10.3, **11.4**
Payments, Progress
9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
PCB
10.3.1

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User Notes: (1194743394)

Performance Bond and Payment Bond
7.3.7.4, 9.6.7, 9.10.3, **11.4**
Permits, Fees, Notices and Compliance with Laws
2.2.2, **3.7**, 3.13, 7.3.7.4, 10.2.2
PERSONS AND PROPERTY, PROTECTION OF
10
Polychlorinated Biphenyl
10.3.1
Product Data, Definition of
3.12.2
Product Data and Samples, Shop Drawings
3.11, **3.12**, 4.2.7
Progress and Completion
4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.3
Progress Payments
9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
Project, Definition of
1.1.4
Project Representatives
4.2.10
Property Insurance
10.2.5, **11.3**
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4
Rejection of Work
3.5, 4.2.6, 12.2.1
Releases and Waivers of Liens
9.10.2
Representations
3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples by Contractor
3.12
Rights and Remedies
1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, **13.4**, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3.1, **10.1**, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, **3.12**, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, **3.12**, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5
Special Inspections and Testing
4.2.6, 12.2.1, 13.5
Specifications, Definition of
1.1.6
Specifications
1.1.1, **1.1.6**, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14
Statute of Limitations
13.7, 15.4.1.1
Stopping the Work
2.3, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, **11.3.7**

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Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
4.1.3
Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3
Surety
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7
Surety, Consent of
9.10.2, 9.10.3
Surveys
2.2.3
Suspension by the Owner for Convenience
14.3
Suspension of the Work
5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 14
Taxes
3.6, 3.8.2.1, 7.3.7.4
Termination by the Contractor
14.1, 15.1.6
Termination by the Owner for Cause
5.4.1.1, **14.2,** 15.1.6
Termination by the Owner for Convenience
14.4
Termination of the Architect
4.1.3
Termination of the Contractor
14.2.2
TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, **13.5**
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5
Time Limits
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4
Time Limits on Claims
3.7.4, 10.2.8, **13.7**, 15.1.2
Title to Work
9.3.2, 9.3.3
Transmission of Data in Digital Form
1.6
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 7.3.4
Use of Documents
1.1.1, 1.5, 2.2.5, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.4.2
Waiver of Claims by the Contractor
9.10.5, 13.4.2, 15.1.6
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6
Waiver of Consequential Damages
14.2.4, 15.1.6
Waiver of Liens
9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, **11.3.7**
Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7
Weather Delays
15.1.5.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Notice
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1
Written Orders
1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect pursuant to Section 7.4. At the Owner's option, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.1.1 Contractor acknowledges and warrants that it has closely examined all the Contract Documents and is unaware of any instance where the documents are not suitable or are insufficient to enable the Contractor to complete the Work in a timely manner for the Contract sum, and that they include all Work, whether or not shown or described, which reasonably may be inferred or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor (except as provided in Sections 5.3 and 5.4 hereof), (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations of the Contractor under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.3.1 The Work shall include the obligation of the Contractor to visit the site of the Project before submitting a proposal. Such site visit shall be for the purpose of familiarizing Contractor with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, including all existing site conditions, access to the site, physical characteristics of the site and surrounding areas. It also includes all supplies, skill, supervision, transportation services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the Contract Documents.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams wherever located and whenever issued.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

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§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Any differences between the requirements of the Drawings and the Specifications or any differences noted within the Drawings themselves or within the Specifications themselves have been referred to Owner and Architect by Contractor prior to the submission of bids and have been clarified by an Addendum issued to all bidders.

If such differences or conflicts were not called to Owner's and Architect's attention prior to submission of bids, Architect shall decide which of the conflicting requirements will govern based upon the following: the most stringent of the requirements will take precedence over the less stringent; the most expensive item will take precedence over the less expensive, and subject to the approval of Owner, Contractor shall perform the Work at no additional cost and/or time to Owner in accordance with the Architect's decision. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable as being necessary to produce the intended results.

§ 1.2.1.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

.1 The Agreement;
.2 Addenda, with those of later date having precedence over those of earlier date;
.3 Supplemental Conditions, if any;
.4 The General Conditions of the Contract for Construction;
.5 Specifications
.6 Drawings, in the case of inconsistency between the Drawings and Specifications or within either document, not clarified by Addendum, the better quality or greater quantity of Work shall be included in the Contract Documents. Clarifications of the inconsistency will be accomplished with the Contractor and, if necessary, an appropriate reduction in the contract will be accomplished by Change Order. Figures given on drawings govern scale measurements. Large scale drawings take precedence over small sale drawings. Written words take precedence over numbers. Handwritten documents take precedence over typewritten documents. Existing conditions take precedence over drawings and specifications for dimensions and shall be verified by the Contractor. The Contractor proceeds at his own risk if conflicts or discrepancies are not resolved prior to the execution of the Work.

§ 1.2.1.2 If Work is required in a manner to make it impossible to produce Work of the quality required by or reasonably inferred from the Contract Documents, or should discrepancies appear among the Contract Documents, Contractor shall request in writing an interpretation from Architect before proceeding with the Work. If Contractor fails to make such request, no excuse will thereafter be entertained for failure to carryout Work in the required manner or provide required guarantees, warranties, or bonds, and Contractor shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 Instruments of Service, including the Drawings, Specifications, and other similar or related documents and copies thereof are furnished to Contractor for the purpose of performing the Work and are, and shall remain, the property of Owner and Owner will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's or Owner's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees of Owner, by majority vote, is the only representative of Owner, having the power to enter into a Contract, to execute a change order requiring an increase in the Contract Sum, or agree to an extension of the contractual completion date. The Board shall designate, as appropriate, an authorized representative(s) to act on its behalf during the course of construction. In the event that an emergency changes the scope of the Work before the Board's next regular meeting or in order to facilitate and expedite the timely completion of the Work, the Board's authorized representative(s) may approve construction changes that do not exceed $5,000.00 in increased costs. Any such changes shall be confirmed in writing between the Contractor and the Board's authorized representative(s) and notice of such approved changes shall be given to the Board at its next regular meeting. The Board will act as soon as reasonably possible to avoid undue delays in the construction completion date.

§ 2.1.2 DELETED.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics and legal limitations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. In connection with the foregoing, Contractor shall be solely responsible for locating (and shall locate prior to performing any Work) all utilities lines, telephone company, cable, sewer lines, water pipes, gas lines, and electrical lines, including without limitation, all buried pipelines and buried telephone cables and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes and pipelines. Under this provision the Architect and Engineer are in no way relieved of their responsibilities outlined in the Contract or other attached contracts for identification of existing conditions.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2 for use on this Project. All costs of reproduction are the responsibility of Contractor.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents or fails to remove and discharge (within ten (10) days) any lien filed upon Owner's or, if applicable landlord's, property by anyone claiming by, through, or under Contractor, or disregards the instructions of Architect or Owner when based on the requirements of the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3 and any delay resulting from such Work stoppage shall not extend any Milestone Date identified in the Contract for Construction or the required dates of Substantial or Final Completion.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.4.1 The rights stated in Article 2 shall be in addition to and not in limitation of any other rights of Owner granted in the Contract Documents or at law or in equity.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express

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authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Owner in writing any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for design information in such form as the Architect may require.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner in writing any nonconformity discovered by or made known to the Contractor as a request for design information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect and Owner.

§ 3.2.5 The Contractor shall not be entitled to additional compensation for the "rework portion" of any additional work caused by his failure to carefully study and compare the Contract Documents prior to execution of the Work.

§ 3.2.6 The Contractor shall make reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation. The Contractor shall not ask the Architect for observation of work prior to the Contractor's field superintendent's personal inspection of the work and his determination that the work complies with the Contract Documents.

§ 3.2.7 If, in the opinion of the Architect, the Contractor does not make a reasonable effort to comply with the above requirements of the Contract Documents and this causes the Architect or Architect's consultants to expend an unreasonable amount of the time in the discharge of the duties imposed on Architect by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure. The Architect will give the Contractor prior notice of intent to bill for additional services related to Sections 3.2.6, 3.2.7, and 3.12 before additional services are performed.

§ 3.2.8 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor his Warranty, Contractor shall promptly

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notify the Architect in writing, providing substantiation for the position. Any necessary changes, including substitutions of materials, may only be accomplished by an appropriate Modification.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors, and their agents and employees, and other persons performing portions of the Work under Contract Documents or other arrangements with Contractor.

§ 3.3.5 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of Contractor are in addition to Contractor's obligations under other provisions hereunder.

§ 3.3.6 Contractor shall be responsible for inspection of portion of Work already performed under the Contract for Construction to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.7 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including of construction utilities.

§ 3.3.8 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the buildings and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner (s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

§ 3.3.9 Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper

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correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all Work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said Work and the Drawings and Specifications for the Work.

§ 3.3.10 Any discrepancy or omission in the dimensions or elections shown on the Drawings and Specifications or found in previous Work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the misdescription of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

§ 3.3.11 Contractor shall engage workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of an approved engineer or foreman. Contractor shall be liable for all property damage, including repairs and replacements of the Work and economic losses, which proximately result from the breach of this duty. Contractor shall advise Architect:

.1 if a specified product deviates from good construction practices;
.2 if following the Specifications will affect any warranties; or
.3 any objections which Contractor may have with the Specifications.

Nothing contained in Section 1.1.3 shall alter the responsibilities established in this Section.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By making requests for substitutions based on Section 3.4.2, Contractor:

.1 represents that Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
.2 represents that Contractor will provide the same warranty for the substitution that Contractor would for that specified;
.3 certifies that the cost data presented is complete and includes all related costs under this Contract except Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
.4 will coordinate the installation for the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor shall also be responsible for labor peace on the Project and shall at all times make its best efforts and judgments as an experienced Contractor to adopt and implement policies and practices designed to avoid Work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances and shall at all times maintain Project-wide labor harmony. Except as specifically provided in Section 8.3 hereof, Contractor shall be liable to Owner for all damages suffered by Owner.

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§ 3.4.4 Materials shall conform to manufacturer's standards in effect at the date of execution of the Agreement and shall be installed in strict accordance with manufacturer's directions. Contractor shall, if required by Owner or Architect, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers clearly labeled, and delivery slips shall be submitted with bulk materials identifying thereon the source, and warranting quality and compliance with Contract Documents.

§ 3.4.5 When the Contract Documents require the Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules and regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by Contractor in accordance with the Contract Documents.

§ 3.4.6 When the manufacturer's name, patent numbers, underwriter's labels, model numbers or similar identifying marks are required, such markings shall be located as inconspicuously as possible.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of the best quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from faults and defects. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 ALL WARRANTIES SHALL INCLUDE LABOR AND MATERIALS AND THE MANUFACTURER'S WARRANTY SHALL BE SIGNED BY SUBCONTRACTOR AND COUNTERSIGNED BY CONTRACTOR. ALL WARRANTIES SHALL BE ADDRESSED TO OWNER AND DELIVERED TO ARCHITECT UPON COMPLETION OF THE WORK AND BEFORE OR WITH THE SUBMISSION OF REQUEST FOR FINAL PAYMENT.

§ 3.5.3 Contractor shall issue in writing to Owner as a condition precedent to final payment a "general warranty" reflecting the terms and conditions of this Section 3.5 for all Work under the Contract.

§ 3.5.4 The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after final completion of the entire Work unless a longer time is specifically called for in the specifications. The Contractor shall assign all components, equipment and fixture warranties to the Owner and will deliver all manuals to the Owner at the completion of construction.

§3.5.5 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to Owner.

§3.5.6 Warranties shall become effective on a date established by Owner and Architect in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties.

§3.5.7 If Architect considers it impractical, because of unsuitable test conditions or some other factors, to execute simultaneous final acceptance of all equipment, portions of properly installed and functioning equipment may be certified by Architect for final acceptance, subject to Owner's approval, when that portion of the system is complete and ready for operation as called for under Section 9.8.1.

§3.5.8 Contractor shall warrant for a period of twelve (12) months that the building(s) shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond Contractor's control. Contractor shall, immediately upon notification by Owner of water penetration, determine the source of water penetration and, at its own expense, do any Work necessary to make the building(s)

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watertight. Contractor shall also, at its own expense, repair or replace any other damaged material, finishes, and furnishings, damaged as a result of this water penetration, to return the building(s) to its (their) original condition.

§3.5.9 In addition to the foregoing stipulations, Contractor shall comply with all other warranties referred to in any portions of the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirement shall govern.

§3.5.10 If for any reason Contractor cannot warrant any part of the Work using material or construction methods that have been specified, or shown, it shall notify Owner and Architect in writing before the Contract is signed, giving reasons, together with the name of product and data on a substitution it can warrant.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall make application, secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract, including without limitation, street openings, sidewalk, and other obstructions, access over public ways and storage necessary for proper execution and which are, legally required at the time bids are received or negotiations concluded.

§3.7.1.1 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency and state and local authorities, that require completion of documentation and/or acquisition of all permits for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during construction phase which modifies the original site drainage plan and requires the issuance of a permit shall be at Contractor's sole cost.

a. The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar utility connection charges.

b. The Contractor shall be responsible for obtaining and paying for all City and County Building Permits, Inspection Fees and Plan Checking Fees; temporary utility charges, tap charges and water meter charges and any other similar fees assessed by jurisdictional authorities having control over the Project.

c. The Owner shall pay fees payable to the Texas Department of Licensing and Regulations (TDLR) for document review relative to the Elimination of Architectural Barriers Act and the Architect will submit the documents to the TDLR for review and approval.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work (including, without limitation, the installation of any materials or equipment) that it knows or reasonably should have known would be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the

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Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend to the Owner in writing an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. . No adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or based on data provided to Contractor and by the Contractor's prior inspections, tests, reviews, and pre-construction services for the Project; or by the Contractors inspections, tests, reviews and pre-construction services that Contractor had the opportunity and obligation to make in connection with the Project but did not do so.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- **.1** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness. If a decision is needed to avoid a delay, Contractor shall notify Architect and Owner in writing sufficiently in advance of needed date to allow reasonable time for selections to be made.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The superintendent shall be satisfactory to the Owner and shall not be changed except with the consent of the Architect, unless the superintendent leaves the employment of the Contractor. No increase in Contract Time or Contract Sum shall be allowed in the event the Owner or Architects object to any nominated superintendent. Such approval by the Owner shall not be unreasonably withheld.

§ 3.9.3 DELETED.

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§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's I review and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days and submitted to Architect with Contractor's Applications for Payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the original schedule. If any schedule submitted sets such a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Contractor shall submit to Architect and Owner for their review and approval a narrative description of the means and methods that Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the schedule.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's and Owner's approval. The Architect's and Owner's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 The process of approving Contractor's schedules and updates to Contractor's schedule shall not constitute a warranty by the Owner that any non-Contractor milestones or activities will occur as set out on Contractor's schedule. Approval of a Contractor's schedule does not constitute a commitment by the Owner to furnish any Owner-furnished information or material any earlier than Owner would otherwise be obligated to furnish that information or material under the Contract Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work, which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold resulting additional time and cost to a minimum. The construction schedule shall be in a detailed format satisfactory to the Owner and the Architect and shall also:

.1 provide a graphic representation of all activities and events that will occur during performance of the Work;
.2 identify each phase of construction and occupancy; and
.3 set forth dates that are critical in ensuing the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents hereinafter referred to as Milestone Dates.

§ 3.10.5 The Owner shall have the right to reschedule the time of day for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any rescheduling of performance of the Work under this Section 3.10.5 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1 and an equitable adjustments in the Contract Sum, if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, (2) such rescheduling is required for the convenience of the Owner and is not attributable to any act of omission of Contractor, and (3) if Owner agrees to the Contract Sum adjustment prior to any rescheduling.

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§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections (all changes and selections to be approved by Owner and Architect in advance) made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 At the Date of Substantial Completion and as a condition precedent to final payment, Contractor shall furnish the following documents to Architect for submittal to Owner: Record Drawings showing the field changes and selections (all changes and selections to be approved by Owner and Architect in advance) affecting the general construction, mechanical, electrical, plumbing, and all other Work, and indicating the Work as actually installed. These shall consist of carefully drawn markings on a set of reproducible prints of Architect's Drawings obtained and paid for by Contractor. Contractor shall maintain at the job site one (1) set of Architect's Drawings and indicate thereon each field change as it occurs. The Contractor shall post all Addenda on Construction Documents prior to commencing work on the site.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. If, in the opinion of the Architect, the Shop Drawings, Product Data, Samples and similar submittals are incomplete, indicate an inadequate understanding of the work covered by the submittals, or indicate a lack of study and review by the Contractor prior to submittal to the Architect, the submittals will be returned, unchecked, to the Contractor for correction of these three deficiencies and subsequent re-submittal. Additional service charges as outlined in Section 3.2.7 may be charged by the Architect in this event.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop

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Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional who shall comply with requirements of Owner regarding qualifications and insurance, and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 The Contractor shall submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents to the Architect at least 30 days prior to the date the Contractor needs the reviewed submittals returned. Where colors are to be selected by the Architect, the Contractor shall submit all Samples in adequate time to allow the Architect to prepare a complete selection schedule. In general, all submittals requiring color selection shall be submitted to the Architect within four weeks of the date of the Contract for construction.

§3.12.12 The Contractor shall submit the number of copies of Shop Drawings, Product Data, Samples and similar submittals which the Contractor and his Subcontractors need for their use plus two additional sets for the Architect and one additional set for each of the Architect's consultants involved with the particular section of work. Where shop drawings are involved, the Contractor shall submit one high quality reproducible transparency and one opaque print of the shop drawing for the Architect plus one additional opaque print for each of the Architect's consultants involved with the particular section of work. The reproducible transparency will be marked by the Architect and/or his consultants and returned to the Contractor for his use, distribution, correction or re-submittal as required. The Architect and his consultants will retain the marked up prints. After final review and correction of the submittal, the Contractor shall send two corrected sets to the Architect, and one to each of the Architect's consultants involved with the particular section of work.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§3.13.1 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

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§3.13.2 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without written consent of the Owner.

§3.13.3 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision on the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of: (1) any area and buildings adjacent to the site or the Work or (2) the Building in the event of partial occupancy.

§3.13.4 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including without limitation, lavatories, toilets, entrance and parking areas other than those designated by Owner. Without limitation of any other provisions of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 Prior to the Architect's inspection for Submittal Completion the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roof, gutters and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

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§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless Owner, the Board of Trustees of Owner, all elected officials, employees and agents of Owner and of any of the above mentioned parties (the "Indemnified Parties") from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty, or cause of action (including attorneys' fees), directly or indirectly arising out of, resulting from, or related to (in whole or in part), (1) the Work performed hereunder, (2) the Contract, or (3) the act or omission of Contractor, a Subcontractor, or an individual, partnership, joint venture, corporation or other entity (a) directly or indirectly employed by Contractor or a Subcontractor, or (b) for whose acts or omissions Contractor or a Subcontractor may be liable (excluding property damage to the Work itself, covered by Owner's all-risk builder's risk insurance, subject to Contractor's liability for any deductible amounts thereunder). The obligations of Contractor under this indemnification shall apply to all matters except those arising solely from the wanton and willful negligence or the malicious acts or omissions of Owner. Further, the obligations of Contractor under this indemnification shall not extend to the liability of Architect, its agents, or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or Specifications, (2) the giving of or failure to give directions or instructions by Architect, its agents, or employees, provided such giving or failure to give is the primary cause of the injury or damage, or (3) any matter prohibited by Section 130.002, Texas Civil Practice and Remedies Code. Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding, or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense, shall assume on behalf of Owner and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to Owner; provided, Owner shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both Contractor and Owner, and Owner shall have reasonably concluded that there may be legal defenses available to it that are different from, or additional to, or inconsistent with, those available to Contractor, then Owner shall have the right to select separate counsel to participate in the defense of such action on its own behalf at Contractor's expense. In the event of failure by Contractor to fully perform in accordance with this indemnification Section, then Owner, at its option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by Owner in that event shall be reimbursed by Contractor to Owner, together with interest on the same from the date any such expense was paid by Owner until reimbursed by Contractor, at the rate of interest provided to be paid on judgments by the law of the jurisdiction to which the interpretation of the Contract is subject. The obligations of Contractor under this Section shall survive the expiration of the Contract and specifically shall survive the limitations contained in Section 15.1 hereof.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.19 SUBSTITUTIONS OF PRODUCTS AND SYSTEMS, "OR EQUAL" BRANDS

§ 3.19.1 The materials, products and the systems covered by these specifications have been selected as a standard because of quality, particular suitability, or record of satisfactory performance. It is not intended to preclude the use of equivalent or better materials, products or systems provided that it meet the requirements of the particular project and have been approved in an addendum as a substitution prior to the submission of bids. If prior written approval in an addendum has not been obtained, it will be assumed that the Bid is based upon the materials, products, and systems described in the Bidding Documents and no substitutions will be permitted, except as provided hereinafter.

§3.19.2 If, after award of contract, the Contractor or one of his Subcontractors or Suppliers determines that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor the Warranty, the Contractor shall promptly notify the Architect, in writing, providing detailed substantiation for his position. Any changes deemed necessary by the Owner and Architect, including substitution of materials and change in Contract Sum, either upward or downward, if any, shall be accompanied by appropriate modification.

§3.20 RECORD DRAWINGS

§3.20.1 At the completion of the project, the Contractor shall submit one complete set of blue lines showing all changes and routing of utilities made during construction, excluding Architect made CAD changes, to the Architect. Drafting

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shall be legible to the Architect's satisfaction. The Contractor shall pay for the cost of the required recording/drafting. The record set shall be kept up to date on a daily basis and the Architect shall review its status at the project meetings. The Architect shall furnish the Contractor with a blueline set at contract award which shall have all Addenda incorporated. The Owner will pay for the printing of the blueline set. The Architect will incorporate any record information into the construction (CAD) documents and provide the Owner with an electronic copy of the record information on the Construction documents that have all bid and construction changes incorporated. The cost for incorporating the record information into the CD will be paid for by the Owner. The Architect will transmit the electronic CD to the Owner with a copy of the transmittal to the Contractor's construction manager.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect whose status under the Contract Documents shall be that of the former Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect, as representative of the Owner,will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will be required to make on-site inspections as necessary to keep the Owner informed of the progress of the Work and as necessary to guard the Owner against defects and deficiencies in the Work. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect shall not have control over or charge of and shall not be responsible for safety precautions and programs in connection with the Work. Architect shall be responsible for promptly notifying Contractor of the failure of Contractor, Subcontractors or any other persons performing any of the Work, in failing to use proper construction means, methods, techniques, sequences, procedures, safety precautions and programs, but only to the extent Architect becomes aware of, or should, exercising due professional diligence, be aware of, same. Architect shall also promptly notify Owner in writing of the failure of any of the foregoing parties to carry out the Work in accordance with the Contract Documents.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority and responsibility to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve or reject, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 DELETED.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site or to otherwise furnish labor, material or other services with respect to a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site or to otherwise furnish labor, material or other services with respect to a portion of the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, but no later than 10 days prior to the submittal date for the Contractor's first Application for Payment shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. Failure of the Contractor to submit the subject names in a timely manner may delay processing of the Contractor's Application for Payment.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1 All subcontracts shall be in written form and shall specifically provide that Owner is an intended third-party beneficiary of the subcontract.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

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.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 5.5 Contractor shall promptly notify Owner and Architect of any material defaults by any Sub-contractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Sub-contractor or other materialman or workman employed by Contractor the right to obtain a personal judgment or to create a lien against Owner for the amount due from the Contractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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§ 6.2.3 DELETED.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may only be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents and is subject to the approval of the Owner.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect and is subject to the approval of the Owner.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Section 7.3 and 9.7, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited, to all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§7.2.3 Contractor shall keep and periodically submit to Owner copies of a log for all Change Orders.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Contractor shall keep and periodically submit to Owner copies of a log for all Construction Change Directives and a log for all requests for information.

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§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation in writing between the Owner and the Contractor;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon in writing between the Owner and the Contractor;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, in each case in writing between the Owner and the Contractor; or

.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit not to exceed a total maximum of **fifteen** percent **(15%)** for all Work, and further limited to as follows, not to exceed five percent (5%) for Work done by Contractor's employees and **ten** percent **(10%)** of such Work's actual cost to be apportioned between any and all Subcontractors and Sub-subcontractor. "*Actual cost*" does not include any item that could be deemed to be a general conditions cost or overhead, such as, but not limited to, the cost of Contractor and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

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reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority after having obtained Owner's approval to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.1.1 The Work shall be fully completed within the time limit and/or date stated in the Contract between Owner and Contractor.

§ 8.1.1.2 Liquidated Damages: If the Contractor should fail to fully complete the Work within the stated time (subject however to extension of time duly granted in the manner and for the causes specified in the General Conditions), Contractor shall be charged by and shall pay to Owner, as liquidated damages, the sum specified in Article 3 of the AIA document A101 – 2017 by and between Owner and Contractor to which this document is attached as Exhibit A per calendar day that the Work remains incomplete beyond the time fixed for completion. Contractor hereby agrees that from the nature of the project it would be impracticable and extremely difficult to fix the actual damage that would or will be suffered in the event that Contractor should fail to fully complete the Work by the time limit or date stated and the amount of the liquidated damages are fair and reasonable. The parties agree that the liquidated damages are a reasonable forecast of just compensation for the harm done to Owner that would be caused by Contractor's failure to timely complete the Work. Contractor agrees that the amount of liquidated damages due Owner may be deducted by Owner from any monies that might otherwise be or become payable to Contractor.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes

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beyond the Contractor's control; or by delay authorized by Owner pending mediation, or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of Contractor or that are otherwise the responsibility of Contractor and shall also be net of any contingency or "float" time allowance included in Contractor's construction schedule. Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Contactor shall not be entitled to damages of any type for delays caused by Owner, his servant, agents, employees, or separate Contractors hired or retained by Owner. Contractor may receive an extension or extensions for additional time in which to complete the Contract but shall not receive any damages of any type for such delays. Changes in the Work, regardless of the extent or number of such Changes or Owner's exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the Work.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.1 Commitment of Current Revenues Only. As reflected in Section 4.5 of the modified AIA document A101 – 2017 Edition by and between Owner and Contractor to which this document is attached as Exhibit A, in the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Contract, then any party may terminate this Contract upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to Subcontractors, supported by such evidence of correctness as Architect may direct or as required by Owner. This schedule, when approved by Architect and Owner, shall be used to monitor the progress of the Work and as a basis for Certificates for Payment. All items with entered values will be transferred by Contractor to the "Application and Certificate for Payment," and shall include the latest approved Change Orders and Construction Change Directives. Change Order values and Construction Change Directives values shall be broken down to show the various subcontracts. The Application for Payment shall be on a form as provided by Architect and approved by Owner. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed, and value yet to be completed. All blanks and columns must be filled in, including every percentage complete figure. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Any

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allowances included in the Application for Payment shall be separately itemized with supporting data attached. The Application for Payment shall be accompanied by a certification by an office of Contractor to the effect that:

> There are no known mechanics', materialman's or laborers' liens or claims, or any other liens or claims, legal or equitable, contractual, statutory, or constitutional, outstanding or known to exist at the date of this Application; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application and there is no known basis for the filing of any mechanics', materialman's or laborers' lien or claim, or any other lien or claim, legal or equitable, contractual, statutory, or constitutional, on the Work; and waivers and releases from all Subcontractors, laborers, and material men for Work done and materials furnished have been obtained in such form as to constitute an effective waiver and release of all such liens and claims under the laws of the state within which the Project is located and shall be delivered to Architect together with Contractor's waiver and release of liens and claims at the time of submission of the Application for Payment.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing by the Owner and Surety. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, that Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and on all other information available to Architect including, without limitation, the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and

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inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified and that the aggregate amount theretofore paid to Contractor plus any applicable retention does not exceed the value of the completed portion of the Work. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a separate contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- **.7** failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion within the Contract Time, subject to extensions of time allowed under these Conditions, Architect may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of the Application for Payment and to the time it is reasonably anticipated that Substantial Completion will be achieved.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner may refuse to make payment on any Certificate for Payment for any default of the Contract, including, but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7. Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 DELETED.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not, for reasons other than a default of the Contract, including but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7 pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or if Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Sum and may, in Owner sole discretion, elect either to (i) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (ii) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof (which Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of issuance of the certificate of final payment by Architect unless otherwise provided in the Certificate of Substantial Completion. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract are in place. In general, the only remaining Work shall be minor in nature, so that Owner and/or Owner's employees and if applicable, the public, could occupy the building on that date and the completing of the Work by Contractor would not materially interfere or hamper Owner's or Owner's employees and if applicable, the public, (or those claiming by, through, or under Owner) from normal County operations. As a further condition of Substantial Completion acceptance, Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the Date of Substantial Completion. If Contractor requests a Substantial Completion review, and Architect, after performing the Substantial Completion review, finds that the Project was not ready for the Substantial Completion review, then Contractor shall pay the Architect's fees for any additional Substantial Completion reviews.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§9.8.6 In order for the project or a major portion thereof to be considered substantially complete, the following conditions must be met: (1) All inspections by governmental authorities have jurisdiction over the project must have been finalized, any remedial work required by those authorities must have been completed, and Certificates of Occupancy and similar governmental approval forms must have been issued and copies delivered to the Owner and Architect. (2) All work, both interior and exterior, shall have been completed and cleaned except minor items which if completed after occupancy, will not, in the Owner's opinion, cause interference to the Owner's use of the building or any portion thereof. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be the sole judge of what constitutes a significantly large number of items.

§9.8.7 After the date of Substantial Completion of the Project is evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of thirty (30) days, unless extended by mutual agreement or provision of the Contract, within which to correct all deficiencies attached to the Certificate of Substantial Completion. Failure of the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In this report, the Contactor and surety will be informed that, should correction remain incomplete for fifteen (15) days, the Owner may initiate action to complete corrective work out of the remaining Contract funds in accordance with Article 14.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any portion of the Work authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- .4 faulty or defective Work appearing after Substantial Completion.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

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.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons

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or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 DELETED.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 DELETED.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor and Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- **.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- **.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- **.3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- **.4** Claims for damages insured by usual personal injury liability coverage;
- **.5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- **.6** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- **.7** Claims for bodily injury or property damage arising out of completed operations; and
- **.8** Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 SCHEDULE OF INSURANCE COVERAGES

§ 11.1.5.1 Contractor shall carry and keep in full force for the duration of the project the following Coverage.

Coverage	**Minimum Amounts and Limits**
Worker's Compensation	
Employer's Liability:	Statutory Limits
Bodily Injury by Accident	$500,000.00/each accident
Bodily Injury by Disease	$500,000.00/each employee
Bodily Injury by Disease	$500,000.00/Policy Limit
Commercial General Liability	
Bodily Injury/Property Damage	$1,000,000.00 per occurrence $2,000,000.00 aggregate

(Premises Operations, Independent Contractors, Product/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage).

Comprehensive Automobile Liability	$1,000,000.00 Combined Single Limit per Occurrence

Auto liability insurance shall be on a standard form written to cover all owned, hired, and non-owned automobiles. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insured, contain cross-liability and severability of interest endorsements, and state that this insurance is primary insurance as regards to any other insurance carried by the Indemnified Parties (see Section 3.18).

§11.1.5.2 All policies shall contain special endorsements to include:

.1 The Owner as an additional insured (except for Worker's Compensation) and all other parties identified in Section 3.18 (Indemnified Parties);

.2 Wavier of Subrogation in favor of Owner under the Worker's Compensation and Employer's Liability policies.

.3 A statement that a notice shall be given to Owner by certified mail thirty (30) days prior to cancellation or upon any material changes in coverage.

4. Contain cross-liability and severability of interest endorsements;

5. state that this insurance is primary insurance in regard to any other insurance carried by an Indemnified Party (see Section 3.18);

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.6 the following coverage:

a. Premises/Operations;
b. Independent Contractors;
c. Completed Operations for a period of two years following the acceptance of Contractor's Work;
d. Comprehensive General Liability Endorsement to include Blanket Contractual Liability (specifically covering, but not limited to, the contractual obligations assumed by Contractor, Broad Form Property Damage, and Personal Injury Liability with employee and contractual exclusions removed);
e. Deletion of exclusions relative to Collapse, Explosion, and Underground Property Damage Hazards;
f. Personal Injury Liability with the contractual exclusions removed;
g. Cross Liability Endorsement.

§11.1.5.6 Umbrella Excess Liability Insurance

Bodily Injury and	$2,000,000.00 per occurrence
Property Damage	$2,000,000.00 aggregate

This policy shall be written on an umbrella excess basis above, the coverage described in this Article 11. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insureds. The policy shall contain cross-liability and severability of interest endorsements and shall state, as regard the Indemnified Parties that the insurance is primary insurance as to any other insurance carried by any Indemnified Party. The policy shall be endorsed to provide the defense coverage obligation.

§11.1.6 Further, Contractor shall require all Subcontractors to carry similar insurance coverage and limits of liability as required under this Article 11, adjusted to the nature of Subcontractor's operations and submit same to Owner for approval before any Work commences.

§11.1.7 In the event Contractor fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, Contractor shall indemnify, defend, and hold harmless the indemnified parties from any and all claims for which the required insurance would have provided coverage.

§11.1.8 Workers' Compensation Insurance Coverage.

§11.1.8.1 Definitions:

.1 Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

.2 Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

.3 Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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§11.1.8.2 The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

§11.1.8.3 The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

§11.1.8.4 If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

§11.1.8.5 The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

.1 a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

.2 no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

§11.1.8.6 The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

§11.1.8.7 The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

§11.1.8.8 The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

§11.1.8.9 The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

.2 provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

.3 provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

.4 obtain from each other person with whom it contracts, and provide to the contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

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.5 retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

.6 notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

.7 contractually require each person with whom it contracts, to perform as required by paragraphs .1 - .7, with the certificates of coverage to be provided to the person for whom they are providing services.

§11.1.8.10 By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§11.1.8.11 The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.2.1 By signing the Contract or providing or causing to be provided a Certificate of Coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that coverage will be based on proper reporting or classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§11.2.2 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Article 11.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Contractor shall obtain a builder's risk "all-risk" or equivalent policy in the amount of the initial Contract Sum (or if applicable Guaranteed Maximum Price), plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. The policy must also name its subcontractors and the Owner as additional insured, as their respective interests may appear. Coverage shall include material stored on-site and in transit. Such insurance will be with a company or companies lawfully authorized to do business in Texas. The policy must have the following endorsement: "This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises."

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework,

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testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.1.1 For any claim made against Contractor's Builder's Risk Insurance, the deductible shall not exceed $2,500.00 for a Contract Sum of less than $4 million. For a Contract Sum of $4 million or more, the deductible shall not exceed $5,000.00.

§11.3.1.1.2 The Contractor waives all rights against (1) Owner, the Subcontractors, Sub-subcontractors, agents, and employees, and (2) the Architect, Architect's consultants, separate contractors, if any, and any of their Subcontractors, Sub-subcontractors, agents, and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as a fiduciary. The Contractor, as appropriate, shall require of any separate contractors, Subcontractors, Sub-subcontractors, agents, and employees of any of them by appropriate written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§11.3.1.1.3 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers. The Contractor shall pay all Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements shall require Subcontractors to make payment to their Sub-subcontractors in similar manner. If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor under the insurance proceeds.

§ 11.3.1.2 DELETED.

§ 11.3.1.3 DELETED.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use shall not affect the validity or coverage of property insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE DELETED.

§ 11.3.3 LOSS OF USE INSURANCE DELETED.

§ 11.3.4 DELETED.

§ 11.3.5 DELETED.

§ 11.3.6 DELETED.

§ 11.3.7 WAIVERS OF SUBROGATION

Contractor waives all rights against (1) Owner, the Subcontractors, Sub-subcontractors, agents and employees, and (2) the Architect, Architect's consultants, separate contractors if any, and any of their Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Article 11or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as fiduciary. The Contractor, as appropriate, shall require of any separate contractors, Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate

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written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 DELETED.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Sum, as security for the faithful performance of the Contract and also a one hundred percent (100%) Payment Bond, as security for the payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with the Contract. The Performance Bond and the Payment Bond may be in one or in separate instruments in accordance with local law. Surety companies must be authorized to write surety bonds in Texas and any such surety bond must comply with the requirements of Subchapter A of Chapter 3503 of the Texas Insurance Code.

§11.4.1.1 The Contractor shall deliver the required Bonds to the Owner not later than the date of the preconstruction meeting. All Bonds will be reviewed by the Architect for compliance with the Contract Documents prior to the execution of the Contract. In the event that Architect has any questions concerning the sufficiency of the bonds, Architect shall refer the bonds to Owner or Owner's representative for decision.

§11.4.1.2 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the Bonding Company shall be provided.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Bonds shall be provided to comply with the terms and provisions of Chapter 2253 of the Texas Government Code. Bonds shall be signed by an agent resident in the State of Texas and date of bond shall be on or after the date of execution of the Contract but prior to the date of the notice to proceed. If at any time during the continuance of the Contract, the surety of the Contractor's bonds becomes insufficient, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld until sufficient bonds are provided by Contractor.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs

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and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect as incomplete, defective, or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the entire Work (unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties), or within such longer period of time as may be prescribed by law or in equity, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be defective or otherwise not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This corrective period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. Corrective Work shall be warranted to be free from defects for a period equal to the longer of six (6) months after the completion of the corrective Work or one (1) year after the Date of Substantial Completion (subject to extension as previously described) or such longer period of time as may be prescribed by law or in equity, or expiration of the term of any applicable special warranty, if applicable, required by the Contract Documents. Any defect in such Work shall be corrected again by Contractor promptly upon notice of the defect from Owner. This obligation under this Section 12.2.2.1 shall survive acceptance of the Work under the Contract and termination of the Contract by the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§12.2.2.4 Just before the termination of the various guarantee periods, Contractor shall accompany Owner's agent and Architect on an inspection tour of the building and shall note any defects and shall start remedying these defects within ten (10) days of the inspection tour and shall prosecute the Work without interruption until accepted by Owner and Architect, even though such prosecution should extend beyond the limit of the guarantee period.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused in whole or in part by the Contractor's correction or removal of Work that is defective or otherwise not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents or under law or in equity. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is defective or otherwise not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

§13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice or if delivered by facsimile to the offices of the person or corporation for which it was intended. Facsimiles received after 5:00 p.m. on a business day, or on a weekend or legal holiday on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next business day.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or in equity or by any other agreement, and any such rights and remedies shall survive the acceptance of the Work and/or any termination of the Contract Documents.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Architect, Owner and Contractor shall be afforded a reasonable opportunity to attend, observe, and witness all inspections and tests of the Work. Architect or Owner may at any time request and receive from Contractor satisfactory evidence that materials, supplies, or equipment are in conformance with the Contract Documents. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve Contractor from its obligations under the Contract Documents unless specifically so stated by Owner in writing.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

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§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, or reveal faulty or otherwise defective Work, or if the necessity of any such testing, inspection, or approval procedures arises out of the fault, neglect, or omission of Contractor, Contractor shall bear all costs of such testing, inspection, and approval procedures and all other costs made necessary by Contractor's failures, including, without limitation, those costs of repeated and additional procedures and compensation for Architect's services and expenses of Owner's personnel and consultant fees and expenses. Such costs shall be paid by Contractor within ten (10) days of receipt of invoice from Owner with supporting data attached.

§ 13.5.4 Required certificates of testing, inspection or approval shall, be secured by the Contractor and delivered to the Owner, unless such testing or inspection services are arranged by Owner.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

An overdue payment bears interest at the legal rate established by the Texas Government Code, currently in Section 2251.025, or in the event no rate is so established, at the rate of one percent (1%) each month. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives an invoice from Contractor.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law.

§ 13.8.1 The Contractor shall maintain policies of employment as follows: "The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment, or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies."

§13.8.1.1 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

§13.9 CERTIFICATION OF ASBESTOS-FREE PROJECT

§13.9.1 Contractor shall submit to the Architect a letter addressed to the Owner certifying that all materials used in the construction of this Project contain less than 0.10 by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. Certification letters shall be dated, shall reference this specific Project, and shall be signed by not less than two (2) officers of the construction company.

§13.9.2 Certification shall further state that should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, that Contractor shall be responsible for determining which materials contain asbestos fibers and shall take corrective action to remove those materials from the Project at no additional cost to the Owner.

§13.9.3 Final payment shall not be made until this letter of certification has been received.

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ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or

.2 An act of government, such as a declaration of national emergency that requires all Work to be

(Paragraphs deleted)

stopped.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed in accordance with the Contract Documents.

§ 14.1.4 Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Sections 14.1.1 and 14.1.2.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 refuses or fails to supply enough properly skilled workers or proper materials and equipment;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 disregards the instructions of Architect or Owner (when such instructions are based on the requirements of the Contract Documents);

.5 is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law; or

.6 otherwise does not fully comply with the Contract Documents**.**

§ 14.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 To the extent the costs of completing Work, including compensation for additional professional services and expenses, exceed those costs that would have been payable to Contractor to complete the Work except for

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Contractor's default, Contractor will pay the difference to Owner, and this obligation for payment shall survive termination of the Contract. Such costs incurred by Owner will be determined by Owner and confirmed by Architect.

§14.2.5 In addition to Owner's right to remove Contractor from any part of Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, terminate any part of Work or any subcontract or all remaining Work for any reason whatsoever by giving seven (7) days' prior written notice to Contractor specifying the part of Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of Work not terminated. If any part of Work or subcontract is so terminated, Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) and for costs directly related to Work thereafter performed by Contractor in terminating such Work or subcontract including reasonable demobilization and cancellation charges provided said Work is authorized in advance by Architect and Owner. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such termination, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the Date of Substantial Completion and/or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

§14.2.6 Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Section 14.2.5.

§14.2.7 Upon a determination by a court of competent jurisdiction that termination of Contractor pursuant to Section 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.2.5 and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.2.5.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- **.1** that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, without any overhead or profit on the Work not executed.

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right adjustment, or interpretation of the Contract Terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims must be by written notice.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Said written notice of claims shall state specifically the reason for the claim, the date or dates of the cause or causes of the claim, and if any extension of time is requested, the number of days of extension requested.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Architect. No such claim shall be value unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Extensions of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if Architect determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

(Paragraph deleted)

Contractor shall not be entitled to claims for additional time and/or increase in Contract Price due to a problem or non-performance of a subcontractor.

§ 15.1.7 In the event the Contractor fails to achieve substantial completion by the date indicated in the Contract, and extended by approved Change Order, the Owner shall be entitled to liquidated damages in the amount as stated in Section 3.1.1 of the modified AIA document A 101 – 2007 Edition by and between Owner and Contractor to which this document is attached as Exhibit A per day until the Work is substantially completed. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult and in no sense be considered a penalty.

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This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim in whole or in part, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to litigation.

§ 15.2.6 DELETED.

§ 15.2.6.1 DELETED.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 DELETED.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract may be subject to mediation as a condition precedent to litigation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

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§ 15.3.3 The parties shall share the mediator's fee. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

The parties expressly agree that disputes or claims arising under the Contract Documents shall not be subject to arbitration unless mutually agreed by the parties in writing.

OWNER:	**CONTRACTOR:**
McALLEN INDEPENDENT SCHOOL DISTRICT	[_____]
By: _____	By: _____ Printed Name: _____ Title: _____
_____ Date	_____ Date

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

(Paragraphs deleted)

DRAFT

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Request for Proposal (RFP) 2023-1008 Construction Manager at Risk Services McAllen High School, McAllen Memorial High School and James "Nikki" Rowe High School New Mariachi and Black Box Buildings

REFERENCE: Goal 3 - Facility Priorities; Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District solicited proposals to hire a construction manager at risk for the management, design, and construction of new mariachi and black box buildings at the three (3) traditional high schools.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

One hundred two (102) vendors were invited to submit proposals, and four (4) vendors responded, including one (1) no bid. On June 9, 2022, the evaluation committee, comprised of Ruben Treviño, Executive Director of Facilities Maintenance & Operations; Melissa Ortiz, Project Manager for Facilities Maintenance & Operations; Alejandra Gonzalez, Director of Purchasing Services; Elizabeth Cabrera, Purchasing Services Coordinator; Carolina Quintanilla, Senior Buyer; and Gracie Garza, Senior Buyer, evaluated the proposals and is recommending that the Board of Trustees award this project to E-Con Group, LLC, from Edinburg, Texas, the highest ranked vendor. Administration will present the Guaranteed Maximum Price Amendment before the Board of Trustees at a future date.

LEGAL REVIEW:

A draft copy of the AIA contract is attached. The AIA contract is pending receipt of payment and performance bonds and final legal review.

BUDGETARY CONSIDERATIONS:

The construction budget is $10,000,000.00. Funds for this project are budgeted through the Capital Projects Fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal (RFP) 2023-1008 Construction Manager at Risk Services McAllen High School, McAllen Memorial High School and James "Nikki" Rowe High School New Mariachi and Black Box Buildings.

SUBMITTED BY: _____ **SUPERVISOR:** _____

For further information contact:
Name: Ruben Trevino
Office: 956-632-3200
email: ruben.trevino@mcallenisd.net

Approved for presentation to the Board of Education:

_____
Superintendent of Schools

McAllen Independent School District

CSP 2023-1008 Construction Manager at Risk Services McAllen High School, Memorial High School and James "Nikki" Rowe High School New Mariachi and Black Box Buildings

Evaluation Matrix

Vendor Names		Noble Texas Builders LLC	E-Con Group, LLC	D. Wilson Construction Company
Rank		**2**	**1**	**3**
Maximum points	**100.00**	**95.7709**	**98.0000**	**88.6579**
Price	**59**	**56.44**	**59.00**	**48.66**
Approximate Total Cost not including budgeted amount ($10M)		$420,750.00	$402,500.00	$488,050.00
Pre-Construction Services		$11,500.00	$15,000.00	$20,000.00
CM's Fees (Proposed fee X Proposed construction budget)		$375,000.00	$350,000.00	$425,000.00
General Conditions Fee		*6.85%*	*7.50%*	*8.61%*
General Conditions approx amount $500k		$ 34,250.00	$ 37,500.00	$ 43,050.00
Offeror's experience and reputation	**17.5**	**17.5**	**17.5**	**17.5**
Three (3) Supplier Reference Letters (LI14)	1.5	1.5	1.5	1.5
0.5 pts per reference				
Claims, judgments, arbitration proceedings or suits (LI9)	1	1	1	1
Three (3) CMAR Projects (LI6)	15	15	15	15
(Reference Checks) 5 pts per project				
Quality of the offeror's goods or services	**3**	**3**	**2**	**3**
Repeat business (LI7)	2	2	2	2
MISD project (LI5)	1	1	0	1
			none provided	
The impact on the ability of the district to comply with rules relating to historically underutilized businesses - HUB (A32)	**1**	**1**	**0**	**0**
Offeror's safety record	**7.5**	**6.17**	**7.5**	**7.5**
"OSHA Form 300 Log (LI16)	2	0.67	2	2
0.67 pts per year		*1 out of 3*		
Safety program manual and/or procedures. (LI17)	2	2	2	2
Provided =2 Not provided =0				
Drug/alcohol prevention policy and/or procedures. (LI18)	1	1	1	1
Provided =1 Not provided =0				
"Workers Compensation Experience Rating" (LI15)	1.5	1.5	1.5	1.5
0.5 pts per year				
Frequency of safety inspections (LI8)	1	1	1	1
Offeror's Proposed Personnel	**8**	**8**	**8**	**8**
Staff experience (industry) (LI11)	4	4	4	4
Avg 10+ years =4;<10 = Weighted Scale				
Staff experience (firm) (LI11)	4	4	4	4
Avg 3+ years =4;<3 = Weighted Scale				
Whether the offeror's financial capability is appropriate to the size and scope of the project	**2**	**2**	**2**	**2**
Financial Statement (LI20)	1	1	1	1
Surety Letter (LI19)	1	1	1	1
Any other relevant factors specifically listed in the CSP	**2**	**1.66**	**2**	**2**
On-time project completion (LI 6)	1	0.66	1	1
0.33 pt per project		*2 out 3 on time (1 yr delay)*		
Projects currently in progress (LI12)	1	1	1	1

AIA® Document A133™ – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the _____ day of _____ in the year _____
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

and the Construction Manager:
(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 Construction Manager agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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.

Sample

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TABLE OF ARTICLES

1 INITIAL INFORMATION

2 GENERAL PROVISIONS

3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

4 OWNER'S RESPONSIBILITIES

5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

7 COST OF THE WORK FOR CONSTRUCTION PHASE

8 DISCOUNTS, REBATES, AND REFUNDS

9 SUBCONTRACTS AND OTHER AGREEMENTS

10 ACCOUNTING RECORDS

11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

12 DISPUTE RESOLUTION

13 TERMINATION OR SUSPENSION

14 MISCELLANEOUS PROVISIONS

15 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT
EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

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§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

.2 Construction commencement date:

.3 Substantial Completion date or dates:

.4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

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§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

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§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), 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. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

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ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the

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cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

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(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

.5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

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§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager 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. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, 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 Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

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§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position	Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within _____ (___) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments
§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid _____ (___) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

_____ % _____

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
§ 6.1 Contract Sum
§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

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§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed _____ percent (_____ %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

§ 6.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

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§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8,

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shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

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§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;

.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;

.3 Expenses of the Construction Manager's principal office and offices other than the site office;

.4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;

.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

.7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and

.9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the _____ day of a month, the Owner shall make payment of the amount certified to the Construction Manager 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.
(Federal, state or local laws may require payment within a certain period of time.)

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§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 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 A201–2017;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager 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 A201–2017;

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.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may 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.)

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

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.
(Insert rate of interest agreed upon, if any.)

_____ % _____

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the

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Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the 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.)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Arbitration pursuant to Article 15 of AIA Document A201–2017

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

If the Owner and Construction Manager 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 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

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.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

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§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. 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.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, 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 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, 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 Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than _____ ($ ___) for each occurrence and _____ ($ ___) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than _____ ($ ___) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than _____ ($ ___) each accident, _____ ($ ___) each employee, and _____ ($ ___) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than _____ ($ ___) per claim and _____ ($ ___) in the aggregate

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits

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§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase
After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 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.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT
§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction

.5 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.)

.6 Other Exhibits:
(Check all boxes that apply.)

[ ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

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[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.7 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 Construction Manager'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.)

Sample

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*	CONSTRUCTION MANAGER *(Signature)*
(Printed name and title)	*(Printed name and title)*

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Contract No. 2022-194 Park Place Recreation Designs, Inc.

REFERENCE: Goal 3 - Facility Priorities; Strategy 3 - Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District solicited cooperative quotes for an inclusive playground at Jose De Escandon Elementary. Per Texas Government Code Chapter 791, Districts are allowed to purchases through Cooperatives. Per CV(Local), construction contracts valued at or above $50,000, require Board approval.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

One hundred ninety-seven (197) contractors were invited to submit a cooperative quote, and one (1) contractor responded. Ruben Treviño, Executive Director of Facilities, Maintenance, and Operations; and Melissa Ortiz, Project Manager for Facilities, Maintenance, Operations evaluated the quotes and are recommending that the Board of Trustees award this contract to Park Place Recreation Designs, Inc. from San Antonio TX, through their TASB Buyboard contract No. 592-19.

LEGAL REVIEW:

The District will utilize the standard service agreement, pending legal review.

BUDGETARY CONSIDERATIONS:

The contract price for this project is $199,976.20. The District will be seeking reimbursement from the City of McAllen through the Community Development Block Grant ("CDBG") Funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Contract No. 2022-194 Park Place Recreation Designs, Inc..

SUBMITTED BY:

SUPERVISOR:

For further information contact:
Name: Ruben Treviño
Office: (956) 632-3200
email: ruben.trevino@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

MCALLEN INDEPENDENT SCHOOL DISTRICT
CONTRACT NO. 2022-194 Park Place Recreation Designs, Inc. through Interlocal Cooperative Agreement No. 2020-002 through Request for Cooperate Quotes 2022-1054

This Contract, dated on June 13, 2022, and entered into effective by and between **McAllen Independent School District** (hereinafter referred to as "District") and **Park Place Recreation Designs, Inc.** a Texas corporation (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, District is a party/member to an Interlocal Cooperative Agreement with Buyboard (the "Cooperative");

WHEREAS, through the Cooperative, District may award contract(s) to Cooperative awarded vendors;

WHEREAS, District recognizes that the Facilities, Maintenance & Operations Department of District (the "Department") requires certain services ("Services") rendered by Contractor who has the training, experience, and qualifications necessary to provide the services;

WHEREAS, District requested quotes from vendors, more particularly described on Exhibit A attached hereto;

WHEREAS, Contractor submitted a quote in response to the needs of the District;

WHEREAS, District has determined that the proper, orderly and efficient delivery of quality Services for the District can be accomplished best by contracting with Contractor in accordance with the local, state and federal regulations for procurement;

WHEREAS, District has determined that for proper and efficient operation of the Department, several objectives must be met, including, among others, coordination of schedules and assignments, administrative ease and efficiency, consistency and uniformity in book and recordkeeping, and the delivery of quality Services;

WHEREAS, the Contractor is willing to accept the responsibility of providing the Services to the District in accordance with recognized standards, the Board Policies of District, applicable laws and regulations and the terms and conditions set forth in this Contract;

WHEREAS, this project is being funded by Community Development Block Grant funds and is subject to the following Federal requirements: Executive Order 11246; Clause 3 of the HUD Act of 1968;
Title IV of the Civil Rights Act of 1964; Title VII of the Civil rights Act of 1968; and Section 109 of the Housing and Community Development Act of 1974.

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:

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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 RFCQ No. 2022-1054

C. Exhibit “B” – Contractor’s Response Pursuant to RFCQ No. 2022-1054

D. Exhibit “C” – Federal Provisions

E. Exhibit “D” – Contractors Insurance

F. Exhibit “E” – Payment and Performance 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.

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

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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 D.

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.

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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 June 14, 2022, and remain effective through January 31, 2023. All services must be completed during the term of the Contract.

A. **Termination without Cause**. District shall have the right to terminate this Contract without cause on thirty (30) days written notice to the Contractor.

B. Termination with Cause.

a. Termination by District. District may terminate this Contract immediately upon the occurrence of any of the following events:

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i. Any conduct of the Contractor, which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the District.

ii. Failure to provide evidence of liability insurance, as required by numbered Paragraph 2 hereof.

iii. Failure of Contractor to immediately bar any individual from performing services under this Contract, if such individual does not meet the qualifications required by this Contract or if such individual commits a material breach of one of the terms of this Contract.

iv. In addition, if the Contractor commits a material breach of any of the terms of this Contract, other than those listed in subsections (i) through (iii) above, District may terminate this Contract upon no less than thirty (30) days written notice.

b. **Termination by Contractor.** In the event District breaches any material term of this Contract, Contractor may terminate this Contract upon no less than fifteen (15) days written notice.

c. **Non-Interference.** Following the expiration of this Contract or its termination for any reason, Contractor agrees to do nothing that may interfere with any contract of District with any other individual or entity for the provision of the services herein.

13. NOTICES

All notices provided to be given under this Contract shall be given in writing and will be deemed delivered when deposited in the United States Postal Service by certified or registered mail, addressed to the proper party, at the following addresses:

If to District: McAllen Independent School District
Attn: Jose A. Gonzalez, Superintendent
2000 N. 23rd Street
McAllen, Texas 78501

If to Contractor: Park Place Recreation Designs, Inc.
Attn: Marilyn Ahrens, Vice President
Street: 4225 Woodburn Dr.
City: San Antonio, TX 78218

Either party may change the address to which notices are to be sent by giving the other party notice of the new address in the manner provided in this section.

14. LAW

THE INTERPRETATION AND ENFORCEMENT OF THIS CONTRACT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED BY THIS AGREEMENT ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS.

15. NO IMPLIED WAIVER

No waiver or modification of the Contract Documents shall be valid unless it is in writing and signed by the District and Contractor.

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16. SEVERABILITY

The invalidity or unenforceability of any provisions of this Contract will not affect the validity or enforceability of any other provision.

17. ASSIGNABILITY

The right and obligations of District hereunder shall inure to the benefit of and be binding upon the successors and assigns of District. The Contractor may not assign Contractor's rights or obligations under this Contract without District's written consent. Any assignment in violation of this provision shall give District the right to terminate this Contract immediately, upon written notice to the Contractor.

18. AMENDMENTS

All provisions of the Contract Documents shall be strictly complied with and performed by Contractor; and no amendment to this Contract shall be made except upon the written agreement by the parties. No amendment shall be construed to release either party from any obligation, representation, and/or warranty of the Contract Documents except as specifically provided for in such amendment.

19. ENTIRE CONTRACT

This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof. This Contract supersedes any and all other agreements, whether oral or in writing, between the parties with respect to the subject matter the Contract.

20. INTERPRETATION

The defined terms used herein are for convenience only and do not limit the contents of this Contract.

21. VARIATIONS OF 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.

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24. NON-APPROPRIATION OF FUNDS.

In the event no funds or insufficient funds are appropriated and budgeted for the services and funds are otherwise unavailable, by any means whatsoever, in any fiscal period in which the payments for the services are due under this Contract, then District shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify Contractor and any assignee of such occurrence. This Contract shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made, without penalty, liability or expense to the District of any kind, except as to (i) the portions of the payment herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available and (ii) District's other obligations and liabilities under this Contract relating to, accruing or arising prior to such termination. In the event of such termination, District agrees to peaceably request that the Contractor or its assignee stop the services on the date of such termination.

25. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA).

Parental consent must be obtained before personally identifiable information is used for any purpose other than meeting a requirement under the Individuals with Disabilities Education Act or disclosed to anyone other than officials of agencies collecting or using this information. The District may not release information from these records without parental consent, except as provided in the Family Educational Rights and Privacy Act (FERPA).

26. CRIMINAL HISTORY INFORMATION.

Pursuant to Texas Education Code Section 22.0834, Contractor shall obtain criminal history record information that relates to an employee, applicant for employment, agent or subcontractor of the Contractor if the employee, applicant, agent, or subcontractor has or will have continuing duties related to the contracted services herein, and the duties are or will be performed on school property or at another location where students are regularly present. Contractor shall certify to District before beginning work and at no less than on an annual basis thereafter, that this process was followed.

Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony, or misdemeanor involving moral turpitude, as defined by Texas law, from District’s property or other location where students are regularly present, District shall be the final decider of what constitutes a “location where students are regularly present”. Contractor’s violation of this section shall constitute a material breach of contract. If the Contractor is the person, owner, or operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review, and must submit original evidence of compliance acceptable to District, with this Contract.

27. ENTITIES THAT BOYCOTT ISRAEL

If (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

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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

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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 on Part 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 _____
Date

DISTRICT:

McAllen Independent School District

By:_____
Tony Forina

Park Place Recreation Designs, Inc.

By: _____
Marilyn Ahrens, Vice President

Approved as to form:

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Atlas Hall & Rodriguez, LLP
by: _____
Stephen Crain

Draft

EXHIBIT A

District RFCQ No. 2022-1054

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EXHIBIT B

Contractor's Response Pursuant to RFCQ No. 2022-1054

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EXHIBIT C

Federal Provisions

Draft

EXHIBIT D

Contractor's Insurance

Draft

EXHIBIT E

Payment and Performance Bonds

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Contract No. 2023-056 Noble Texas Builders LLC

REFERENCE: Goal 3 - Facility Priorities; Strategy 3 - Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District solicited cooperative quotes for kitchen renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School. Per Texas Government Code Chapter 791, Districts are allowed to purchase through Cooperatives as a method of procurement. Per CV(Local), construction contracts valued at or above $50,000, require Board approval.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Seventeen (17) contractors were invited to submit a cooperative quote and since no quotes had been received, Administration extended the deadline for four (4) additional days, totaling fourteen (14) days. One (1) contractor responded after the extended deadline. Ruben Treviño, Executive Director of Facilities, Maintenance, and Operations; Melissa Ortiz, Project Manager for Facilities, Maintenance, and Operations; and Alexandra Molina, Director of Child Nutrition Program, evaluated the quotes and are recommending that the Board of Trustees award this contract to Noble Texas Builders LLC from La Feria, TX, through their BuyBoard Contract 581-19.

LEGAL REVIEW:

The Contract has been approved by legal counsel, pending payment and performance bonds.

BUDGETARY CONSIDERATIONS:

The contract price for this project is $2,213,891.00. Funds are budgeted through the Elementary and Secondary School Relief ("ESSER") fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Contract No. 2023-056 Noble Texas Builders LLC.

SUBMITTED BY: Alexandra Molina

SUPERVISOR:

For further information contact:
Name: Alexandra Molina
Office: (956) 632-3226
email: alejandra.molina@mcallenisd.net

Approved for presentation to the Board of Education:

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 13th day of June 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 23rd Street
McAllen, Texas 78501

and the Contractor:
(Name, legal status, address and other information)

NOBLE TEXAS BUILDERS, LLC, a Texas limited liability company
108 S. Main Street
La Feria, TX 78559

for the following Project:
(Name, location and detailed description)

Request for Cooperative Quotes No. 2023-1009 Kitchen Renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School (Owner Contract No. 2023-056)

Location 1:
Dorothea Brown Middle School
2700 S. Ware Rd.
McAllen, TX 78503

Location 2:
Alonzo De Leon Middle School
4201 N 29th
McAllen, Texas 78504

The Architect:
(Name, legal status, address and other information)

Halff Associates, Inc.
5000 W. Military Hwy, Suite 100
McAllen, Texas 78501

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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User Notes: (1697805643)

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.

[X] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

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User Notes: (1697805643)

§ 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 three hundred twenty (320) 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 Two Million Thirteen Thousand Eight Hundred Ninety-One Dollars and Zero Cents ($ 2,013,891.00), 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 Thirteen Thousand Eight Hundred Ninety-One Dollars and Zero Cents ($1,813,891.00) and contingencies of Two Hundred Thousand Dollars and Zero Cents ($200,000.00) as specified in Section 4.3 below. The contingencies are 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 Contingencies are 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.)

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Item	Price
Owner's Contingency – Brown Middle School	$100,000.00
Owner's Contingency – De Leon Middle School	$100,000.00

§ 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 Two Hundred Fifty Dollars and Zero Cents ($250.00) 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 Two Hundred Fifty Dollars and Zero Cents ($250.00) 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.

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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:

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(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 nonconformingWork as provided in Article 12 of AIA Document A201, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201;

.3 the Contractor has provided the following documents:

.1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;

.2 Final list of subcontractors (AIA Document G705);

.3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at: www.tea.state.tx.us/school.finance/facilities/cert_2004. pdf;

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.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

[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

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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. Eric Delgado
Noble Texas Builders, LLC
108 S. Main Street
La Feria, TX 78559
Phone: (956) 277-0708
Email: ericdelgado@nobletx.net

§ 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.

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§ 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. 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.

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§ 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
1	May 26, 2022	255
2	May 27, 2022	1
3	June 1, 2022	6

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

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(Paragraph deleted)
This Agreement entered into as of the day and year first written above.

OWNER:	**CONTRACTOR:**
McALLEN INDEPENDENT SCHOOL DISTRICT	**NOBLE TEXAS BUILDERS, LLC**
By: _____	By: _____
	Printed Name:
	Title:

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

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EXHIBIT A

to

Agreement dated June 13, 2022 between

(Table deleted)

McAllen Independent School District and Noble Texas Builders, LLC

(Request for Cooperative Quotes No. 2023-1009 Kitchen Renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School (Owner Contract No. 2023-056))

Modified AIA Document A201-2007 General Conditions of the Contract for Construction

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EXHIBIT B

to

Agreement dated June 13, 2022 between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1009 Kitchen Renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School (Owner Contract No. 2023-056))

Contractor's Proposal

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EXHIBIT C

to

Agreement dated June 13, 2022 between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1009 Kitchen Renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School (Owner Contract No. 2023-056))

Payment Bond

and

Performance Bond

Init.
/
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EXHIBIT D

to

Agreement dated June 13, 2022 between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1009 Kitchen Renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School (Owner Contract No. 2023-056))

Contractor's Insurance Certificates

Init.
/
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EXHIBIT E

to

Agreement dated June 13, 2022 between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1009 Kitchen Renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School (Owner Contract No. 2023-056))

Plans and/or Specifications

(Table deleted)

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/
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Additions and Deletions Report for
AIA® Document A101® – 2017

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PAGE 1

AGREEMENT made as of the 13th day of June in the year 2022

...

McALLEN INDEPENDENT SCHOOL DISTRICT
2000 North 23rd Street
McAllen, Texas 78501

...

NOBLE TEXAS BUILDERS, LLC, a Texas limited liability company
108 S. Main Street
La Feria, TX 78559

...

Request for Cooperative Quotes No. 2023-1009 Kitchen Renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School (Owner Contract No. 2023-056)
Location 1:
Dorothea Brown Middle School
2700 S. Ware Rd.
McAllen, TX 78503

Location 2:
Alonzo De Leon Middle School
4201 N 29th
McAllen, Texas 78504

...

Halff Associates, Inc.
5000 W. Military Hwy, Suite 100
McAllen, Texas 78501
PAGE 2

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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

...

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.

...

[**X**] A date set forth in a notice to proceed issued by the Owner.

PAGE 3

§ 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:

...

[**X**] Not later than three hundred twenty (320) 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.

...

N/A

...

§ 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 Two Million Thirteen Thousand Eight Hundred Ninety-One Dollars and Zero Cents ($ 2,013,891.00), 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 Thirteen Thousand Eight Hundred Ninety-One Dollars and Zero Cents ($1,813,891.00) and contingencies of Two Hundred Thousand Dollars and Zero Cents ($200,000.00) as specified in Section 4.3 below. The contingencies are 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 Contingencies are 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.

...

~~Item~~Item*	Price
n/a	

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Owner's Contingency – Brown Middle School	$100,000.00
Owner's Contingency – De Leon Middle School	$100,000.00

...

.

...

§ 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 Two Hundred Fifty Dollars and Zero Cents ($250.00) 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 Two Hundred Fifty Dollars and Zero Cents ($250.00) 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.

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§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the ~~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~~ 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 ~~Work~~ nonconformingWork 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;

.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

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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.

PAGE 7

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:

...

[X] Litigation in a court of competent jurisdiction

PAGE 8

§ 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.)*~~

...

§ 8.1 All references to AIA Document A201-2017, AIA Document A201-2007, AIA Document A201 or the A201, shall mean to the modified A201-2007 attached hereto as Exhibit "A". Similarly, references to AIA Document A101-2017, AIA Document A101-2007 or to the A101 shall mean to this A101-2017. Where reference is made in this

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Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

...

Mr. Ruben Trevino
McAllen Independent School District
4309 Warrior Drive, Bldg. B
McAllen, TX 78501

...

Mr. Eric Delgado
Noble Texas Builders, LLC
108 S. Main Street
La Feria, TX 78559
Phone: (956) 277-0708
Email: ericdelgado@nobletx.net

...

§ 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

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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.

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§ 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"):

...

1	May 26, 2022	255
2	May 27, 2022	1
3	June 1, 2022	6

...

~~**.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

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~~[~~ ~~] 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	**NOBLE TEXAS BUILDERS, LLC**
By: _____	By: _____
_____	Printed Name:
_____	Title:

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

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EXHIBIT A

to

~~[–] The Sustainability Plan:~~

Agreement dated June 13, 2022 between

~~Title~~ ~~Date~~ ~~Pages~~

McAllen Independent School District and Noble Texas Builders, LLC

~~[–] Supplementary and other Conditions of the Contract:~~(Request for Cooperative Quotes No. 2023-1009 Kitchen Renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School (Owner Contract No. 2023-056))

Modified AIA Document A201-2007 General Conditions of the Contract for Construction

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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 June 13, 2022 between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1009 Kitchen Renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School (Owner Contract No. 2023-056))

Contractor's Proposal

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EXHIBIT C

to

Agreement dated June 13, 2022 between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1009 Kitchen Renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School (Owner Contract No. 2023-056))

Payment Bond

and

Performance Bond

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EXHIBIT D

to

Agreement dated June 13, 2022 between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1009 Kitchen Renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School (Owner Contract No. 2023-056))

Contractor's Insurance Certificates

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EXHIBIT E

to

~~This Agreement entered into as of the day and year first written above.~~Agreement dated June 13, 2022
between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1009 Kitchen Renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School (Owner Contract No. 2023-056))

Plans and/or Specifications

OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
(Printed name and title)	*(Printed name and title)*

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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 17:40:07 ET on 06/09/2022 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)

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Contract No. 2023-057 Noble Texas Builders LLC

REFERENCE: Goal 3 - Facility Priorities; Strategy 3 - Engaging Learning Environment

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District solicited cooperative quotes for kitchen renovations for Leonel H. Gonzalez Elementary and Andrew Jackson Elementary. Per Texas Government Code Chapter 791, Districts are allowed to purchase through Cooperatives as a method of procurement. Per CV(Local), construction contracts valued at or above $50,000, require Board approval.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Seventeen (17) contractors were invited to submit a cooperative quote, and since no quotes had been received, Administration extended the deadline for four (4) additional days, totaling fourteen (14) days. One (1) contractor responded after the extended deadline. Ruben Treviño, Executive Director of Facilities, Maintenance, and Operations; Melissa Ortiz, Project Manager for Facilities, Maintenance, and Operations; and Alexandra Molina, Director of Child Nutrition Program, evaluated the quotes and are recommending that the Board of Trustees award this contract to Noble Texas Builders LLC from La Feria, TX, through their BuyBoard Contract 581-19.

LEGAL REVIEW:

The Contract has been approved by legal counsel, pending payment and performance bonds.

BUDGETARY CONSIDERATIONS:

The contract price for this project is $2,911,973.00. Funds are budgeted through the Elementary and Secondary School Relief ("ESSER") fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Contract No. 2023-057 Noble Texas Builders LLC.

SUBMITTED BY: Alexandra Molina

SUPERVISOR:

For further information contact:
Name: Alexandra Molina
Office: (956) 632-3226
email: alexandra.molina@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

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 13th day of June 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 23rd Street
McAllen, Texas 78501

and the Contractor:
(Name, legal status, address and other information)

NOBLE TEXAS BUILDERS, LLC, a Texas limited liability company
108 S. Main Street
La Feria, TX 78559

for the following Project:
(Name, location and detailed description)

Request for Cooperative Quotes No. 2023-1010 Kitchen Renovations for Leonel H. Gonzalez Elementary School and Andrew Jackson Elementary School (Owner Contract No. 2023-057)

Leonelo H. Gonzalez Elementary
201 E. Martin Avenue
McAllen, TX 78501

Andrew Jackson Elementary
501 Harvey Ave.
McAllen, TX 78501

The Architect:
(Name, legal status, address and other information)

Halff Associates, Inc.
5000 W. Military Hwy, Suite 100
McAllen, Texas 78501

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.
/

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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.

[X] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

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§ 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 three hundred twenty (320) 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 Two Million Seven Hundred Eleven Thousand Nine Hundred Seventy-Three Dollars and Zero Cents ($2,711,973.00), subject to additions and deductions as provided in the Contract Documents. The Contract Sum consists of two portions, the budgeted amount of Two Million Five Hundred Eleven Thousand Nine Hundred Seventy-Three Dollars and Zero Cents ($2,511,973.00) and contingencies of Two Hundred Thousand Dollars and Zero Cents ($200,000.00) as specified in Section 4.3 below. The contingencies are 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 Contingencies are 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.)

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Item	Price
Owner's Contingency – Gonzalez Elementary School	$100,000.00
Owner's Contingency – Jackson Elementary School	$100,000.00

§ 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 Two Hundred Fifty Dollars and Zero Cents ($250.00) 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 Two Hundred Fifty Dollars and Zero Cents ($250.00) 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.

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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:

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(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 nonconformingWork as provided in Article 12 of AIA Document A201, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201;

.3 the Contractor has provided the following documents:

.1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;

.2 Final list of subcontractors (AIA Document G705);

.3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at: www.tea.state.tx.us/school.finance/facilities/cert_2004. pdf;

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.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

[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

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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. Eric Delgado
Noble Texas Builders, LLC
108 S. Main Street
La Feria, TX 78559
Phone: (956) 277-0708
Email: ericdelgado@nobletx.net

§ 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.

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§ 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. 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.

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§ 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
1	May 26, 2022	296
2	May 27, 2022	1
3	June 1, 2022	7
4	June 2, 2022	4

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

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(Paragraph deleted)
This Agreement entered into as of the day and year first written above.

OWNER:	**CONTRACTOR:**
McALLEN INDEPENDENT SCHOOL DISTRICT	**NOBLE TEXAS BUILDERS, LLC**
By: _____	By: _____
	Printed Name:
	Title:

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

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EXHIBIT A

to

Agreement dated June 13, 2022 between

(Table deleted)

McAllen Independent School District and Noble Texas Builders, LLC

(Request for Cooperative Quotes No. 2023-1010 Kitchen Renovations for Leonel H. Gonzalez Elementary School and Andrew Jackson Elementary School (Owner Contract No. 2023-057))

Modified AIA Document A201-2007 General Conditions of the Contract for Construction

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EXHIBIT B

to

Agreement dated June 13, 2022 between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1010 Kitchen Renovations for Leonel H. Gonzalez Elementary School and Andrew Jackson Elementary School (Owner Contract No. 2023-057))

Contractor's Proposal

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EXHIBIT C

to

Agreement dated June 13, 2022 between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1010 Kitchen Renovations for Leonel H. Gonzalez Elementary School and Andrew Jackson Elementary School (Owner Contract No. 2023-057))

Payment Bond

and

Performance Bond

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EXHIBIT D

to

Agreement dated June 13, 2022 between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1010 Kitchen Renovations for Leonel H. Gonzalez Elementary School and Andrew Jackson Elementary School (Owner Contract No. 2023-057))

Contractor's Insurance Certificates

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EXHIBIT E

to

Agreement dated June 13, 2022 between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1010 Kitchen Renovations for Leonel H. Gonzalez Elementary School and Andrew Jackson Elementary School (Owner Contract No. 2023-057))

Plans and/or Specifications

(Table deleted)

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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.

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PAGE 1

AGREEMENT made as of the 13th day of June in the year 2022

...

McALLEN INDEPENDENT SCHOOL DISTRICT
2000 North 23rd Street
McAllen, Texas 78501

...

NOBLE TEXAS BUILDERS, LLC, a Texas limited liability company
108 S. Main Street
La Feria, TX 78559

...

Request for Cooperative Quotes No. 2023-1010 Kitchen Renovations for Leonel H. Gonzalez Elementary School and Andrew Jackson Elementary School (Owner Contract No. 2023-057)

Leonelo H. Gonzalez Elementary
201 E. Martin Avenue
McAllen, TX 78501

Andrew Jackson Elementary
501 Harvey Ave.
McAllen, TX 78501

...

Halff Associates, Inc.
5000 W. Military Hwy, Suite 100
McAllen, Texas 78501

PAGE 2

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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

...

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.

...

[**X**] A date set forth in a notice to proceed issued by the Owner.

PAGE 3

§ 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:

...

[**X**] Not later than three hundred twenty (320) 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.

...

N/A

...

§ 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 ~~($~~—Two Million Seven Hundred Eleven Thousand Nine Hundred Seventy-Three Dollars and Zero Cents ($2,711,973.00), subject to additions and deductions as provided in the Contract Documents. The Contract Sum consists of two portions, the budgeted amount of Two Million Five Hundred Eleven Thousand Nine Hundred Seventy-Three Dollars and Zero Cents ($2,511,973.00) and contingencies of Two Hundred Thousand Dollars and Zero Cents ($200,000.00) as specified in Section 4.3 below. The contingencies are 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 Contingencies are 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.

...

~~Item~~Item*	Price
n/a	

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Owner's Contingency – Gonzalez Elementary School	$100,000.00
Owner's Contingency – Jackson Elementary School	$100,000.00

...

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...

§ 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 Two Hundred Fifty Dollars and Zero Cents ($250.00) 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 Two Hundred Fifty Dollars and Zero Cents ($250.00) 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.

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§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the ~~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~~ 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).

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~~§ 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 ~~Work~~ nonconformingWork 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;

.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

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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.

PAGE 7

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:

...

[**X**] Litigation in a court of competent jurisdiction

PAGE 8

§ 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.)*~~

...

§ 8.1 All references to AIA Document A201-2017, AIA Document A201-2007, AIA Document A201 or the A201, shall mean to the modified A201-2007 attached hereto as Exhibit "A". Similarly, references to AIA Document A101-2017, AIA Document A101-2007 or to the A101 shall mean to this A101-2017. Where reference is made in this

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Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

...

Mr. Ruben Trevino
McAllen Independent School District
4309 Warrior Drive, Bldg. B
McAllen, TX 78501

...

Mr. Eric Delgado
Noble Texas Builders, LLC
108 S. Main Street
La Feria, TX 78559
Phone: (956) 277-0708
Email: ericdelgado@nobletx.net

...

§ 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

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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.

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§ 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"):

...

1	May 26, 2022	296
2	May 27, 2022	1
3	June 1, 2022	7
4	June 2, 2022	4

...

~~**.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

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~~[~~ ~~] 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	**NOBLE TEXAS BUILDERS, LLC**
By: _____	By: _____
_____	Printed Name:
_____	Title:

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

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EXHIBIT A

to

~~[–] The Sustainability Plan:~~

Agreement dated June 13, 2022 between

~~Title~~ ~~Date~~ ~~Pages~~

McAllen Independent School District and Noble Texas Builders, LLC

~~[–] Supplementary and other Conditions of the Contract:~~(Request for Cooperative Quotes No. 2023-1010 Kitchen Renovations for Leonel H. Gonzalez Elementary School and Andrew Jackson Elementary School (Owner Contract No. 2023-057))

Modified AIA Document A201-2007 General Conditions of the Contract for Construction

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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 June 13, 2022 between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1010 Kitchen Renovations for Leonel H. Gonzalez Elementary School and Andrew Jackson Elementary School (Owner Contract No. 2023-057))

Contractor's Proposal

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EXHIBIT C

to

Agreement dated June 13, 2022 between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1010 Kitchen Renovations for Leonel H. Gonzalez Elementary School and Andrew Jackson Elementary School (Owner Contract No. 2023-057))

Payment Bond

and

Performance Bond

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EXHIBIT D

to

Agreement dated June 13, 2022 between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1010 Kitchen Renovations for Leonel H. Gonzalez Elementary School and Andrew Jackson Elementary School (Owner Contract No. 2023-057))

Contractor's Insurance Certificates

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EXHIBIT E

to

~~This Agreement entered into as of the day and year first written above.~~Agreement dated June 13, 2022
between
McAllen Independent School District and Noble Texas Builders, LLC
(Request for Cooperative Quotes No. 2023-1010 Kitchen Renovations for Leonel H. Gonzalez Elementary School and Andrew Jackson Elementary School (Owner Contract No. 2023-057))

Plans and/or Specifications

~~**OWNER** *(Signature)*~~	~~**CONTRACTOR** *(Signature)*~~
~~*(Printed name and title)*~~	~~*(Printed name and title)*~~

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(Title)

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(Dated)

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General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

Request for Cooperative Quotes No. 2023-1010 Kitchen Renovations for Leonel H. Gonzalez Elementary School and Andrew Jackson Elementary School (Owner Contract No. 2023-057)

Leonelo H. Gonzalez Elementary
201 E. Martin Avenue
McAllen, TX 78501

Andrew Jackson Elementary
501 Harvey Ave.
McAllen, TX 78501

THE OWNER:
(Name, legal status and address)

McALLEN INDEPENDENT SCHOOL DISTRICT
2000 North 23rd Street
McAllen, Texas 78501

THE ARCHITECT:
(Name, legal status and address)

Halff Associates, Inc.
5000 W. Military Hwy, Suite 100
McAllen, Texas 78501

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.

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 OWNER

3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

8 TIME

Init.
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9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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INDEX
(Topics and numbers in bold are section headings.)

Acceptance of Nonconforming Work
9.6.6, 9.9.3, **12.3**
Acceptance of Work
9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3
Access to Work
3.16, 6.2.1, 12.1
Accident Prevention
10
Acts and Omissions
3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, 13.7, 14.1, 15.2
Addenda
1.1.1, 3.11.1
Additional Costs, Claims for
3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4
Additional Inspections and Testing
9.4.2, 9.8.3, 12.2.1, **13.5**
Additional Insured
11.1.4
Additional Time, Claims for
3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**
Administration of the Contract
3.1.3, **4.2**, 9.4, 9.5
Advertisement or Invitation to Bid
1.1.1
Aesthetic Effect
4.2.13
Allowances
3.8, 7.3.8
All-risk Insurance
11.3.1, 11.3.1.1
Applications for Payment
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10, 11.1.3
Approvals
2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, 13.5.1
Arbitration
8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4**
ARCHITECT
4
Architect, Definition of
4.1.1
Architect, Extent of Authority
2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1
Architect, Limitations of Authority and Responsibility
2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2
Architect's Additional Services and Expenses
2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4
Architect's Administration of the Contract
3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5
Architect's Approvals
2.4.1, 3.1.3, 3.5, 3.10.2, 4.2.7
Architect's Authority to Reject Work
3.5, 4.2.6, 12.1.2, 12.2.1
Architect's Copyright
1.1.7, 1.5
Architect's Decisions
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.5.2, 15.2, 15.3
Architect's Inspections
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5
Architect's Instructions
3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2
Architect's Interpretations
4.2.11, 4.2.12
Architect's Project Representative
4.2.10
Architect's Relationship with Contractor
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2
Architect's Relationship with Subcontractors
1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7
Architect's Representations
9.4.2, 9.5.1, 9.10.1
Architect's Site Visits
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5
Asbestos
10.3.1
Attorneys' Fees
3.18.1, 9.10.2, 10.3.3
Award of Separate Contracts
6.1.1, 6.1.2
Award of Subcontracts and Other Contracts for Portions of the Work
5.2
Basic Definitions
1.1
Bidding Requirements
1.1.1, 5.2.1, 11.4.1
Binding Dispute Resolution
9.7, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1
Boiler and Machinery Insurance
11.3.2
Bonds, Lien
7.3.7.4, 9.10.2, 9.10.3
Bonds, Performance, and Payment
7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**
Building Permit
3.7.1

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User Notes:

Capitalization
1.3
Certificate of Substantial Completion
9.8.3, 9.8.4, 9.8.5
Certificates for Payment
4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3
Certificates of Inspection, Testing or Approval
13.5.4
Certificates of Insurance
9.10.2, 11.1.3
Change Orders
1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3
Change Orders, Definition of
7.2.1
CHANGES IN THE WORK
2.2.1, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.3.9
Claims, Definition of
15.1.1
CLAIMS AND DISPUTES
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1
Claims for Additional Cost
3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, **15.1.4**
Claims for Additional Time
3.2.4, 3.7.46.1.1, 8.3.2, 10.3.2, **15.1.5**
Concealed or Unknown Conditions, Claims for
3.7.4
Claims for Damages
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Claims Subject to Arbitration
15.3.1, 15.4.1
Cleaning Up
3.15, 6.3
Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4
Commencement of the Work, Definition of
8.1.2
Communications Facilitating Contract Administration
3.9.1, **4.2.4**
Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2
COMPLETION, PAYMENTS AND
9
Completion, Substantial
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7
Compliance with Laws
1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3
Concealed or Unknown Conditions
3.7.4, 4.2.8, 8.3.1, 10.3
Conditions of the Contract
1.1.1, 6.1.1, 6.1.4
Consent, Written
3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2
Consolidation or Joinder
15.4.4
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
1.1.4, **6**
Construction Change Directive, Definition of
7.3.1
Construction Change Directives
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1
Construction Schedules, Contractor's
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Contingent Assignment of Subcontracts
5.4, 14.2.2.2
Continuing Contract Performance
15.1.3
Contract, Definition of
1.1.2
CONTRACT, TERMINATION OR SUSPENSION OF THE
5.4.1.1, 11.3.9, **14**
Contract Administration
3.1.3, 4, 9.4, 9.5
Contract Award and Execution, Conditions Relating to
3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1
Contract Documents, Copies Furnished and Use of
1.5.2, 2.2.5, 5.3
Contract Documents, Definition of
1.1.1
Contract Sum
3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, **9.1**, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5
Contract Sum, Definition of
9.1
Contract Time
3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5
Contract Time, Definition of
8.1.1
CONTRACTOR
3
Contractor, Definition of
3.1, 6.1.2

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Contractor's Construction Schedules
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Contractor's Employees
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1
Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8
Contractor's Relationship with the Architect
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
9.7
Contractor's Right to Terminate the Contract
14.1, 15.1.6
Contractor's Submittals
3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3
Contractual Liability Insurance
11.1.1.8, 11.2
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.2.5, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.7
Costs
2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14
Cutting and Patching
3.14, 6.2.5
Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Damages for Delay
6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1
Delays and Extensions of Time
3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2, 11.1.2
Emergencies
10.4, 14.1.1.2, 15.1.4
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1
Equipment, Labor, Materials or
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

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Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3
Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3, 15.1.5, 15.2.5
Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Faulty Work
(See Defective or Nonconforming Work)
Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3.1, 14.2.4, 14.4.3
Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4
Fire and Extended Coverage Insurance
11.3.1.1
GENERAL PROVISIONS
1
Governing Law
13.1
Guarantees (See Warranty)
Hazardous Materials
10.2.4, **10.3**
Identification of Subcontractors and Suppliers
5.2.1
Indemnification
3.17, **3.18**, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7
Information and Services Required of the Owner
2.1.2, **2.2**, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Injury or Damage to Person or Property
10.2.8, 10.4.1
Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5
Instructions to Bidders
1.1.1
Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2
Instruments of Service, Definition of
1.1.7
Insurance
3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, **11**
Insurance, Boiler and Machinery
11.3.2
Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 11.1.2
Insurance, Loss of Use
11.3.3
Insurance, Owner's Liability
11.2
Insurance, Property
10.2.5, **11.3**
Insurance, Stored Materials
9.3.2
INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4
Interest
13.6
Interpretation
1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12, 15.1.4
Judgment on Final Award
15.4.2
Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2, 13.6.1, 14, 15.2.8, 15.4
Liens
2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 13.7, 15.4.1.1
Limitations of Liability
2.3.1, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2
Limitations of Time
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15
Loss of Use Insurance
11.3.3
Material Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5
Materials, Hazardous
10.2.4, **10.3**

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Materials, Labor, Equipment and
1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 15.2.8
Mediation
8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1
Minor Changes in the Work
1.1.1, 3.12.8, 4.2.8, 7.1, **7.4**
MISCELLANEOUS PROVISIONS
13
Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2, 11.3.1
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, **12.3**
Nonconforming Work, Rejection and Correction of
2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Notice
2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7, 9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1
Notice, Written
2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8, 15.4.1
Notice of Claims
3.7.4, 10.2.8, **15.1.2**, 15.4
Notice of Testing and Inspections
13.5.1, 13.5.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.2.2, 9.6.6, 9.8, 11.3.1.5
Orders, Written
1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Information and Services Required of the
2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Owner's Authority
1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7
Owner's Financial Capability
2.2.1, 13.2.2, 14.1.1.4
Owner's Liability Insurance
11.2
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.4, 14.2.2
Owner's Right to Clean Up
6.3
Owner's Right to Perform Construction and to Award Separate Contracts
6.1
Owner's Right to Stop the Work
2.3
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2
Ownership and Use of Drawings, Specifications and Other Instruments of Service
1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11.1, 3.17, 4.2.12, 5.3.1
Partial Occupancy or Use
9.6.6, **9.9**, 11.3.1.5
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Payment, Final
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3.1, 13.7, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.7.4, 9.6.7, 9.10.3, **11.4**
Payments, Progress
9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
PCB
10.3.1

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Performance Bond and Payment Bond
7.3.7.4, 9.6.7, 9.10.3, **11.4**
Permits, Fees, Notices and Compliance with Laws
2.2.2, **3.7**, 3.13, 7.3.7.4, 10.2.2
PERSONS AND PROPERTY, PROTECTION OF
10
Polychlorinated Biphenyl
10.3.1
Product Data, Definition of
3.12.2
Product Data and Samples, Shop Drawings
3.11, **3.12**, 4.2.7
Progress and Completion
4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.3
Progress Payments
9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
Project, Definition of
1.1.4
Project Representatives
4.2.10
Property Insurance
10.2.5, **11.3**
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4
Rejection of Work
3.5, 4.2.6, 12.2.1
Releases and Waivers of Liens
9.10.2
Representations
3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field Conditions by Contractor
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples by Contractor
3.12
Rights and Remedies
1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, **13.4**, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3.1, **10.1**, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, **3.12**, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, **3.12**, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5
Special Inspections and Testing
4.2.6, 12.2.1, 13.5
Specifications, Definition of
1.1.6
Specifications
1.1.1, **1.1.6**, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14
Statute of Limitations
13.7, 15.4.1.1
Stopping the Work
2.3, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, **11.3.7**

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Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
4.1.3
Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3
Surety
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7
Surety, Consent of
9.10.2, 9.10.3
Surveys
2.2.3
Suspension by the Owner for Convenience
14.3
Suspension of the Work
5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 14
Taxes
3.6, 3.8.2.1, 7.3.7.4
Termination by the Contractor
14.1, 15.1.6
Termination by the Owner for Cause
5.4.1.1, **14.2,** 15.1.6
Termination by the Owner for Convenience
14.4
Termination of the Architect
4.1.3
Termination of the Contractor
14.2.2
TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, **13.5**
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5
Time Limits
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4
Time Limits on Claims
3.7.4, 10.2.8, **13.7**, 15.1.2
Title to Work
9.3.2, 9.3.3
Transmission of Data in Digital Form
1.6
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 7.3.4
Use of Documents
1.1.1, 1.5, 2.2.5, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.4.2
Waiver of Claims by the Contractor
9.10.5, 13.4.2, 15.1.6
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6
Waiver of Consequential Damages
14.2.4, 15.1.6
Waiver of Liens
9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, **11.3.7**
Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7
Weather Delays
15.1.5.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Notice
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1
Written Orders
1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect pursuant to Section 7.4. At the Owner's option, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.1.1 Contractor acknowledges and warrants that it has closely examined all the Contract Documents and is unaware of any instance where the documents are not suitable or are insufficient to enable the Contractor to complete the Work in a timely manner for the Contract sum, and that they include all Work, whether or not shown or described, which reasonably may be inferred or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor (except as provided in Sections 5.3 and 5.4 hereof), (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations of the Contractor under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.3.1 The Work shall include the obligation of the Contractor to visit the site of the Project before submitting a proposal. Such site visit shall be for the purpose of familiarizing Contractor with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, including all existing site conditions, access to the site, physical characteristics of the site and surrounding areas. It also includes all supplies, skill, supervision, transportation services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the Contract Documents.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams wherever located and whenever issued.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

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§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Any differences between the requirements of the Drawings and the Specifications or any differences noted within the Drawings themselves or within the Specifications themselves have been referred to Owner and Architect by Contractor prior to the submission of bids and have been clarified by an Addendum issued to all bidders.

If such differences or conflicts were not called to Owner's and Architect's attention prior to submission of bids, Architect shall decide which of the conflicting requirements will govern based upon the following: the most stringent of the requirements will take precedence over the less stringent; the most expensive item will take precedence over the less expensive, and subject to the approval of Owner, Contractor shall perform the Work at no additional cost and/or time to Owner in accordance with the Architect's decision. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable as being necessary to produce the intended results.

§ 1.2.1.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

.1 The Agreement;
.2 Addenda, with those of later date having precedence over those of earlier date;
.3 Supplemental Conditions, if any;
.4 The General Conditions of the Contract for Construction;
.5 Specifications
.6 Drawings, in the case of inconsistency between the Drawings and Specifications or within either document, not clarified by Addendum, the better quality or greater quantity of Work shall be included in the Contract Documents. Clarifications of the inconsistency will be accomplished with the Contractor and, if necessary, an appropriate reduction in the contract will be accomplished by Change Order. Figures given on drawings govern scale measurements. Large scale drawings take precedence over small sale drawings. Written words take precedence over numbers. Handwritten documents take precedence over typewritten documents. Existing conditions take precedence over drawings and specifications for dimensions and shall be verified by the Contractor. The Contractor proceeds at his own risk if conflicts or discrepancies are not resolved prior to the execution of the Work.

§ 1.2.1.2 If Work is required in a manner to make it impossible to produce Work of the quality required by or reasonably inferred from the Contract Documents, or should discrepancies appear among the Contract Documents, Contractor shall request in writing an interpretation from Architect before proceeding with the Work. If Contractor fails to make such request, no excuse will thereafter be entertained for failure to carryout Work in the required manner or provide required guarantees, warranties, or bonds, and Contractor shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 Instruments of Service, including the Drawings, Specifications, and other similar or related documents and copies thereof are furnished to Contractor for the purpose of performing the Work and are, and shall remain, the property of Owner and Owner will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's or Owner's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees of Owner, by majority vote, is the only representative of Owner, having the power to enter into a Contract, to execute a change order requiring an increase in the Contract Sum, or agree to an extension of the contractual completion date. The Board shall designate, as appropriate, an authorized representative(s) to act on its behalf during the course of construction. In the event that an emergency changes the scope of the Work before the Board's next regular meeting or in order to facilitate and expedite the timely completion of the Work, the Board's authorized representative(s) may approve construction changes that do not exceed $5,000.00 in increased costs. Any such changes shall be confirmed in writing between the Contractor and the Board's authorized representative(s) and notice of such approved changes shall be given to the Board at its next regular meeting. The Board will act as soon as reasonably possible to avoid undue delays in the construction completion date.

§ 2.1.2 DELETED.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics and legal limitations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. In connection with the foregoing, Contractor shall be solely responsible for locating (and shall locate prior to performing any Work) all utilities lines, telephone company, cable, sewer lines, water pipes, gas lines, and electrical lines, including without limitation, all buried pipelines and buried telephone cables and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes and pipelines. Under this provision the Architect and Engineer are in no way relieved of their responsibilities outlined in the Contract or other attached contracts for identification of existing conditions.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2 for use on this Project. All costs of reproduction are the responsibility of Contractor.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents or fails to remove and discharge (within ten (10) days) any lien filed upon Owner's or, if applicable landlord's, property by anyone claiming by, through, or under Contractor, or disregards the instructions of Architect or Owner when based on the requirements of the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3 and any delay resulting from such Work stoppage shall not extend any Milestone Date identified in the Contract for Construction or the required dates of Substantial or Final Completion.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.4.1 The rights stated in Article 2 shall be in addition to and not in limitation of any other rights of Owner granted in the Contract Documents or at law or in equity.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express

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authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Owner in writing any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for design information in such form as the Architect may require.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner in writing any nonconformity discovered by or made known to the Contractor as a request for design information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect and Owner.

§ 3.2.5 The Contractor shall not be entitled to additional compensation for the "rework portion" of any additional work caused by his failure to carefully study and compare the Contract Documents prior to execution of the Work.

§ 3.2.6 The Contractor shall make reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation. The Contractor shall not ask the Architect for observation of work prior to the Contractor's field superintendent's personal inspection of the work and his determination that the work complies with the Contract Documents.

§ 3.2.7 If, in the opinion of the Architect, the Contractor does not make a reasonable effort to comply with the above requirements of the Contract Documents and this causes the Architect or Architect's consultants to expend an unreasonable amount of the time in the discharge of the duties imposed on Architect by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure. The Architect will give the Contractor prior notice of intent to bill for additional services related to Sections 3.2.6, 3.2.7, and 3.12 before additional services are performed.

§ 3.2.8 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor his Warranty, Contractor shall promptly

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notify the Architect in writing, providing substantiation for the position. Any necessary changes, including substitutions of materials, may only be accomplished by an appropriate Modification.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors, and their agents and employees, and other persons performing portions of the Work under Contract Documents or other arrangements with Contractor.

§ 3.3.5 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of Contractor are in addition to Contractor's obligations under other provisions hereunder.

§ 3.3.6 Contractor shall be responsible for inspection of portion of Work already performed under the Contract for Construction to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.7 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including of construction utilities.

§ 3.3.8 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the buildings and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner (s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

§ 3.3.9 Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper

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correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all Work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said Work and the Drawings and Specifications for the Work.

§ 3.3.10 Any discrepancy or omission in the dimensions or elevations shown on the Drawings and Specifications or found in previous Work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the misdescription of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

§ 3.3.11 Contractor shall engage workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of an approved engineer or foreman. Contractor shall be liable for all property damage, including repairs and replacements of the Work and economic losses, which proximately result from the breach of this duty. Contractor shall advise Architect:

.1 if a specified product deviates from good construction practices;
.2 if following the Specifications will affect any warranties; or
.3 any objections which Contractor may have with the Specifications.

Nothing contained in Section 1.1.3 shall alter the responsibilities established in this Section.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By making requests for substitutions based on Section 3.4.2, Contractor:

.1 represents that Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
.2 represents that Contractor will provide the same warranty for the substitution that Contractor would for that specified;
.3 certifies that the cost data presented is complete and includes all related costs under this Contract except Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
.4 will coordinate the installation for the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor shall also be responsible for labor peace on the Project and shall at all times make its best efforts and judgments as an experienced Contractor to adopt and implement policies and practices designed to avoid Work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances and shall at all times maintain Project-wide labor harmony. Except as specifically provided in Section 8.3 hereof, Contractor shall be liable to Owner for all damages suffered by Owner.

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§ 3.4.4 Materials shall conform to manufacturer's standards in effect at the date of execution of the Agreement and shall be installed in strict accordance with manufacturer's directions. Contractor shall, if required by Owner or Architect, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers clearly labeled, and delivery slips shall be submitted with bulk materials identifying thereon the source, and warranting quality and compliance with Contract Documents.

§ 3.4.5 When the Contract Documents require the Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules and regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by Contractor in accordance with the Contract Documents.

§ 3.4.6 When the manufacturer's name, patent numbers, underwriter's labels, model numbers or similar identifying marks are required, such markings shall be located as inconspicuously as possible.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of the best quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from faults and defects. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 ALL WARRANTIES SHALL INCLUDE LABOR AND MATERIALS AND THE MANUFACTURER'S WARRANTY SHALL BE SIGNED BY SUBCONTRACTOR AND COUNTERSIGNED BY CONTRACTOR. ALL WARRANTIES SHALL BE ADDRESSED TO OWNER AND DELIVERED TO ARCHITECT UPON COMPLETION OF THE WORK AND BEFORE OR WITH THE SUBMISSION OF REQUEST FOR FINAL PAYMENT.

§ 3.5.3 Contractor shall issue in writing to Owner as a condition precedent to final payment a "general warranty" reflecting the terms and conditions of this Section 3.5 for all Work under the Contract.

§ 3.5.4 The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after final completion of the entire Work unless a longer time is specifically called for in the specifications. The Contractor shall assign all components, equipment and fixture warranties to the Owner and will deliver all manuals to the Owner at the completion of construction.

§3.5.5 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to Owner.

§3.5.6 Warranties shall become effective on a date established by Owner and Architect in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties.

§3.5.7 If Architect considers it impractical, because of unsuitable test conditions or some other factors, to execute simultaneous final acceptance of all equipment, portions of properly installed and functioning equipment may be certified by Architect for final acceptance, subject to Owner's approval, when that portion of the system is complete and ready for operation as called for under Section 9.8.1.

§3.5.8 Contractor shall warrant for a period of twelve (12) months that the building(s) shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond Contractor's control. Contractor shall, immediately upon notification by Owner of water penetration, determine the source of water penetration and, at its own expense, do any Work necessary to make the building(s)

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watertight. Contractor shall also, at its own expense, repair or replace any other damaged material, finishes, and furnishings, damaged as a result of this water penetration, to return the building(s) to its (their) original condition.

§3.5.9 In addition to the foregoing stipulations, Contractor shall comply with all other warranties referred to in any portions of the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirement shall govern.

§3.5.10 If for any reason Contractor cannot warrant any part of the Work using material or construction methods that have been specified, or shown, it shall notify Owner and Architect in writing before the Contract is signed, giving reasons, together with the name of product and data on a substitution it can warrant.

§ 3.6 TAXES

The Contractor shall pay applicable sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall make application, secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract, including without limitation, street openings, sidewalk, and other obstructions, access over public ways and storage necessary for proper execution and which are, legally required at the time bids are received or negotiations concluded.

§3.7.1.1 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency and state and local authorities, that require completion of documentation and/or acquisition of all permits for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during construction phase which modifies the original site drainage plan and requires the issuance of a permit shall be at Contractor's sole cost.

a. The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar utility connection charges.

b. The Contractor shall be responsible for obtaining and paying for all City and County Building Permits, Inspection Fees and Plan Checking Fees; temporary utility charges, tap charges and water meter charges and any other similar fees assessed by jurisdictional authorities having control over the Project.

c. The Owner shall pay fees payable to the Texas Department of Licensing and Regulations (TDLR) for document review relative to the Elimination of Architectural Barriers Act and the Architect will submit the documents to the TDLR for review and approval.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work (including, without limitation, the installation of any materials or equipment) that it knows or reasonably should have known would be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the

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Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend to the Owner in writing an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. . No adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or based on data provided to Contractor and by the Contractor's prior inspections, tests, reviews, and pre-construction services for the Project; or by the Contractors inspections, tests, reviews and pre-construction services that Contractor had the opportunity and obligation to make in connection with the Project but did not do so.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- **.1** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness. If a decision is needed to avoid a delay, Contractor shall notify Architect and Owner in writing sufficiently in advance of needed date to allow reasonable time for selections to be made.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The superintendent shall be satisfactory to the Owner and shall not be changed except with the consent of the Architect, unless the superintendent leaves the employment of the Contractor. No increase in Contract Time or Contract Sum shall be allowed in the event the Owner or Architects object to any nominated superintendent. Such approval by the Owner shall not be unreasonably withheld.

§ 3.9.3 DELETED.

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§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's review and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days and submitted to Architect with Contractor's Applications for Payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the original schedule. If any schedule submitted sets such a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Contractor shall submit to Architect and Owner for their review and approval a narrative description of the means and methods that Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the schedule.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's and Owner's approval. The Architect's and Owner's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 The process of approving Contractor's schedules and updates to Contractor's schedule shall not constitute a warranty by the Owner that any non-Contractor milestones or activities will occur as set out on Contractor's schedule. Approval of a Contractor's schedule does not constitute a commitment by the Owner to furnish any Owner-furnished information or material any earlier than Owner would otherwise be obligated to furnish that information or material under the Contract Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work, which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold resulting additional time and cost to a minimum. The construction schedule shall be in a detailed format satisfactory to the Owner and the Architect and shall also:

.1 provide a graphic representation of all activities and events that will occur during performance of the Work;
.2 identify each phase of construction and occupancy; and
.3 set forth dates that are critical in ensuing the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents hereinafter referred to as Milestone Dates.

§ 3.10.5 The Owner shall have the right to reschedule the time of day for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any rescheduling of performance of the Work under this Section 3.10.5 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1 and an equitable adjustments in the Contract Sum, if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, (2) such rescheduling is required for the convenience of the Owner and is not attributable to any act of omission of Contractor, and (3) if Owner agrees to the Contract Sum adjustment prior to any rescheduling.

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§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections (all changes and selections to be approved by Owner and Architect in advance) made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 At the Date of Substantial Completion and as a condition precedent to final payment, Contractor shall furnish the following documents to Architect for submittal to Owner: Record Drawings showing the field changes and selections (all changes and selections to be approved by Owner and Architect in advance) affecting the general construction, mechanical, electrical, plumbing, and all other Work, and indicating the Work as actually installed. These shall consist of carefully drawn markings on a set of reproducible prints of Architect's Drawings obtained and paid for by Contractor. Contractor shall maintain at the job site one (1) set of Architect's Drawings and indicate thereon each field change as it occurs. The Contractor shall post all Addenda on Construction Documents prior to commencing work on the site.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. If, in the opinion of the Architect, the Shop Drawings, Product Data, Samples and similar submittals are incomplete, indicate an inadequate understanding of the work covered by the submittals, or indicate a lack of study and review by the Contractor prior to submittal to the Architect, the submittals will be returned, unchecked, to the Contractor for correction of these three deficiencies and subsequent re-submittal. Additional service charges as outlined in Section 3.2.7 may be charged by the Architect in this event.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop

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Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional who shall comply with requirements of Owner regarding qualifications and insurance, and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 The Contractor shall submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents to the Architect at least 30 days prior to the date the Contractor needs the reviewed submittals returned. Where colors are to be selected by the Architect, the Contractor shall submit all Samples in adequate time to allow the Architect to prepare a complete selection schedule. In general, all submittals requiring color selection shall be submitted to the Architect within four weeks of the date of the Contract for construction.

§3.12.12 The Contractor shall submit the number of copies of Shop Drawings, Product Data, Samples and similar submittals which the Contractor and his Subcontractors need for their use plus two additional sets for the Architect and one additional set for each of the Architect's consultants involved with the particular section of work. Where shop drawings are involved, the Contractor shall submit one high quality reproducible transparency and one opaque print of the shop drawing for the Architect plus one additional opaque print for each of the Architect's consultants involved with the particular section of work. The reproducible transparency will be marked by the Architect and/or his consultants and returned to the Contractor for his use, distribution, correction or re-submittal as required. The Architect and his consultants will retain the marked up prints. After final review and correction of the submittal, the Contractor shall send two corrected sets to the Architect, and one to each of the Architect's consultants involved with the particular section of work.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§3.13.1 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

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§3.13.2 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without written consent of the Owner.

§3.13.3 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision on the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of: (1) any area and buildings adjacent to the site or the Work or (2) the Building in the event of partial occupancy.

§3.13.4 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including without limitation, lavatories, toilets, entrance and parking areas other than those designated by Owner. Without limitation of any other provisions of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 Prior to the Architect's inspection for Submittal Completion the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roof, gutters and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

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§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless Owner, the Board of Trustees of Owner, all elected officials, employees and agents of Owner and of any of the above mentioned parties (the "Indemnified Parties") from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty, or cause of action (including attorneys' fees), directly or indirectly arising out of, resulting from, or related to (in whole or in part), (1) the Work performed hereunder, (2) the Contract, or (3) the act or omission of Contractor, a Subcontractor, or an individual, partnership, joint venture, corporation or other entity (a) directly or indirectly employed by Contractor or a Subcontractor, or (b) for whose acts or omissions Contractor or a Subcontractor may be liable (excluding property damage to the Work itself, covered by Owner's all-risk builder's risk insurance, subject to Contractor's liability for any deductible amounts thereunder). The obligations of Contractor under this indemnification shall apply to all matters except those arising solely from the wanton and willful negligence or the malicious acts or omissions of Owner. Further, the obligations of Contractor under this indemnification shall not extend to the liability of Architect, its agents, or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or Specifications, (2) the giving of or failure to give directions or instructions by Architect, its agents, or employees, provided such giving or failure to give is the primary cause of the injury or damage, or (3) any matter prohibited by Section 130.002, Texas Civil Practice and Remedies Code. Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding, or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense, shall assume on behalf of Owner and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to Owner; provided, Owner shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both Contractor and Owner, and Owner shall have reasonably concluded that there may be legal defenses available to it that are different from, or additional to, or inconsistent with, those available to Contractor, then Owner shall have the right to select separate counsel to participate in the defense of such action on its own behalf at Contractor's expense. In the event of failure by Contractor to fully perform in accordance with this indemnification Section, then Owner, at its option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by Owner in that event shall be reimbursed by Contractor to Owner, together with interest on the same from the date any such expense was paid by Owner until reimbursed by Contractor, at the rate of interest provided to be paid on judgments by the law of the jurisdiction to which the interpretation of the Contract is subject. The obligations of Contractor under this Section shall survive the expiration of the Contract and specifically shall survive the limitations contained in Section 15.1 hereof.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.19 SUBSTITUTIONS OF PRODUCTS AND SYSTEMS, "OR EQUAL" BRANDS

§ 3.19.1 The materials, products and the systems covered by these specifications have been selected as a standard because of quality, particular suitability, or record of satisfactory performance. It is not intended to preclude the use of equivalent or better materials, products or systems provided that it meet the requirements of the particular project and have been approved in an addendum as a substitution prior to the submission of bids. If prior written approval in an addendum has not been obtained, it will be assumed that the Bid is based upon the materials, products, and systems described in the Bidding Documents and no substitutions will be permitted, except as provided hereinafter.

§3.19.2 If, after award of contract, the Contractor or one of his Subcontractors or Suppliers determines that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor the Warranty, the Contractor shall promptly notify the Architect, in writing, providing detailed substantiation for his position. Any changes deemed necessary by the Owner and Architect, including substitution of materials and change in Contract Sum, either upward or downward, if any, shall be accompanied by appropriate modification.

§3.20 RECORD DRAWINGS

§3.20.1 At the completion of the project, the Contractor shall submit one complete set of blue lines showing all changes and routing of utilities made during construction, excluding Architect made CAD changes, to the Architect. Drafting

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shall be legible to the Architect's satisfaction. The Contractor shall pay for the cost of the required recording/drafting. The record set shall be kept up to date on a daily basis and the Architect shall review its status at the project meetings. The Architect shall furnish the Contractor with a blueline set at contract award which shall have all Addenda incorporated. The Owner will pay for the printing of the blueline set. The Architect will incorporate any record information into the construction (CAD) documents and provide the Owner with an electronic copy of the record information on the Construction documents that have all bid and construction changes incorporated. The cost for incorporating the record information into the CD will be paid for by the Owner. The Architect will transmit the electronic CD to the Owner with a copy of the transmittal to the Contractor's construction manager.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect whose status under the Contract Documents shall be that of the former Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect, as representative of the Owner,will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will be required to make on-site inspections as necessary to keep the Owner informed of the progress of the Work and as necessary to guard the Owner against defects and deficiencies in the Work. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect shall not have control over or charge of and shall not be responsible for safety precautions and programs in connection with the Work. Architect shall be responsible for promptly notifying Contractor of the failure of Contractor, Subcontractors or any other persons performing any of the Work, in failing to use proper construction means, methods, techniques, sequences, procedures, safety precautions and programs, but only to the extent Architect becomes aware of, or should, exercising due professional diligence, be aware of, same. Architect shall also promptly notify Owner in writing of the failure of any of the foregoing parties to carry out the Work in accordance with the Contract Documents.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority and responsibility to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve or reject, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 DELETED.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site or to otherwise furnish labor, material or other services with respect to a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site or to otherwise furnish labor, material or other services with respect to a portion of the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, but no later than 10 days prior to the submittal date for the Contractor's first Application for Payment shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. Failure of the Contractor to submit the subject names in a timely manner may delay processing of the Contractor's Application for Payment.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1 All subcontracts shall be in written form and shall specifically provide that Owner is an intended third-party beneficiary of the subcontract.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

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.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 5.5 Contractor shall promptly notify Owner and Architect of any material defaults by any Sub-contractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Sub-contractor or other materialman or workman employed by Contractor the right to obtain a personal judgment or to create a lien against Owner for the amount due from the Contractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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§ 6.2.3 DELETED.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may only be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents and is subject to the approval of the Owner.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect and is subject to the approval of the Owner.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Section 7.3 and 9.7, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited, to all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§7.2.3 Contractor shall keep and periodically submit to Owner copies of a log for all Change Orders.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Contractor shall keep and periodically submit to Owner copies of a log for all Construction Change Directives and a log for all requests for information.

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§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation in writing between the Owner and the Contractor;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon in writing between the Owner and the Contractor;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, in each case in writing between the Owner and the Contractor; or

.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit not to exceed a total maximum of **fifteen** percent **(15%)** for all Work, and further limited to as follows, not to exceed five percent (5%) for Work done by Contractor's employees and **ten** percent **(10%)** of such Work's actual cost to be apportioned between any and all Subcontractors and Sub-subcontractor. "*Actual cost*" does not include any item that could be deemed to be a general conditions cost or overhead, such as, but not limited to, the cost of Contractor and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

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reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority after having obtained Owner's approval to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.1.1 The Work shall be fully completed within the time limit and/or date stated in the Contract between Owner and Contractor.

§ 8.1.1.2 Liquidated Damages: If the Contractor should fail to fully complete the Work within the stated time (subject however to extension of time duly granted in the manner and for the causes specified in the General Conditions), Contractor shall be charged by and shall pay to Owner, as liquidated damages, the sum specified in Article 3 of the AIA document A101 – 2017 by and between Owner and Contractor to which this document is attached as Exhibit A per calendar day that the Work remains incomplete beyond the time fixed for completion. Contractor hereby agrees that from the nature of the project it would be impracticable and extremely difficult to fix the actual damage that would or will be suffered in the event that Contractor should fail to fully complete the Work by the time limit or date stated and the amount of the liquidated damages are fair and reasonable. The parties agree that the liquidated damages are a reasonable forecast of just compensation for the harm done to Owner that would be caused by Contractor's failure to timely complete the Work. Contractor agrees that the amount of liquidated damages due Owner may be deducted by Owner from any monies that might otherwise be or become payable to Contractor.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes

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beyond the Contractor's control; or by delay authorized by Owner pending mediation, or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of Contractor or that are otherwise the responsibility of Contractor and shall also be net of any contingency or "float" time allowance included in Contractor's construction schedule. Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Contactor shall not be entitled to damages of any type for delays caused by Owner, his servant, agents, employees, or separate Contractors hired or retained by Owner. Contractor may receive an extension or extensions for additional time in which to complete the Contract but shall not receive any damages of any type for such delays. Changes in the Work, regardless of the extent or number of such Changes or Owner's exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the Work.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.1 Commitment of Current Revenues Only. As reflected in Section 4.5 of the modified AIA document A101 – 2017 Edition by and between Owner and Contractor to which this document is attached as Exhibit A, in the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Contract, then any party may terminate this Contract upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to Subcontractors, supported by such evidence of correctness as Architect may direct or as required by Owner. This schedule, when approved by Architect and Owner, shall be used to monitor the progress of the Work and as a basis for Certificates for Payment. All items with entered values will be transferred by Contractor to the "Application and Certificate for Payment," and shall include the latest approved Change Orders and Construction Change Directives. Change Order values and Construction Change Directives values shall be broken down to show the various subcontracts. The Application for Payment shall be on a form as provided by Architect and approved by Owner. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed, and value yet to be completed. All blanks and columns must be filled in, including every percentage complete figure. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Any

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allowances included in the Application for Payment shall be separately itemized with supporting data attached. The Application for Payment shall be accompanied by a certification by an office of Contractor to the effect that:

> There are no known mechanics', materialman's or laborers' liens or claims, or any other liens or claims, legal or equitable, contractual, statutory, or constitutional, outstanding or known to exist at the date of this Application; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application and there is no known basis for the filing of any mechanics', materialman's or laborers' lien or claim, or any other lien or claim, legal or equitable, contractual, statutory, or constitutional, on the Work; and waivers and releases from all Subcontractors, laborers, and material men for Work done and materials furnished have been obtained in such form as to constitute an effective waiver and release of all such liens and claims under the laws of the state within which the Project is located and shall be delivered to Architect together with Contractor's waiver and release of liens and claims at the time of submission of the Application for Payment.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing by the Owner and Surety. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, that Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and on all other information available to Architect including, without limitation, the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and

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inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified and that the aggregate amount theretofore paid to Contractor plus any applicable retention does not exceed the value of the completed portion of the Work. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a separate contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- **.7** failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion within the Contract Time, subject to extensions of time allowed under these Conditions, Architect may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of the Application for Payment and to the time it is reasonably anticipated that Substantial Completion will be achieved.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner may refuse to make payment on any Certificate for Payment for any default of the Contract, including, but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7. Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 DELETED.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not, for reasons other than a default of the Contract, including but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7 pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or if Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Sum and may, in Owner sole discretion, elect either to (i) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (ii) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof (which Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of issuance of the certificate of final payment by Architect unless otherwise provided in the Certificate of Substantial Completion. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract are in place. In general, the only remaining Work shall be minor in nature, so that Owner and/or Owner's employees and if applicable, the public, could occupy the building on that date and the completing of the Work by Contractor would not materially interfere or hamper Owner's or Owner's employees and if applicable, the public, (or those claiming by, through, or under Owner) from normal County operations. As a further condition of Substantial Completion acceptance, Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the Date of Substantial Completion. If Contractor requests a Substantial Completion review, and Architect, after performing the Substantial Completion review, finds that the Project was not ready for the Substantial Completion review, then Contractor shall pay the Architect's fees for any additional Substantial Completion reviews.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§9.8.6 In order for the project or a major portion thereof to be considered substantially complete, the following conditions must be met: (1) All inspections by governmental authorities have jurisdiction over the project must have been finalized, any remedial work required by those authorities must have been completed, and Certificates of Occupancy and similar governmental approval forms must have been issued and copies delivered to the Owner and Architect. (2) All work, both interior and exterior, shall have been completed and cleaned except minor items which if completed after occupancy, will not, in the Owner's opinion, cause interference to the Owner's use of the building or any portion thereof. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be the sole judge of what constitutes a significantly large number of items.

§9.8.7 After the date of Substantial Completion of the Project is evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of thirty (30) days, unless extended by mutual agreement or provision of the Contract, within which to correct all deficiencies attached to the Certificate of Substantial Completion. Failure of the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In this report, the Contactor and surety will be informed that, should correction remain incomplete for fifteen (15) days, the Owner may initiate action to complete corrective work out of the remaining Contract funds in accordance with Article 14.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any portion of the Work authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- **.1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- .4 faulty or defective Work appearing after Substantial Completion.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

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.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons

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or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 DELETED.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 DELETED.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor and Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- **.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- **.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- **.3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- **.4** Claims for damages insured by usual personal injury liability coverage;
- **.5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- **.6** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- **.7** Claims for bodily injury or property damage arising out of completed operations; and
- **.8** Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 SCHEDULE OF INSURANCE COVERAGES

§ 11.1.5.1 Contractor shall carry and keep in full force for the duration of the project the following Coverage.

Coverage	**Minimum Amounts and Limits**
Worker's Compensation	
Employer's Liability:	Statutory Limits
Bodily Injury by Accident	$500,000.00/each accident
Bodily Injury by Disease	$500,000.00/each employee
Bodily Injury by Disease	$500,000.00/Policy Limit
Commercial General Liability	
Bodily Injury/Property Damage	$1,000,000.00 per occurrence $2,000,000.00 aggregate

(Premises Operations, Independent Contractors, Product/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage).

Comprehensive Automobile Liability	$1,000,000.00 Combined Single Limit per Occurrence

Auto liability insurance shall be on a standard form written to cover all owned, hired, and non-owned automobiles. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insured, contain cross-liability and severability of interest endorsements, and state that this insurance is primary insurance as regards to any other insurance carried by the Indemnified Parties (see Section 3.18).

§11.1.5.2 All policies shall contain special endorsements to include:

.1 The Owner as an additional insured (except for Worker's Compensation) and all other parties identified in Section 3.18 (Indemnified Parties);

.2 Wavier of Subrogation in favor of Owner under the Worker's Compensation and Employer's Liability policies.

.3 A statement that a notice shall be given to Owner by certified mail thirty (30) days prior to cancellation or upon any material changes in coverage.

4. Contain cross-liability and severability of interest endorsements;

5. state that this insurance is primary insurance in regard to any other insurance carried by an Indemnified Party (see Section 3.18);

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.6 the following coverage:

a. Premises/Operations;
b. Independent Contractors;
c. Completed Operations for a period of two years following the acceptance of Contractor's Work;
d. Comprehensive General Liability Endorsement to include Blanket Contractual Liability (specifically covering, but not limited to, the contractual obligations assumed by Contractor, Broad Form Property Damage, and Personal Injury Liability with employee and contractual exclusions removed);
e. Deletion of exclusions relative to Collapse, Explosion, and Underground Property Damage Hazards;
f. Personal Injury Liability with the contractual exclusions removed;
g. Cross Liability Endorsement.

§11.1.5.6 Umbrella Excess Liability Insurance

Bodily Injury and	$2,000,000.00 per occurrence
Property Damage	$2,000,000.00 aggregate

This policy shall be written on an umbrella excess basis above, the coverage described in this Article 11. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insureds. The policy shall contain cross-liability and severability of interest endorsements and shall state, as regard the Indemnified Parties that the insurance is primary insurance as to any other insurance carried by any Indemnified Party. The policy shall be endorsed to provide the defense coverage obligation.

§11.1.6 Further, Contractor shall require all Subcontractors to carry similar insurance coverage and limits of liability as required under this Article 11, adjusted to the nature of Subcontractor's operations and submit same to Owner for approval before any Work commences.

§11.1.7 In the event Contractor fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, Contractor shall indemnify, defend, and hold harmless the indemnified parties from any and all claims for which the required insurance would have provided coverage.

§11.1.8 Workers' Compensation Insurance Coverage.

§11.1.8.1 Definitions:

.1 Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

.2 Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

.3 Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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§11.1.8.2 The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

§11.1.8.3 The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

§11.1.8.4 If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

§11.1.8.5 The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

.1 a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

.2 no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

§11.1.8.6 The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

§11.1.8.7 The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

§11.1.8.8 The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

§11.1.8.9 The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

.2 provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

.3 provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

.4 obtain from each other person with whom it contracts, and provide to the contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

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.5 retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

.6 notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

.7 contractually require each person with whom it contracts, to perform as required by paragraphs .1 - .7, with the certificates of coverage to be provided to the person for whom they are providing services.

§11.1.8.10 By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§11.1.8.11 The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.2.1 By signing the Contract or providing or causing to be provided a Certificate of Coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that coverage will be based on proper reporting or classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§11.2.2 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Article 11.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Contractor shall obtain a builder's risk "all-risk" or equivalent policy in the amount of the initial Contract Sum (or if applicable Guaranteed Maximum Price), plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. The policy must also name its subcontractors and the Owner as additional insured, as their respective interests may appear. Coverage shall include material stored on-site and in transit. Such insurance will be with a company or companies lawfully authorized to do business in Texas. The policy must have the following endorsement: "This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises."

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework,

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testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.1.1 For any claim made against Contractor's Builder's Risk Insurance, the deductible shall not exceed $2,500.00 for a Contract Sum of less than $4 million. For a Contract Sum of $4 million or more, the deductible shall not exceed $5,000.00.

§11.3.1.1.2 The Contractor waives all rights against (1) Owner, the Subcontractors, Sub-subcontractors, agents, and employees, and (2) the Architect, Architect's consultants, separate contractors, if any, and any of their Subcontractors, Sub-subcontractors, agents, and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as a fiduciary. The Contractor, as appropriate, shall require of any separate contractors, Subcontractors, Sub-subcontractors, agents, and employees of any of them by appropriate written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§11.3.1.1.3 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers. The Contractor shall pay all Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements shall require Subcontractors to make payment to their Sub-subcontractors in similar manner. If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor under the insurance proceeds.

§ 11.3.1.2 DELETED.

§ 11.3.1.3 DELETED.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use shall not affect the validity or coverage of property insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE DELETED.

§ 11.3.3 LOSS OF USE INSURANCE DELETED.

§ 11.3.4 DELETED.

§ 11.3.5 DELETED.

§ 11.3.6 DELETED.

§ 11.3.7 WAIVERS OF SUBROGATION

Contractor waives all rights against (1) Owner, the Subcontractors, Sub-subcontractors, agents and employees, and (2) the Architect, Architect's consultants, separate contractors if any, and any of their Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Article 11or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as fiduciary. The Contractor, as appropriate, shall require of any separate contractors, Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate

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written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 DELETED.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Sum, as security for the faithful performance of the Contract and also a one hundred percent (100%) Payment Bond, as security for the payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with the Contract. The Performance Bond and the Payment Bond may be in one or in separate instruments in accordance with local law. Surety companies must be authorized to write surety bonds in Texas and any such surety bond must comply with the requirements of Subchapter A of Chapter 3503 of the Texas Insurance Code.

§11.4.1.1 The Contractor shall deliver the required Bonds to the Owner not later than the date of the preconstruction meeting. All Bonds will be reviewed by the Architect for compliance with the Contract Documents prior to the execution of the Contract. In the event that Architect has any questions concerning the sufficiency of the bonds, Architect shall refer the bonds to Owner or Owner's representative for decision.

§11.4.1.2 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the Bonding Company shall be provided.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Bonds shall be provided to comply with the terms and provisions of Chapter 2253 of the Texas Government Code. Bonds shall be signed by an agent resident in the State of Texas and date of bond shall be on or after the date of execution of the Contract but prior to the date of the notice to proceed. If at any time during the continuance of the Contract, the surety of the Contractor's bonds becomes insufficient, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld until sufficient bonds are provided by Contractor.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs

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and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect as incomplete, defective, or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the entire Work (unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties), or within such longer period of time as may be prescribed by law or in equity, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be defective or otherwise not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This corrective period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. Corrective Work shall be warranted to be free from defects for a period equal to the longer of six (6) months after the completion of the corrective Work or one (1) year after the Date of Substantial Completion (subject to extension as previously described) or such longer period of time as may be prescribed by law or in equity, or expiration of the term of any applicable special warranty, if applicable, required by the Contract Documents. Any defect in such Work shall be corrected again by Contractor promptly upon notice of the defect from Owner. This obligation under this Section 12.2.2.1 shall survive acceptance of the Work under the Contract and termination of the Contract by the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§12.2.2.4 Just before the termination of the various guarantee periods, Contractor shall accompany Owner's agent and Architect on an inspection tour of the building and shall note any defects and shall start remedying these defects within ten (10) days of the inspection tour and shall prosecute the Work without interruption until accepted by Owner and Architect, even though such prosecution should extend beyond the limit of the guarantee period.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused in whole or in part by the Contractor's correction or removal of Work that is defective or otherwise not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents or under law or in equity. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is defective or otherwise not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

§13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice or if delivered by facsimile to the offices of the person or corporation for which it was intended. Facsimiles received after 5:00 p.m. on a business day, or on a weekend or legal holiday on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next business day.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or in equity or by any other agreement, and any such rights and remedies shall survive the acceptance of the Work and/or any termination of the Contract Documents.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Architect, Owner and Contractor shall be afforded a reasonable opportunity to attend, observe, and witness all inspections and tests of the Work. Architect or Owner may at any time request and receive from Contractor satisfactory evidence that materials, supplies, or equipment are in conformance with the Contract Documents. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve Contractor from its obligations under the Contract Documents unless specifically so stated by Owner in writing.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

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§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, or reveal faulty or otherwise defective Work, or if the necessity of any such testing, inspection, or approval procedures arises out of the fault, neglect, or omission of Contractor, Contractor shall bear all costs of such testing, inspection, and approval procedures and all other costs made necessary by Contractor's failures, including, without limitation, those costs of repeated and additional procedures and compensation for Architect's services and expenses of Owner's personnel and consultant fees and expenses. Such costs shall be paid by Contractor within ten (10) days of receipt of invoice from Owner with supporting data attached.

§ 13.5.4 Required certificates of testing, inspection or approval shall, be secured by the Contractor and delivered to the Owner, unless such testing or inspection services are arranged by Owner.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

An overdue payment bears interest at the legal rate established by the Texas Government Code, currently in Section 2251.025, or in the event no rate is so established, at the rate of one percent (1%) each month. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives an invoice from Contractor.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law.

§ 13.8.1 The Contractor shall maintain policies of employment as follows: "The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment, or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies."

§13.8.1.1 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

§13.9 CERTIFICATION OF ASBESTOS-FREE PROJECT

§13.9.1 Contractor shall submit to the Architect a letter addressed to the Owner certifying that all materials used in the construction of this Project contain less than 0.10 by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. Certification letters shall be dated, shall reference this specific Project, and shall be signed by not less than two (2) officers of the construction company.

§13.9.2 Certification shall further state that should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, that Contractor shall be responsible for determining which materials contain asbestos fibers and shall take corrective action to remove those materials from the Project at no additional cost to the Owner.

§13.9.3 Final payment shall not be made until this letter of certification has been received.

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ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or

.2 An act of government, such as a declaration of national emergency that requires all Work to be

(Paragraphs deleted)

stopped.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed in accordance with the Contract Documents.

§ 14.1.4 Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Sections 14.1.1 and 14.1.2.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 refuses or fails to supply enough properly skilled workers or proper materials and equipment;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 disregards the instructions of Architect or Owner (when such instructions are based on the requirements of the Contract Documents);

.5 is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law; or

.6 otherwise does not fully comply with the Contract Documents**.**

§ 14.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 To the extent the costs of completing Work, including compensation for additional professional services and expenses, exceed those costs that would have been payable to Contractor to complete the Work except for

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Contractor's default, Contractor will pay the difference to Owner, and this obligation for payment shall survive termination of the Contract. Such costs incurred by Owner will be determined by Owner and confirmed by Architect.

§14.2.5 In addition to Owner's right to remove Contractor from any part of Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, terminate any part of Work or any subcontract or all remaining Work for any reason whatsoever by giving seven (7) days' prior written notice to Contractor specifying the part of Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of Work not terminated. If any part of Work or subcontract is so terminated, Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) and for costs directly related to Work thereafter performed by Contractor in terminating such Work or subcontract including reasonable demobilization and cancellation charges provided said Work is authorized in advance by Architect and Owner. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such termination, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the Date of Substantial Completion and/or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

§14.2.6 Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Section 14.2.5.

§14.2.7 Upon a determination by a court of competent jurisdiction that termination of Contractor pursuant to Section 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.2.5 and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.2.5.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, without any overhead or profit on the Work not executed.

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right adjustment, or interpretation of the Contract Terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims must be by written notice.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Said written notice of claims shall state specifically the reason for the claim, the date or dates of the cause or causes of the claim, and if any extension of time is requested, the number of days of extension requested.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Architect. No such claim shall be value unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Extensions of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if Architect determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

(Paragraph deleted)

Contractor shall not be entitled to claims for additional time and/or increase in Contract Price due to a problem or non-performance of a subcontractor.

§ 15.1.7 In the event the Contractor fails to achieve substantial completion by the date indicated in the Contract, and extended by approved Change Order, the Owner shall be entitled to liquidated damages in the amount as stated in Section 3.1.1 of the modified AIA document A 101 – 2007 Edition by and between Owner and Contractor to which this document is attached as Exhibit A per day until the Work is substantially completed. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult and in no sense be considered a penalty.

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This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim in whole or in part, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to litigation.

§ 15.2.6 DELETED.

§ 15.2.6.1 DELETED.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 DELETED.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract may be subject to mediation as a condition precedent to litigation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

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§ 15.3.3 The parties shall share the mediator's fee. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

The parties expressly agree that disputes or claims arising under the Contract Documents shall not be subject to arbitration unless mutually agreed by the parties in writing.

OWNER:	**CONTRACTOR:**
McALLEN INDEPENDENT SCHOOL DISTRICT	**NOBLE TEXAS BUILDERS, LLC**
By: _____	By: _____
	Printed Name:
	Title:
_____	_____
Date	Date

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

(Paragraphs deleted)

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PAGE 1

Request for Cooperative Quotes No. 2023-1010 Kitchen Renovations for Leonel H. Gonzalez Elementary School and Andrew Jackson Elementary School (Owner Contract No. 2023-057)
Leonelo H. Gonzalez Elementary
201 E. Martin Avenue
McAllen, TX 78501

Andrew Jackson Elementary
501 Harvey Ave.
McAllen, TX 78501

...

McALLEN INDEPENDENT SCHOOL DISTRICT
2000 North 23rd Street
McAllen, Texas 78501

...

(Name, legal status and address)

Halff Associates, Inc.
5000 W. Military Hwy, Suite 100
McAllen, Texas 78501

PAGE 3

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~~2.4,~~ 2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

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9.7, 11.3.9, 11.3.10, ~~13.1,~~ 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1

PAGE 4

1.1.1, ~~2.4,~~ 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, ~~3.11,~~ 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

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3.2.4, ~~3.7.4, 6.1.1,~~ 3.7.46.1.1, 8.3.2, 10.3.2, **15.1.5**

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~~1.6,~~ 1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

PAGE 5

3.3.2, 3.18, ~~5.3,~~ 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8

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~~2.4,~~ 2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

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3.14.2, 9.9.1, 10.2.1.2, 10.2.5, ~~10.4,~~ 10.4.1, 11.3.1, 12.2.4

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~~2.3, 2.4,~~ 2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

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3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, ~~10.4,~~ 10.4.1, 14.3.2, 15.1.5, 15.2.5

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1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, ~~3.13,~~ 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

PAGE 6

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, ~~10.4,~~ 10.4.1, 14.3, 15.1.5, 15.2.5

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4.2.1, 4.2.9, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.3.1, 11.3.5, ~~12.3,~~ 12.3.1, 14.2.4, 14.4.3

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PAGE 7

1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, ~~3.13,~~ 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

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1.5, 2.1.1, ~~2.3, 2.4,~~ 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, ~~12.3,~~ 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7

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1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, ~~3.11,~~ 3.11.1, 3.17, 4.2.12, ~~5.3~~5.3.1

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4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, ~~12.3,~~ 12.3.1, 13.7, 14.2.4, 14.4.3

PAGE 8

3.3.2, 3.18, 4.2.3, ~~5.3,~~ 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

...

3.3.1, 4.2.2, 4.2.7, ~~5.3,~~ 5.3.1, **10.1**, 10.2, 10.4

PAGE 9

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, ~~11.4.1,~~ 11.4.1.1, 12.2.1, **13.5**

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PAGE 10

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. Unless specifically enumerated in the Agreement,~~ 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.

...

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,~~ 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.

...

§ 1.1.3.1 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.

...

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.~~diagrams wherever located and whenever issued.
PAGE 11

§ 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

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Drawings themselves or within the Specifications themselves have been referred to Owner and Architect by Contractor prior to the submission of bids and have been clarified by an Addendum issued to all bidders.

If such differences or conflicts were not called to Owner's and Architect's attention prior to submission of bids, Architect shall decide which of the conflicting requirements will govern based upon the following: the most stringent of the requirements will take precedence over the less stringent; the most expensive item will take precedence over the less expensive, and subject to the approval of Owner, Contractor shall perform the Work at no additional cost and/or time to Owner in accordance with the Architect's decision. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable as being necessary to produce the intended results.

§ 1.2.1.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

.1 The Agreement;
.2 Addenda, with those of later date having precedence over those of earlier date;
.3 Supplemental Conditions, if any;
.4 The General Conditions of the Contract for Construction;
.5 Specifications
.6 Drawings, in the case of inconsistency between the Drawings and Specifications or within either document, not clarified by Addendum, the better quality or greater quantity of Work shall be included in the Contract Documents. Clarifications of the inconsistency will be accomplished with the Contractor and, if necessary, an appropriate reduction in the contract will be accomplished by Change Order. Figures given on drawings govern scale measurements. Large scale drawings take precedence over small sale drawings. Written words take precedence over numbers. Handwritten documents take precedence over typewritten documents. Existing conditions take precedence over drawings and specifications for dimensions and shall be verified by the Contractor. The Contractor proceeds at his own risk if conflicts or discrepancies are not resolved prior to the execution of the Work.

§ 1.2.1.2 If Work is required in a manner to make it impossible to produce Work of the quality required by or reasonably inferred from the Contract Documents, or should discrepancies appear among the Contract Documents, Contractor shall request in writing an interpretation from Architect before proceeding with the Work. If Contractor fails to make such request, no excuse will thereafter be entertained for failure to carryout Work in the required manner or provide required guarantees, warranties, or bonds, and Contractor shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure.

PAGE 12

§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and~~ 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 ~~Architect's or Architect's~~ Owner's or Owner's consultants' reserved rights.

...

§ 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 ~~Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~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

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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 ~~The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~DELETED.

PAGE 13

§ 2.2.3 The Owner shall furnish surveys describing physical ~~characteristics,~~ characteristics and legal limitations ~~and utility locations~~ 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.

...

§ 2.2.5 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.~~1.5.2 for use on this Project. All costs of reproduction are the responsibility of Contractor.

...

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.~~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.

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§ 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.

PAGE 14

§ 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. ~~It is recognized~~

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~~that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~

§ 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.~~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.

PAGE 15

§ 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. ~~If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.~~

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§ 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 elevations shown on the Drawings and Specifications or found in previous Work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the misdescription of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

§ 3.3.11 Contractor shall engage workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of an approved engineer or foreman. Contractor shall be liable for all property damage, including repairs and replacements of the Work and economic losses, which proximately result from the breach of this duty. Contractor shall advise Architect:

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.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.

PAGE 16

§ 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.

PAGE 17

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of ~~good~~ 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 ~~defects, except for those inherent in the quality of the Work the Contract Documents require or permit.~~ faults and defects. Work, materials, or equipment not conforming to these requirements may be considered defective. ~~The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect,~~ If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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§ 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.

PAGE 18

The Contractor shall pay applicable 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.

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§ 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 and~~ Contract, including without limitation, street openings, sidewalk, and other obstructions, access over public ways and

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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 ~~knowing it to~~ (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.~~ 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.

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PAGE 19

§ 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.

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§ 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 ~~Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.~~ 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 ~~The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~ DELETED.

PAGE 20

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's ~~information~~ 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.

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§ 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

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additional time and cost to a minimum. The construction schedule shall be in a detailed format satisfactory to the Owner and the Architect and shall also:

.1 provide a graphic representation of all activities and events that will occur during performance of the Work;
.2 identify each phase of construction and occupancy; and
.3 set forth dates that are critical in ensuing the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents hereinafter referred to as Milestone Dates.

§ 3.10.5 The Owner shall have the right to reschedule the time of day for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any rescheduling of performance of the Work under this Section 3.10.5 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1 and an equitable adjustments in the Contract Sum, if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, (2) such rescheduling is required for the convenience of the Owner and is not attributable to any act of omission of Contractor, and (3) if Owner agrees to the Contract Sum adjustment prior to any rescheduling.

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.
PAGE 21

§ 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.
PAGE 22

§ 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,~~ 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

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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.

...

§3.13.1 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.

PAGE 23

§ 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,

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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.

PAGE 24

§ 3.18.1 To the fullest extent permitted by ~~law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~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.

...

§ 3.19 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

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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.

PAGE 25

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect ~~as to whom the Contractor has no reasonable objection and~~ whose status under the Contract Documents shall be that of the former Architect.

...

§ 4.2.2 The ~~Architect will~~ 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 ~~will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not~~ shall not have control over or charge of and ~~will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.~~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.

PAGE 26

§ 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,

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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,~~ approve or reject, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, ~~but only for the limited purpose of checking~~ 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.

...

§ 4.2.13 ~~The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.~~DELETED.

PAGE 27

§ 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.~~ 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.~~ 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.

...

§ 5.2.1 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.

...

§ 5.2.3 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. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.~~

...

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By appropriate ~~agreement, written where legally required for validity,~~ 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.
PAGE 28

§ 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.~~If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

§ 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.
PAGE 29

§ 6.2.3 ~~The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.~~DELETED.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor ~~wrongfully~~ causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

...

§ 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.~~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 ~~alone.~~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

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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.

...

§ 7.2.2 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.

§ 7.3.1 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.

PAGE 30

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit ~~evaluation;~~evaluation in writing between the Owner and the Contractor;

.2 Unit prices stated in the Contract Documents or subsequently agreed ~~upon;~~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;~~ fee, in each case in writing between the Owner and the Contractor; or

...

§ 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 ~~as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.~~ 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:

PAGE 31

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.

...

§ 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),

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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.

...

§ 8.3.1 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 ~~the~~ Owner pending ~~mediation and arbitration;~~ 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.~~ 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.

PAGE 32

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Contactor shall not be entitled to damages of any type for delays caused by Owner, his servant, agents, employees, or separate Contractors hired or retained by Owner. Contractor may receive an extension or extensions for additional time in which to complete the Contract but shall not receive any damages of any type for such delays. Changes in the Work, regardless of the extent or number of such Changes or Owner's exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the Work.

...

§ 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.

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 and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require.~~ 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

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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.

...

§ 9.3.1 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, ~~if required under Section 9.2,~~ 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.

PAGE 33

§ 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.~~ 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.

...

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and on all other information available to Architect including, without limitation, the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and

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inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in ~~the amount certified.~~ 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, ~~(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4)~~ or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

PAGE 34

.6 reasonable evidence that the Work will not be completed within the Contract Time, ~~and~~ or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 ~~repeated~~ failure to carry out the Work in accordance with the Contract Documents.

...

§ 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.

§ 9.6.1 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.

PAGE 35

§ 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, except as may otherwise be required by law.~~Subcontractor.

...

§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~DELETED.

...

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 or awarded by binding dispute resolution,~~ Architect, then the Contractor may, upon seven additional days' written notice

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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.

...

§ 9.8.1 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.
PAGE 36

§ 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 ~~Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.~~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.

...

§9.8.6 In order for the project or a major portion thereof to be considered substantially complete, the following conditions must be met: (1) All inspections by governmental authorities have jurisdiction over the project must have been finalized, any remedial work required by those authorities must have been completed, and Certificates of Occupancy and similar governmental approval forms must have been issued and copies delivered to the Owner and Architect. (2) All work, both interior and exterior, shall have been completed and cleaned except minor items which if completed after occupancy, will not, in the Owner's opinion, cause interference to the Owner's use of the building or any portion thereof. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be the sole judge of what constitutes a significantly large number of items.

§9.8.7 After the date of Substantial Completion of the Project is evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of thirty (30) days, unless extended by mutual agreement or provision of the Contract, within which to correct all deficiencies attached to the Certificate of Substantial Completion. Failure of the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In this report, the Contactor and surety will be informed that, should correction remain

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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.

§ 9.9.1 The Owner may occupy or use any ~~completed or partially completed~~ portion of the Work ~~at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and~~ 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.

PAGE 37

.2 failure of the Work to comply with the requirements of the Contract Documents; ~~or~~
.3 terms of special warranties required by the Contract ~~Documents.~~Documents; or
.4 faulty or defective Work appearing after Substantial Completion.

PAGE 38

§ 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.

PAGE 39

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.~~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. ~~The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

...

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.~~DELETED.

...

§ 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

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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:
PAGE 40

§ 11.1.5 SCHEDULE OF INSURANCE COVERAGES
§ 11.1.5.1 Contractor shall carry and keep in full force for the duration of the project the following Coverage.

Coverage	**Minimum Amounts and Limits**
Worker's Compensation	
Employer's Liability:	Statutory Limits
Bodily Injury by Accident	$500,000.00/each accident
Bodily Injury by Disease	$500,000.00/each employee
Bodily Injury by Disease	$500,000.00/Policy Limit
Commercial General Liability	
Bodily Injury/Property Damage	$1,000,000.00 per occurrence
	$2,000,000.00 aggregate

(Premises Operations, Independent Contractors, Product/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage).

Comprehensive Automobile Liability	$1,000,000.00 Combined Single Limit per Occurrence

Auto liability insurance shall be on a standard form written to cover all owned, hired, and non-owned automobiles. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insured, contain cross-liability and severability of interest endorsements, and state that this insurance is primary insurance as regards to any other insurance carried by the Indemnified Parties (see Section 3.18).

§11.1.5.2 All policies shall contain special endorsements to include:

.1 The Owner as an additional insured (except for Worker's Compensation) and all other parties identified in Section 3.18 (Indemnified Parties);

.2 Wavier of Subrogation in favor of Owner under the Worker's Compensation and Employer's Liability policies.

.3 A statement that a notice shall be given to Owner by certified mail thirty (30) days prior to cancellation or upon any material changes in coverage.

4. Contain cross-liability and severability of interest endorsements;

5. state that this insurance is primary insurance in regard to any other insurance carried by an Indemnified Party (see Section 3.18);

.6 the following coverage:

a. Premises/Operations;
b. Independent Contractors;
c. Completed Operations for a period of two years following the acceptance of Contractor's Work;
d. Comprehensive General Liability Endorsement to include Blanket Contractual Liability (specifically covering, but not limited to, the contractual obligations assumed by Contractor, Broad Form Property Damage, and Personal Injury Liability with employee and contractual exclusions removed);
e. Deletion of exclusions relative to Collapse, Explosion, and Underground Property Damage Hazards;

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f. Personal Injury Liability with the contractual exclusions removed;
g. Cross Liability Endorsement.

§11.1.5.6 Umbrella Excess Liability Insurance

Bodily Injury and	$2,000,000.00 per occurrence
Property Damage	$2,000,000.00 aggregate

This policy shall be written on an umbrella excess basis above, the coverage described in this Article 11. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insureds. The policy shall contain cross-liability and severability of interest endorsements and shall state, as regard the Indemnified Parties that the insurance is primary insurance as to any other insurance carried by any Indemnified Party. The policy shall be endorsed to provide the defense coverage obligation.

§11.1.6 Further, Contractor shall require all Subcontractors to carry similar insurance coverage and limits of liability as required under this Article 11, adjusted to the nature of Subcontractor's operations and submit same to Owner for approval before any Work commences.

§11.1.7 In the event Contractor fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, Contractor shall indemnify, defend, and hold harmless the indemnified parties from any and all claims for which the required insurance would have provided coverage.

§11.1.8 Workers' Compensation Insurance Coverage.

§11.1.8.1 Definitions:

.1 Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

.2 Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

.3 Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

§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:

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.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

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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.

PAGE 43

§ 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.

§ 11.3.1 ~~Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on~~ Contractor shall obtain a builder's risk "all-risk" or equivalent policy ~~form~~ in the amount of the initial Contract ~~Sum,~~ Sum (or if applicable Guaranteed Maximum Price), plus value of subsequent Contract ~~Modifications~~ 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. ~~Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.~~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."

PAGE 44

§ 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

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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 ~~If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~DELETED.

§ 11.3.1.3 ~~If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~DELETED.

...

§ 11.3.1.5 Partial occupancy or use ~~in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of~~ shall not affect the validity or coverage of property insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

~~**The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.**~~**DELETED.**

§ 11.3.3 LOSS OF USE INSURANCE

~~**The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.**~~**DELETED.**

§ 11.3.4 ~~If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~DELETED.

§ 11.3.5 ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~DELETED.

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§ 11.3.6 ~~Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~DELETED.

...

~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other,~~ Contractor waives all rights against (1) Owner, the Subcontractors, Sub-subcontractors, agents and employees, and (2) the Architect, Architect's consultants, separate contractors ~~described in Article 6,~~ if any, and any of their ~~subcontractors, sub-subcontractors,~~ Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other ~~causes of loss~~ perils to the extent covered by property insurance obtained pursuant to this ~~Section 11.3 or~~ Article 11or other property insurance applicable to the Work, except such rights as ~~they have~~ Contractor has to proceeds of such insurance held by the ~~Owner~~ Contractor as fiduciary. The ~~Owner or~~ Contractor, as appropriate, shall require of ~~the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors,~~ any separate contractors, Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate ~~agreements, written where legally required for validity,~~ 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.

PAGE 45

§ 11.3.9 ~~If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. 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 after notification of a Change in the Work in accordance with Article 7.~~DELETED.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with ~~insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~ insurers.

...

§ 11.4.1 The ~~Owner shall have the right to require the Contractor to furnish bonds covering~~ 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 ~~payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.~~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,

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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.

...

§ 11.4.3 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.

...

§ 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.~~Time or Contract Sum.
PAGE 46

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.

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the ~~Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1,~~ 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. ~~The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ 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.

...

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§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.

§ 12.2.4 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.~~ 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.

PAGE 47

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.

...

The Contract shall be governed by the law of the place where the Project is ~~located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~located.

...

~~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.~~ **§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.

...

§ 13.4.1 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.~~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.

...

§ 13.5.1 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

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procedures. ~~The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.~~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. ~~Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.~~

§ 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, ~~all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.~~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, ~~unless otherwise required by the Contract Documents,~~ be secured by the Contractor and ~~promptly delivered to the Architect.~~delivered to the Owner, unless such testing or inspection services are arranged by Owner.

PAGE 48

~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~An overdue payment bears interest at the legal rate established by the Texas Government Code, currently in Section 2251.025, or in the event no rate is so established, at the rate of one percent (1%) each month. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives an invoice from Contractor.

...

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 ~~in accordance with the requirements of the final dispute resolution method selected in the Agreement~~ within the time period specified by applicable ~~law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.~~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

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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.

PAGE 49

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~ 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 ~~stopped;~~

~~.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~

~~.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~stopped.

...

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon ~~seven~~ fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work ~~executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.~~ properly executed in accordance with the Contract Documents.

§ 14.1.4 ~~If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~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.

...

.1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper ~~materials;~~materials and equipment;

...

.3 ~~repeatedly~~ 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);

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~~.4 otherwise is guilty of substantial breach of a provision 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, ~~upon certification by the Initial Decision Maker that sufficient cause exists to justify such action,~~ 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:

...

§ 14.2.4 ~~If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application,~~ 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.

PAGE 50

§ 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, ~~along with reasonable overhead and~~ without any overhead or profit on the Work not executed.

PAGE 51

A Claim is a demand or assertion by one of the parties seeking, as a matter of ~~right, payment of money,~~ 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.

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...

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.

...

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.

...

§ 15.1.5.2 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.

...

~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~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.

~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~**§ 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.

PAGE 52

§ 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,~~ 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.

...

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§ 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 ~~binding dispute resolution.~~litigation.

§ 15.2.6 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~DELETED.

§ 15.2.6.1 ~~Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~ DELETED.

...

§ 15.2.8 ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~ DELETED.

...

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract ~~except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall~~ may be subject to mediation as a condition precedent to ~~binding dispute resolution.~~ litigation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by ~~mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.~~ 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.~~The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

§ 15.3.3 The parties shall share the mediator's ~~fee and any filing fees equally.~~ 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.

PAGE 53

The parties expressly agree that disputes or claims arising under the Contract Documents shall not be subject to arbitration unless mutually agreed by the parties in writing.

OWNER:	**CONTRACTOR:**
McALLEN INDEPENDENT SCHOOL DISTRICT	**NOBLE TEXAS BUILDERS, LLC**
By: _____	By: _____
	Printed Name: _____
	Title: _____

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Date Date

APPROVED AS TO FORM
ATLAS, HALL & RODRIGUEZ, LLP

By: _____
Stephen L. Crain

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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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 18:10:11 ET on 06/09/2022 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 A201™ – 2007, General Conditions of the Contract for Construction, 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)

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Request for Proposal No. 2023-1004 Branding Rights for McAllen ISD's Game Day Athletic Uniforms

REFERENCE: Goal 1 - Student Achievement/Student Focus; Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited proposals for branding rights for McAllen ISD's game day athletic uniforms for high school football, boys & girls basketball, volleyball, boys & girls soccer, baseball, softball, boys & girls cross country, and boys & girls track.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

One hundred forty-two (142) vendors were invited to submit proposals; and ten (10) vendors responded, including seven (7) no bid responses. On June 9, 2022, the evaluation committee comprised of Brian McClenny, Director of Athletics; Raul Vega, Assistant Athletics Director; Lorena Lopez, Assistant Athletics Director; Elizabeth Cabrera, Coordinator for Purchasing Services; and Carol Quintanilla, Senior Buyer evaluated the proposals and are recommending that the Board award this Contract to BSN Sports, LLC for Under Armour brand, from Dallas TX, the second highest ranked vendor. BSN is offering annual incentives totaling $102,000 in year one; and $75,000 in years two and three. The District would like to continue to benefit from the incentives offered by BSN while maintaining the current existing Game Day uniforms (Under Armour), which will provide cost savings to the District by not requiring additional expenses with a new brand.

LEGAL REVIEW:

The District will utilize the standard service agreement, pending legal review.

BUDGETARY CONSIDERATIONS:

Funds for these purchases have been budgeted through local funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2023-1004 Branding Rights for McAllen ISD's Game Day Athletic Uniforms and award BSN Sports, LLC for a term of three (3) years, beginning August 13, 2022 through August 12, 2025, with the option to renew for two (2) additional one (1) year terms.

SUBMITTED BY: Brian McClenny (Jun 9, 2022 19:11 CDT)

SUPERVISOR: Brian McClenny (Jun 9, 2022 19:11 CDT)

For further information contact:
Name: Brian McClenny
Office: 956-618-6089
email: bmcclenn@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

EVALUATION MATRIX

2023-1004 Branding Rights for McAllen ISD's Game Day Athletic Uniforms

No	Criteria	Max. Pts. 100	It's Greek To Me dba Champion Teamwear	First to the Finish, Inc. (Under Armour)	BSN Sports, LLC (Under Armour)	BSN Sports, LLC (Alternate - Nike)
	Total Points	**100**	**53**	**33**	**57**	**67**
	Ranking					
1	**Price**	**36**	**30**	**31.0**	**18.3**	**20.6**
	Total (Total Line Items 3 through 14 less discount (Item 15))	30	30	25.0	18.3	20.6
			$488.65	$587.00	$800.20	$712.00
	Additional Cost for screen printing/logo (Line Item 75)	3	0	3	0	0
			Not provided	5	Not provided	Not provided
	Additional cost for embroidery (Line Item 76)	3	0	3	0	0
			Not provided	10	Not provided	Not provided
2	**Reputation of the vendor and of the vendor's goods or services;**	**9**	**9**	**0**	**9**	**9**
	Reference Checks		3 out of 3	0 out of 3	3 out of 3	3 out of 3
3	**The quality of the vendor's goods or services**	**2**	**2**	**2**	**2**	**2**
	Maximum delivery time frame	2	2	2	2	2
			2-3 weeks for std. orders; 5-7 weeks for sublimation orders	*8-12 weeks; 2-3 weeks*	*6-8 Weeks; 4-8 weeks custom; 7-14 days*	*6-8 Weeks; 4-8 weeks custom; 7-14 days*
4	**The extent to which the goods or services meet District's needs**	**48**	**12**	**0**	**25**	**32**
	Rebates (line item 78)	8	0	0	8	8
			None	*None*	*10% all items*	*10% all items*
	Commissions (line item 79)	8	0	0	0	0
			None	*None*	*None*	*None*
	Discounts (line item 80)	8	4	0	0	8
			15% off uniforms & warm ups, 10% off apparel	*None*	*None*	*BOGO Free year 1; Year 2- 3 $10K per HS for Nike Switchovers*
	Merchandise (line item 81)	8	4	0	9	8
			Spend $1,000,= 2 coaches packs; $1,500- 3 packs; $2,000 =4 packs; $2,500= 5 packs	*None*	*HS=$45K credit/yr;MS=$15k /yr; Ath. Dept=$5k/yr; Sponsorships=$5k/yr; 10% back on purchases*	*HS=$45K credit/yr;MS=$15k /yr; Ath. Dept=$5k/yr; Sponsorships=$5k/yr; 10% back on purchases*
	Advertising (line item 82)	8	0	0	0	0
			None	*None*	*None*	*None*
	Other Contract Incentives (line item 84)	8	4	0	8	8
			free shipping (over $100)	*None*	*$10k Waterboy graphics/HS & stadium; $500 branding package/HS; Motivational Speaker ($7k value)*	*$10k Waterboy graphics/HS & stadium; Motivational Speaker ($7k value)*
5	**Past Relationship with District**	**1**	**0**	**0**	**1**	**1**
	Positive past experience = 1 point; not positive past experience/no experience = 0 points					
6	**HUB**	**1**	**0**	**0**	**0**	
	Yes = 1 point; No = 0 points		No	No	No	No
7	**Total long-term cost to the district to acquire the vendor's goods or services**	**0**	**0**	**0**	**0**	**0**
8	**Vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state**	**1**	**0**	**0**	**1**	**1**
	Located in Texas, Yes = 1 point; No = 0 points		No	No	Yes	Yes
9	**Any other relevant factor specifically listed in the request for bids or proposals.**	**2**	**0**	**0**	**1**	**1**
	Other Information (Line item 87 and 88)		None	None	1 year guarantee on products	1 year guarantee on products

MCALLEN INDEPENDENT SCHOOL DISTRICT
CONTRACT NO. 2023-062 BSN Sports, LLC through Request for Proposal No. 2023-1004

This contract ("Contract"), made and entered into effective by and between **McALLEN INDEPENDENT SCHOOL DISTRICT** (hereinafter referred to as "District") and BSN Sports, LLC, a Texas Corporation (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, District recognizes that the **Athletics** 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 recordkeeping, and the delivery of quality Services;

WHEREAS, the Contractor is willing to accept the responsibility of providing the Services to the District in accordance with recognized standards, the Board Policies of District, applicable laws and regulations and the terms and conditions set forth in this Contract; and

WHEREAS, the parties desire to provide a full statement of their agreement in connection with the provision of the Services by Contractor during the term of this Contract;

NOW, THEREFORE, in consideration of the following mutual agreements and covenants, it is understood and agreed by and between the parties hereto as follows:

1. **OBLIGATIONS OF THE CONTRACTOR**

Contractor shall perform all of the work and provide all equipment, materials, and labor required in accordance with the terms and conditions of the Contract Documents, as hereinafter defined.

Contractor represents and warrants to District that Contractor possesses all of the licenses, permits, and expertise required to provide the equipment, materials, and labor and perform the services contemplated hereunder.

DRAFT

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. 2023-1004

C. Exhibit "B" – Vendor's Services, Products and Fees Pursuant to Request for Proposal No.2023-1004

D. Exhibit "C" – Certificate of Insurance

This Contract is entered into subject to the following conditions:

A. Contractor shall use its best efforts to keep to a minimum disruption or interruption of duties and/or work of employees of District and /or the learning environment of students of District while performing its work in accordance with the Contract Documents.

B. Contractor assumes full responsibility and liability for all labor and materials furnished and activities conducted by Contractor pursuant to this Contract and any action or omission incident thereto 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.

DRAFT

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 August 13, 2022 and remain effective through August 12, 2025, with the option to renew for two (2) additional one (1) year terms). All services must be completed during the term of the Contract.

DRAFT

A. **Termination without Cause**. District shall have the right to terminate this Contract without cause on thirty (30) days written notice to the Contractor.

B. Termination with Cause.

a. Termination by District. District may terminate this Contract immediately upon the occurrence of any of the following events:

i. Any conduct of the Contractor, which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the District.

ii. Failure to provide evidence of liability insurance, as required by numbered Paragraph 2 hereof.

iii. Failure of Contractor to immediately bar any individual from performing services under this Contract, if such individual does not meet the qualifications required by this Contract or if such individual commits a material breach of one of the terms of this Contract.

iv. In addition, if the Contractor commits a material breach of any of the terms of this Contract, other than those listed in subsections (i) through (iii) above, District may terminate this Contract upon no less than thirty (30) days written notice.

b. Termination by Contractor. In the event District breaches any material term of this Contract, Contractor may terminate this Contract upon no less than fifteen (15) days written notice.

c. Non-Interference. Following the expiration of this Contract or its termination for any reason, Contractor agrees to do nothing that may interfere with any contract of District with any other individual or entity for the provision of the services herein.

13. NOTICES

All notices provided to be given under this Contract shall be given in writing and will be deemed delivered when deposited in the United States Postal Service by certified or registered mail, addressed to the proper party, at the following addresses:

If to District: McAllen Independent School District
Attn: Jose A. Gonzalez, Superintendent
2000 N. 23rd Street
McAllen, Texas 78501

If to Contractor: BSN Sports, LLC
Attn: John Stafford
P.O. Box 7726:
Dallas, TX 75209-0726

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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.

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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 appropriations were made, without penalty, liability or expense to the District of any kind, except as to (i) the portions of the payment herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available and (ii) District's other obligations and liabilities under this Contract relating to, accruing or arising prior to such termination. In the event of such termination, District agrees to peaceably request that the Contractor or its assignee stop the services on the date of such termination.

25. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA).

Parental consent must be obtained before personally identifiable information is used for any purpose other than meeting a requirement under the Individuals with Disabilities Education Act or disclosed to anyone other than officials of agencies collecting or using this information. The District may not release information from these records without parental consent except as provided in the Family Educational Rights and Privacy Act (FERPA).

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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 on Part 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:_____
Tony Forina, Board President

VENDOR:

BSN Sports, LLC

By:_____
John Stafford, Bid Specialist

Approved as to form:
Atlas Hall & Rodriguez, LLP
by: _____
Stephen L. Crain

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Exhibit "A" – District's Request for Proposal No. 2023-1004

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2023-1004 Addendum 1

Branding Rights for McAllen ISD's Game Day Athletic Uniforms

Issue Date: 5/18/2022
Questions Deadline: 6/3/2022 10:00 AM (CT)
Response Deadline: 6/8/2022 10:00 AM (CT)

Contact Information

Contact: Carol Quintanilla, CTCD, Senior Buyer
Address: Purchasing Services
Administration Office
2000 N 23rd St
McAllen, TX 78501-6126
Phone: (956) 6574486
Fax: (956) 6574481
Email: carolina.quintanilla@mcallenisd.net

Event Information

Number:	2023-1004 Addendum 1
Title:	Branding Rights for McAllen ISD's Game Day Athletic Uniforms
Type:	Request for Proposal
Issue Date:	5/18/2022
Question Deadline:	6/3/2022 10:00 AM (CT)
Response Deadline:	6/8/2022 10:00 AM (CT)
Notes:	McAllen Independent School District (the "District") invites your submittal on the above referenced project.

Interested respondents may obtain details through IonWave. The District prefers and encourages respondents to submit their proposals electronically, through IonWave.

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: Brian McClenny
Address: Athletics
4309 Warrior Drive
Stadium
McAllen, TX 78501
Phone: (956) 6186089
Email: bmcclenn@mcallenisd.net

Billing Information

Contact: Dyanira Diaz, Director
Address: Accounting
2000 N. 23rd Street
McAllen, TX 78501
Phone: (956) 6328403
Email: Dyanira.Farias@mcallenisd.net

Bid Activities

Proposal Opening 6/8/2022 10:00:00 AM (CT)

A proposal opening will be held and the names of the companies responding shall be announced.

Bid Attachments

2023-1004 Addendum 1.pdf View Online

Addendum 1

General Terms and Conditions RFP.pdf View Online

General Terms and Conditions RFP

2023-1004 Specifications and SOW.pdf View Online

Specifications and Scope of Work

Exhibit A.pdf View Online

Exhibit A

IRS FORM W-9 Revised Oct 2018 (Fillable Form).pdf View Online

W-9 Form

CIQ FORM FILLABLE R1.1.2021.pdf View Online

Conflict of Interest Questionnaire (CIQ) form

Draft Contract thru RFP 2023-1004.pdf View Online

Draft Contract

Requested Attachments

Completed W9 Form

(Attachment required)

Please upload your completed W9 form.

Assumed Name Certificate/Fictitious Name Documentation/Disregarded Entity Documentation

Upload your Assumed Name Certificate/Fictitious Name Documentation/Disregarded Entity Documentation (if applicable).

Proof of Insurance (Acord Certificate of Insurance Form)

(Attachment required)

Please upload your certificate of insurance in Acord form.

Completed Conflict of Interest Questionnaire.

(Attachment required)

Please upload your completed CIQ.

Note: If no conflict, please indicate "N/A" on the form.

Completed Form 1295 Form or Exemption Statement

(Attachment required)

Please upload your completed 1295 Form.
Form must be completed online: http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

If not applicable to your company, please attach a statement indicating the reason.

HUB Certificate

Upload your HUB Certificate, if applicable.

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 Deviations and Exceptions

If your company intends to deviate from the Specifications listed in the solicitation attached documents, all such deviations and exceptions must be listed here, with complete and detailed conditions and information included. The District reserves the right to accept or reject any proposals based upon any deviations indicated below. **If none, enter N/A (Not Applicable)**.

(Required: Maximum 4000 characters allowed)

4 Form 1295 - Certificate of Interested Parties

The Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 before the District may enter into a contract with that business entity. Form 1295 must be submitted with your proposal and is required as condition of award. Form must be completed online.

Access form at:

- http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
- Complete the form
- Enter solicitation number and name
- Print and sign form
- Attach form on "Response Attachments" tab

If exempt, attach documentation.

☐ I have read and understand.
(Required: Check if applicable)

5 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 any proposer indebted to the District.

**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)

6 **Provide the business name as it is registered with the Texas Comptroller, or similar. *Note: the name must match IRS registration and W-9 form.**

(Required: Maximum 1000 characters allowed)

7 **Does your company have a business name on Line 2 of the W-9? If yes, attach an Assumed Name Certificate/Fictitious Name issued by the State/County (on the "Response Attachments" tab).**

☐ Yes (upload Assumed Name Certificate)

☐ No

(Required: Check all that apply)

8 **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)

9 **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).

(Required: Maximum 4000 characters allowed)

10 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)

11 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)

12 **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 employs 500+ in Texas

☐ C. Principal place is NOT in Texas

(Required: Check only one)

13 **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)

14 **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)

15 **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, 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 is your electronic signature.

☐ I have read and hereby certify.

(Required: Check if applicable)

16 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 TEXAS GOVERNMENT CODE 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 TEXAS GOVERNMENT CODE 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. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**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)

22 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)

23 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 sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The 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)

24	**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)*
29	**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)*

30	**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)*
31	**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)*

32 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)

33 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.

☐ I am an Active certified HUB vendor (attach HUB ce

☐ Small & Minority, WBE, Labor Surplus Area Firms ☐ I am neither.
(Required: Check only one)

34 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)

35 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)

36	**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)*

37	**Addendum** 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	**Vendor Information** **Item Attributes** **1. Vendor's Authorized Representative Name** _____ _____ _____ *(Required: Maximum 1000 characters allowed)* **2. Vendor's Authorized Representative Title** _____ _____ _____ *(Required: Maximum 1000 characters allowed)* **3. Vendor's Authorized Representative E-mail** [ ] *(Required: Email address)* **4. Vendor's Authorized Representative Phone** (__ __ __) __ __ __ - __ __ __ __ ext: [ ] *(Required)*

2	**Pricing (Items 3 through 14) - Specify Manufacturer Suggested Retail Price ("MSRP") (Refer to Specifications and SOW 10.7)**

3 MSRP - Football Jersey, Under Armour Gameday Compfit 2, UF029JM or equal
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Manufacturer: *(Required)*

Manufacturer #: *(Required)*

Supplier Notes:

☐ No bid
☐ Alternate specification *(Attach separate sheet)*
☐ Additional notes *(Attach separate sheet)*

4 MSRP - Football Pant, Under Amour Armourfuse, UJFP1 or equal
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Manufacturer: *(Required)*

Manufacturer #: *(Required)*

Supplier Notes:

☐ No bid
☐ Alternate specification *(Attach separate sheet)*
☐ Additional notes *(Attach separate sheet)*

5 MSRP **-** Basketball Jersey, Under Armour Armourfuse Primetime Plus Drive, DG, UJKJP2WUA or equal
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Manufacturer: *(Required)*

Manufacturer #: *(Required)*

Supplier Notes:

☐ No bid
☐ Alternate specification *(Attach separate sheet)*
☐ Additional notes *(Attach separate sheet)*

6 MSRP - Basketball Short, Under Armour Armourfuse Primetime Plus Drive, DG, UJKSP2W or equal
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Manufacturer: *(Required)*

Manufacturer #: *(Required)*

Supplier Notes:

☐ No bid
☐ Alternate specification *(Attach separate sheet)*
☐ Additional notes *(Attach separate sheet)*

7 MSRP - Volleyball Shorty, Under Armour, 4" Shorty, UA1351243 or equal
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Manufacturer: *(Required)*

Manufacturer #: *(Required)*

Supplier Notes:

☐ No bid
☐ Alternate specification *(Attach separate sheet)*
☐ Additional notes *(Attach separate sheet)*

8 MSRP - Volleyball, Jersey, Under Armour Armourfuse Showtime, V-Neck, Long Sleeve,UJVJ4LW or equal
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Manufacturer: *(Required)*

Manufacturer #: *(Required)*

Supplier Notes:

☐ No bid
☐ Alternate specification *(Attach separate sheet)*
☐ Additional notes *(Attach separate sheet)*

9 MSRP - Softball, Jersey, Under Armour Armourfuse, Gametime Faux Placket, UJSJX1W or equal
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Manufacturer: *(Required)*

Manufacturer #: *(Required)*

Supplier Notes:

☐ No bid
☐ Alternate specification *(Attach separate sheet)*
☐ Additional notes *(Attach separate sheet)*

10 MSRP - Softball, Knicker Pants, Under Armour Gameday Select Thief Pant, UB015PM or equal
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Manufacturer: *(Required)*

Manufacturer #: *(Required)*

Supplier Notes:

☐ No bid
☐ Alternate specification *(Attach separate sheet)*
☐ Additional notes *(Attach separate sheet)*

11 MSRP - Baseball, Jersey, Under Armour Armourfuse, Showtime, V-Neck, UJBJV3M or equal
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Manufacturer: *(Required)*

Manufacturer #: *(Required)*

Supplier Notes:

☐ No bid
☐ Alternate specification *(Attach separate sheet)*
☐ Additional notes *(Attach separate sheet)*

12 MSRP - Baseball, Taper Pant, Under Armour Game Day Select Legend,UB019PM or equal
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Manufacturer: *(Required)*

Manufacturer #: *(Required)*

Supplier Notes:

☐ No bid
☐ Alternate specification *(Attach separate sheet)*
☐ Additional notes *(Attach separate sheet)*

13 MSRP - Track, Singlet, Under Armour Armourfuse, UJTJ1 or equal
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Manufacturer: *(Required)*

Manufacturer #: *(Required)*

Supplier Notes:

☐ No bid
☐ Alternate specification *(Attach separate sheet)*
☐ Additional notes *(Attach separate sheet)*

14 MSRP - Track, Short, Under Armour Armourfuse, UJTSSPM or equal
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Manufacturer: *(Required)*

Manufacturer #: *(Required)*

Supplier Notes:

☐ No bid
☐ Alternate specification *(Attach separate sheet)*
☐ Additional notes *(Attach separate sheet)*

15 **Total Discount for Items 3 through 14** (Enter your discount as a negative dollar amount. i.e., -$1.00)
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Supplier Notes: _____

_____

☐ No bid
☐ Alternate specification *(Attach separate sheet)*
☐ Additional notes *(Attach separate sheet)*

16 **Category A: Football Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

17 Jersey (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes: _____

_____

☐ No bid
☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

_____

_____

_____

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

_____

_____

_____

(Required: Maximum 1000 characters allowed)

18 Jersey (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes: _____

_____

☐ No bid
☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

_____

_____

_____

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

19 Pants (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

20 Pants (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

21 Socks (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

22 Socks (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

23 Shoes (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

24 Shoes (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

25 Belt (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

26 Belt (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

27 **Category B: Basketball Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

28 Jersey (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

29 Jersey (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

30 Shorts (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

31 Shorts (Middle School), Under Armour or equal
(Response required)

Total: ____ %

Supplier Notes: _____

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

32 Socks (High School), Under Armour or equal
(Response required)

Total: ____ %

Supplier Notes: _____

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

33 Socks (Middle School), Under Armour or equal
(Response required)

Total: ____ %

Supplier Notes: _____

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

34 Shoes (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

35 Shoes (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

36 **Category C: Volleyball Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

37 Jersey (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

38 Jersey (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

39 Tights (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

40 Tights (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

41 Socks (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

42 Socks (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

43 Shoes (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

44 Shoes (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

45 **Category D: Soccer Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

46 Jersey (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

47 Jersey (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

48 Shorts (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

49 Shorts (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

50 Socks (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

51 Socks (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

52 Shoes (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

53 Shoes (Middle School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

54 **Category E: Baseball Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

55 Jersey (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

56 Pants (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

57 Socks (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

58 Shoes (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

59 Belt (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

60 Cap (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

61 **Category F: Softball Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

62 Jersey (High School), Under Armour or equal
(Response required)

Total: ____ %

Supplier Notes: _____

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

63 Pants (High School), Under Armour or equal
(Response required)

Total: ____ %

Supplier Notes: _____

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

64 Socks (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

65 Shoes (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

66 Belt (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

67 Cap (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

68 **Category G: Cross Country Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

69 Jersey (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

70 Shorts (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

71 **Category H: Track Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

72 Jersey (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

73 Shorts (High School), Under Armour or equal
(Response required)

Total: %

Supplier Notes:

☐ No bid

☐ Additional notes *(Attach separate sheet)*

Item Attributes

1. Specify Brand

(Required: Maximum 1000 characters allowed)

2. Specify Estimated Delivery

(Required: Maximum 1000 characters allowed)

74 **Additional Costs**

75 Additional Cost for Screen Printing/Logo
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Supplier Notes:

☐ No bid

☐ Alternate specification *(Attach separate sheet)*

☐ Additional notes *(Attach separate sheet)*

76 Additional Cost for Embroidery
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Supplier Notes:

☐ No bid
☐ Alternate specification *(Attach separate sheet)*
☐ Additional notes *(Attach separate sheet)*

77 **Incentive Program for Each of the High Schools (refer to Specifications and SOW 10.9)**

78 Rebates

Item Attributes

1. Provide details on rebates proposed (If none, enter "N/A").

(Required: Maximum 4000 characters allowed)

79 Commissions

Item Attributes

1. Provide details on commission proposed (if none, enter "N/A").

(Required: Maximum 4000 characters allowed)

80 Discounts

Item Attributes

1. Provide details on additional discounts proposed (If none, enter "N/A").

(Required: Maximum 4000 characters allowed)

81 Merchandise

Item Attributes

1. Provide details on merchandise incentives proposed (if none, enter "N/A").

(Required: Maximum 4000 characters allowed)

82 Advertising

Item Attributes

1. Specify any advertising/logo programs that will be expected of the District to follow (if none, enter "N/A").

(Required: Maximum 4000 characters allowed)

83 **Other Contract Incentives (refer to Specifications and SOW 10.10)**

84 Other Incentives

Item Attributes

1. Provide details on other incentives proposed (if none, enter "N/A").

(Required: Maximum 4000 characters allowed)

85 Added Value

Item Attributes

1. Added Value

Provide an overview of the benefits to and obligations of the District and Vendor associated with the offer for exclusivity. Provide details of the benefits offered. Clearly outline all obligations the District will incur if accepting your offer (include requirements such as advertising and/or promotion).

If none, enter "N/A".

(Required: Maximum 4000 characters allowed)

86 **Other Information (refer to Specifications and SOW 10.11)**

87 Quality of products/services

Item Attributes

1. Provide any other relevant factor/information that demonstrates product or service quality (if none, enter "N/A").

(Required: Maximum 4000 characters allowed)

88 Requirements/Timelines

Item Attributes

1. Provide requirements and timelines for ordering team uniforms (if none, enter "N/A").

(Required: Maximum 4000 characters allowed)

89 **References - List three (3) references with whom your company has had branding rights.**

Item Notes: The District reserves the right to contact any reference listed.

90 **Reference 1**

Item Attributes

1. Organization Name

(Required: Maximum 1000 characters allowed)

2. Contact Person

(Required: Maximum 1000 characters allowed)

3. Contact Person Email Address

(Required: Email address)

4. Contact Person Phone Number

(__ __ __) __ __ __ - __ __ __ __ ext:

(Required)

91 **Reference 2**

Item Attributes

1. Organization Name

(Required: Maximum 1000 characters allowed)

2. Contact Person

(Required: Maximum 1000 characters allowed)

3. Contact Person Email Address

(Required: Email address)

4. Contact Person Phone Number

(__ __ __) __ __ __ - __ __ __ __ ext:

(Required)

9 2 Reference 3

Item Attributes

1. Organization Name

(Required: Maximum 1000 characters allowed)

2. Contact Person

(Required: Maximum 1000 characters allowed)

3. Contact Person Email Address

(Required: Email address)

4. Contact Person Phone Number

(__ __ __) __ __ __ - __ __ __ __ ext:

(Required)

Supplier Information

Company Name:

Contact Name:

Address:

Phone:

Fax:

Email:

Supplier Notes

By submitting your response, you certify that you are authorized to represent and bind your company.

Print Name

Signature

Please read the following information carefully. Any exceptions to these terms and conditions will be cause for a proposal to be disqualified. Additionally, please read the Specifications and Scope of Work contained in each Invitation for Request for Proposal ("RFP"). The Specifications and Scope of Work in the RFP will take precedence over the General Terms and Conditions when they are in conflict. Prospective Proposers are responsible for familiarizing themselves with all aspects of the process for the Request for Proposal.

1. ProposerGuarantee:
   - 1.1 Proposer agrees to comply with all terms and conditions contained in this document and the RFP.
   - 1.2 Proposal must comply with all federal, state, county, and local laws concerning these types of goods/services.
   - 1.3 Proposer guarantees products/services offered will meet or exceed the written specifications identified in the RFP.
   - 1.4 Proposer agrees to protect the District from claims involving infringement of patents or copyrights.
   - 1.5 Minimum Standards for Responsible Prospective Proposers: The business must be a well- established organization and have an adequate number of trained personnel to ensure quality and performance and completion of contract within a specified time period. A prospective Proposer must affirmatively demonstrate Proposer's responsibility. District may request representation and other information sufficient to determine Proposer's ability to meet the following minimum standards:
     - 1.5.1 that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in district, state or federal procurements or contracts;
     - 1.5.2 are not identified in the "Debarment and Suspension" issued by the General Services Administration;
     - 1.5.3 have adequate financial resources, or the ability to obtain such resources as required;
     - 1.5.4 be able to comply with the required or proposed delivery schedule;
     - 1.5.5 have a satisfactory record of performance;
     - 1.5.6 have a satisfactory record of integrity and ethics;
     - 1.5.7 be otherwise qualified and eligible to receive an award.
   - 1.6 Contract: This proposal, when properly accepted by District, shall constitute a contract equally binding between the awarded Proposer and District. Different or additional contractual terms may become a part of this contract.
   - 1.7 Conflict of Interest: Any purchase order of contract resulting from this process shall be considered null and void if the awarded Proposer fails to comply with Section 1, Subtitle C, Title 5, Local Government Code Chapter 176: Disclosure of Certain Relationships with Local Government Officers; Providing Public Access to Certain Information, specifically Sec. 176.006: Disclosure Requirements for Contractors and Other Persons; Conflict of Interest Questionnaire Form CIQ.
   - 1.8 Criminal History Record Information Review: Proposer agrees to comply with Section 22.0834. Criminal History Record Information Review of Certain Contract Employees, Texas Education Code if awarded a contract through this solicitation. Proposer, if awarded a contract, shall obtain criminal history record information through the criminal history clearinghouse as provided by Section 411.0845, Government Code relating to an employee or applicant who has or will have continuing duties related to the contracted services; and the employee or applicant has or will have direct contact with students. Proposer agrees to certify of the receipt of criminal history record information before or immediately after employing or securing the services of the employee or applicant that has or will have continuing duties related to the contracted services if the employee or applicant has or will have direct contact with students. Proposer agrees that if awarded a contract, Proposer will provide to the District a list with names of all of their employees and any subcontractor's employees before commencing any services. Proposer further agrees to provide written notice of any new employees and any new subcontractor's employees to the District immediately after employment. Proposer further agrees that if awarded a contract, shall assume all expenses associated with the criminal background check and shall immediately remove any employee or agent who was convicted of a felony or misdemeanor involving moral turpitude, as defined by Texas law, from District property or the location where students are present.
   - 1.9 Entities Certification regarding Boycotting of Israel & Prohibition on Contracts with Certain Companies Engaged In Business With Iran, Sudan, Or Foreign Terrorist Organization and Listed Companies - Govt Code 808 (HB89) and Govt Code 2252 (SB252): 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 of services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any (the "Vendor Companies"), boycotts Israel, and Vendor agrees that 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 terminating business activities 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.
   - 1.10 Form 1295. Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 to District before Proposer may enter into a contract with that business entity. **Form must be completed online.** If this is your first time to access the Texas Ethics Commission (TEC), you will be required to create an account and establish a user name and password. This will require for you to have a valid email address and know your email user name and password as you will be required to access your email to validate your identity. After creating a user name and password at TEC, you will log in and begin completing Form 1295. Completing Form 1295 will require a contract number, which identifies and ties the form to the District's contract number; which is the assigned RFP No. for this solicitation.
     How to complete Form 1295:
     - Go to website: http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
     - Enter Required information
     - Print form
     - Submit with proposal
   - 1.11 Campus Visitation Procedures: If Proposer is awarded a contract which requires on-site visit, Proposer must first report to the front office and must be prepared to present a valid driver's license for clearance through the District's security system.
   - 1.12 Representations: Proposer represents that the products/services provided by Proposer hereunder shall conform to the representations of same as represented and described in the Attachments. Notwithstanding anything to the contrary herein, if for any reason District determines in its sole discretion, that part or all of such products/services fail to meet the expectation of District, District may on ten (10) days' notice terminate this Contract and receive the pro-rata portion of the contract sum paid to Proposer by District for the unexpired term of the Contract.
   - 1.13 Proposer, in submitting this proposal, agrees that District shall not be liable to prosecution for damages in the event that District declares Proposer in default.
   - 1.14 Purchases made for school use are exempt from the state sales tax and federal excise tax. Do not include these taxes in your proposal. Both unit prices and extension must be submitted. Unit prices shall govern.

1.15 Adherence to Specifications and Anti-Collusion: Proposer is responsible for reading the instructions and specifications to Proposer. Each Proposer by making his proposal represents that he has read and understands the proposal documents and his proposal is made in accordance therewith. Signing this proposal affirms that your company will enter into a binding contract with District for products/services awarded to your company. Proposer, by signing and executing this proposal, certifies and represents to the District that Proposer has not offered, conferred or agreed to confer any pecuniary benefit, as defined by §1.07(a)(6) of the Texas Penal Code, or any other thing of value, as consideration for the receipt of information or any special treatment or advantage relating to this proposal; Proposer also certifies and represents that Proposer has not offered, conferred or agreed to confer any pecuniary benefit or other things of value as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion concerning this proposal; Proposer certifies and represents that Proposer has neither coerced nor attempted to influence the exercise of discretion by any officer, trustee, agent or employee of the District concerning this proposal on the basis of any consideration not authorized by law; Proposer also certifies and represents that Proposer has not received any information not available to other Proposers so as to give the undersigned a preferential advantage with respect to this proposal; the Proposer further certifies and represents that Proposer has not violated any state, federal or local law, regulation or ordinance relating to bribery, improper influence, collusion or the like and that Proposer will not in the future offer, confer, or agree to confer any pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the District in return for the person having exercised the person's official discretion, power or duty with respect to this proposal; Proposer certifies and represents that it has not now and will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the District in connection with information regarding this proposal, the submission of this proposal, the award of this proposal or the performance, delivery or sale pursuant to this proposal.

1.16 Bid Guarantee: Bid bonds may be required for certain bids/proposals in excess of $25,000, if stated in the RFP. A bid guarantee will be submitted in the form of a bid bond, postal money order, certified check or cashier's check in an amount not less than 5% of the total maximum amount bid/proposed, payable without recourse to McAllen Independent School District. Failure to furnish a bid guarantee in the proper form and amount by the time set for opening may be cause for rejection of the proposal. If the awarded Proposer, upon acceptance of his proposal by the District within the period specified therein for acceptance, fails to execute such further contractual documents, if any, and give such bond(s) (i.e., performance bonds, payment bonds, delivery, etc.) as may be required within the time specified (ten days if no period is specified) after receipt of the forms by him, then he shall be liable for any cost of procuring the work which exceeds the amount of his proposal, and the bid guarantee shall be available toward offsetting such difference.

1.17 Performance and Payment Bonds: Payment bonds are required on construction projects costing $25,000 or more. Performance bonds are required on construction projects costing $100,000 or more. Payment and Performance bonds may be required for projects other than construction, if stated in the RFP. When a performance or payment bond is required, the amounts shall be for 100% of the contract amount.

1.17.1 Any required bond(s) must be filed with the District within 10 days from the date of the NOA.

1.17.2 Payment and performance bonds must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

1.17.3 Bonds may be executed only by a surety company that is authorized and admitted to write surety bonds in the State of Texas.

1.17.4 A separate performance or payment bond MUST be provided for each contract awarded and must reference the contract number(s) for which the bond is provided.

1.17.5 All references to the bond by Proposer and/or surety companies must reference the contract number in lieu of or in addition to the bonding company's number, and the effective dates of the contract.

1.17.6 Bonds and other forms of surety must be made payable to McAllen Independent School District. Bonds in excess of $100,000 must be from a surety that holds a Certificate of Authority from the United States Department of Treasury or have reinsurance for liability in excess of $100,000 from a United States Treasury listed reinsurer.

2. General Provisions

2.1 Term of Contract and Purchase Order Dates:

2.1.1 The RFP shall state the term of the contract and applicable extensions.

2.1.2 Purchase Order: Purchase order(s) shall be generated by the District to the awarded Proposer(s). **The purchase order number must appear on all itemized invoices and packing slips. District will not be held responsible for any orders placed/delivered without a valid signed purchase order.**

2.1.3 Purchase orders dated during the term of the contract must be honored even if received after the contract expiration date. Proposers may not specify a "final order" receipt date. Pricing is established by the date the order is placed unless otherwise stated in the contract.

2.1.4 Confirmation orders will be the date the order is mailed but will show the date the order was originally placed.

2.1.5 Grace Period: District requests the right to continue to enforce this contract for a period not to exceed ninety (90) days after expiration date for unforeseeable reasons.

2.1.6 District reserves the right to reorder from this proposal for the term of the contract at the proposed award prices or lower provided the terms and conditions remain the same. Proper authorization for reorders and issuance of approved and manually signed purchase orders will be through Purchasing Services only.

2.2 Shipment Identification and Delivery: Special delivery requirements will be addressed in the Specifications and Scope of Work or in the specifications contained in each RFP. The following shall be applicable unless in conflict with specific contract instructions.

2.2.1 Identification of Shipments: In addition to the complete destination address, each package must be clearly marked with the District's purchase order number and the ATTN: addressee as shown on the order. Each shipment must be accompanied by an itemized packing slip.

2.2.2 Packaging and Labeling: All items shipped must be properly labeled showing the brand name, package quantity, lot number (if applicable) and any other necessary identifying information usually used by Proposer.

2.2.3 Hours for Delivery: Delivery shall be made between 8:00 a.m. and 3:00 p.m. unless prior approval for after-hours delivery has been obtained from the District.

2.3 Inspection and Tests: All goods are subject to inspection and testing by the District. Authorized District personnel shall have access to a Proposer's place of business for the purpose of inspecting contracted merchandise. Tests may be performed on samples obtained by District request or taken from regular shipments. When products tested fail to meet or exceed all applicable specifications, the cost of the sample used and the cost of any testing shall be borne by Proposer. Goods that have been delivered and rejected in whole or in part may be, at the District's option, returned to Proposer at Proposer's risk and expense or disposed of in accordance with District procedures. Proposer may request that goods be held at Proposer's risk for a reasonable period of time for later disposition at Proposer's expense. Latent defects

may result in revocation of acceptance of any product.

2.4 Late Delivery: If a delivery delay is foreseen, Proposer shall give notice to District with seventy-two (72) hour notice. The District has the right to extend the delivery date if reasons appear valid. Proposer must keep the District advised at all times of the status of the order. If Proposer has orders in their possession which have not been completed within the specified delivery time, the District reserves the right to withhold issuance of further orders until all orders have been filled and acceptable assurance has been given that the event will not be repeated.

2.5 Back Orders: The District may purchase on the open market any commodity reported by a Proposer to be on back order when the resultant delivery time is unsatisfactory. Damages may be applicable in cases of a pattern of back orders.

2.6 Damage Assessment: If a Proposer is in default on an order, the District reserves the right to purchase the item in default and charge the increase in price, if any, and cost of handling to Proposer. Failure to pay a damage assessment is cause for contract cancellation and/or suspension or removal of Proposer from the District's Centralized Master Contractors List (CMBL).

2.7 Emergency Deliveries: In case of an emergency experienced by a qualified ordering entity, the awarded Proposer is requested to supply the needed material immediately, if possible. If the awarded Proposer cannot respond, then the emergency requirement may be purchased on the open market. The District or Proposer shall not consider such purchases a breach of contract.

2.8 Substitutions: All substitutions require prior written approval by the District. The District reserves the right to require Proposer to offer possible substitutes if any material or equipment becomes unobtainable during the term of the contract. Outstanding orders are not automatically amended by an approved substitution. Proposer must contact the qualified ordering entity prior to shipment of the approved substitution.

2.9 Purchases Off Contract: Under certain circumstances, the District permits campuses and other District users to purchase commodities available through a contract on the open market. Such circumstances may be identified in the RFP. Proposers are to allow for such purchases provided purchase orders are issued for these purchases.

2.10 References: District may request Proposers to supply, with this proposal, a list of at least three (3) references where like goods/services have been supplied by their firm. Include name of firm, address, telephone number and name of representative.

2.11 Proposals from unresponsive Proposers will not be accepted. Proposers having a history of inconsistent service and unreliability will not be considered by the District to be a responsible Proposer.

2.12 Proposer will employ accounting policies and procedures hereunder to preserve all contract-related records for the term of this Contract and such further period of time thereafter as may be prescribed by Federal, State or Local regulations. All Proposers are subject to having any records or other documentation related to any transaction with District available for public access or for review and auditing purposes by any local, state or federal agency, as well as, the public in accordance with the provisions of Government Code, Title 5, Subtitle A, Chapter 552, Open Records.

2.13 Notice: Any notice provided by this proposal (or required by Law) to be given to the awarded Proposer by District shall be conclusively deemed to have been given and received on the next day after such written notice has been deposited in the mail in McAllen, Texas, by Registered or Certified mail, addressed to the awarded Proposer at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

2.14 Venue: This contract will be governed and construed according to the laws of the State of Texas. Both parties agree that venue for any litigation arising from this contract shall lie in Hidalgo County, Texas.

2.15 Silence of Specification: The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

2.16 Deviations from Specifications: All deviations from the specifications must be noted in writing, in detail by Proposer at the time of submittal of the proposal. The absence of a written list of specification deviations will hold Proposer strictly accountable to the District to the specifications as written. Any deviations from the specifications as written not previously submitted, as required, will be grounds for rejection of the materials/goods/services and/or equipment when delivered.

2.17 Proposers that fail to comply with the conditions of the RFP may be removed from the District's Centralized Master Contractors List for a period of two years.

2.18 Proposers wishing to reinstate their status must request it in writing at the end of the two-year period.

3. Preparation of Proposal:

3.1 Freight Charges & F.O.B. Point: Quote all proposals F.O.B. destination, transportation prepaid and allowed, i.e., included in the price proposed, unless special contract instructions direct or permit otherwise. Alternate F.O.B. point or freight terms may be offered but are subject to rejection by the DISTRICT.

3.2 Proposal prices must be firm for acceptance for 120 days from proposal opening date unless otherwise specified in the RFP. Proposal prices shall remain in effect for a period of one year from date of acceptance by the Board of Trustees unless otherwise specified in the proposal documents. Refer to Section 7 for additional information regarding proposal prices.

3.3 Usage Figures: Quantities shown on the RFP under the term "Quantity or Qty" are estimated requirements based upon purchase orders for a prior period indicated in the RFP. These figures are not to be construed as guaranteed purchases under the contract; however, the figures will be used as a factor for determining the award and bonding requirements. District users will purchase all commodity requirements from contract Proposers but only in such quantities as actual needs require. To keep consistency of the item description and item numbers, some item quantity(s) is/are marked with a zero (0) quantity on the proposal sheet. Proposals are requested on these items as well.

3.4 Referenced Example: Any catalog number, brand name or manufacturer's reference used in an RFP is descriptive only (not restrictive) and is used to indicate type and quality desired. Proposals for brands of like nature and quality will be considered. Proposer should not construe specifications for the referenced example to be the minimum requirements acceptable. The District is the sole determinate as to acceptability of specifications in its best interest. If proposing other than the referenced example, Proposer must show the manufacturer, brand or trade name, and model number and give a full description of the product offered. The submission of illustrations and specification brochures is encouraged to provide a complete description of the product being offered. If a Proposer takes no written exception to the referenced example in the proposal, the brand names, numbers, etc., exactly as specified in the RFP shall be furnished.

3.5 Condition of Products: All items proposed shall be new and unused and in first class condition, including containers suitable for shipment and storage, unless otherwise specified in the RFP.

3.6 Warranty: Manufacturer's standard warranty shall apply unless otherwise stated in the RFP.

3.7 Unit of Measure: If offering a proposal price for a different unit of measure, the exception and proposed packaging must be shown by the

line item proposal.

3.8 Alternate Proposals: Alternate or supplemental proposals shall be submitted as a separate item and be identified by Proposer's name and signature and be cross-referenced to the applicable item in the RFP.

3.9 Samples: DO NOT send samples unless requested. Any samples submitted must be furnished at no cost to the District. If not destroyed in examination, samples will be returned to Proposer on request at Proposer's expense. Samples submitted to verify compliance with specifications prior to making an award may be retained at Proposer's expense. Samples submitted to verify compliance with specifications prior to making an award may be retained for the duration of the contract for later comparison with items delivered. Each sample should be marked with Proposer's name, address, proposal opening date and proposal number. Do not attach samples to proposal pages. Failure to submit samples when requested shall cause items not to be considered for award. All samples are to be delivered to:

McAllen Independent School District
Attn: Purchasing Services
2000N. 23rd ST.
McAllen, TX 78501-7734

3.10 Signature on Proposal: Electronic signatures are acceptable. The person signing the proposal must have authority to bind the represented company to a contract. An unsigned proposal cannot be signed after the proposal opening time even though Proposer or a representative is present at the proposal opening.

3.11 Attachments: Proposers may include attachments to describe commodities being proposed and/or to exhibit that products offered meet all written specifications; however, do not submit samples unless requested to do so. No terms or conditions recorded on any attachment will be considered binding unless specifically made a part of the proposal in writing. WARNING: Any added terms or conditions may result in disqualification of a proposal, e.g., proposals subject to laws of a state other than Texas, requirements for prepayment, limitations on remedies, etc.

3.12 Addendums: Should an addition or correction become necessary after an RFP is issued, an addendum relating to the necessary information will be issued electronically. It is the Proposer's responsibility to view the District's Bidding Portal regularly, or prior to submitting a quote, to ensure that no addenda or additional information have been issued for the solicitation. The web address is https://mcallenisd.ionwave.net/Login.aspx .

3.13 Discounts for large one-time order deliveries, educational purposes, etc. The conditions for earning the discount may be indicated by the item being proposed or by submitting a separate page with the information. These discounts will not be considered in determining the low proposal but will be part of any contract issued.

3.14 Proposal Preparation Expense: Any expense related to the submission of a proposal is the sole responsibility of the Proposer. The District will not reimburse Proposers for any cost related to proposal preparation or submission.

3.15 All Proposers doing business with the District must have on file a Form W-9 Request for Taxpayer Identification Number and Certification.

3.16 All Proposers must provide a Felony Conviction Notification as required by Texas Education Code, Subchapter B, Section 44.034, Notification of Criminal History, Subsection (a). A copy of this form is included for your use as part of Contractor Certifications Form.

4. Submission of Proposal:

4.1 No Bids: To remain on Proposer's list, "NO BIDS" must be submitted by Proposers wishing to remain on the District's Centralized Master Contractors List (CMBL). Continued submittal of "NO BIDS" will result in Proposer being removed from the District's Centralized Master Contractors List (CMBL). Proposers not submitting proposals or submitting "no bids" may be removed without notice at any time and must reapply for inclusion in the District's Centralized Master Contractors List (CMBL). The District is not responsible for any errors occurring as a result of this procedure.

4.2 Public Proposal Opening: Proposals are opened in a manner to avoid disclosure of contents to competing Proposers and the contents are kept secret during the process of proposal negotiations. A copy of the proposal tabulation is usually available for public review after proposal awards. Tabulation information is available for download the day after award from the following purchasing webpage: https://mcallenisdtx.sites.thrillshare.com/page/awarded-vendors.

4.3 Late Proposals: Late proposals will NOT be considered. The District will not be responsible for missent or misplaced proposals.

4.4 Amending/Withdrawing Proposal: A proposal cannot be altered or amended after the proposal opening date and time. Any alterations made before the opening date and time shall be initialed by Proposer or Proposer's authorized agent identified in the proposal. No proposal can be withdrawn after the opening date and time without approval of District. All approvals shall be based upon an acceptable written reason for the action.

4.5 Proposal Package(s): The District encourages and prefers proposals submitted on District RFP form(s) electronically; however, DISTRICT will be accepting sealed packages on CD, USB, paper/hardcopy through mail or hand delivery. Each proposal must be placed in a separate submittal. Proposals must be submitted and time stamped at District no later than the date and time specified for the proposal opening. Only the completed W-9, Contractor Certifications Form, Form 1295, Conflict of Interest and those pages on which a Proposer is submitting a proposal need to be returned. Blank pages or pages with no proposal information should not be returned.

4.6 Price lists must be included in the RFP. Any terms and conditions in a price list will not be considered a part of a proposal unless specifically identified by Proposer and referenced in writing.

4.7 Proposals via the U. S. Postal Service are to be sent to the address shown below.

McAllen Independent School District
ATTN: Purchasing Services (RFP #/Name)
2000 N. 23rd Street
McAllen, TX 78501

4.8 Confidential: Subject to the requirements of the Texas Open Records Act, if a company believes that a proposal is, or parts of a proposal are confidential, then the company must so specify. The company must stamp in bold letters the term "CONFIDENTIAL" on that part of the proposal, which the company believes to be confidential. The awarded proposal may be considered public information even though parts are marked confidential.

4.9 Copyrighted proposals are unacceptable and will be disqualified as unresponsive.

5. Proposal Evaluation and Award:

5.1 Proposal Evaluation: The District reserves the right to award on the basis of a low line item, low total (group or groups) or in any other combination that will best serve the interests of the District. The lowest proposal will not necessarily be the awarded proposal. Proposals will be assessed not only in terms of the cost of the goods/equipment, but also in terms of responsiveness of the proposed goods/services to the District's needs and requirements. The District reserves the right to accept or reject all or any part of a proposal, waive minor technicalities

and make an award in the best interest of the District.

5.2 A response to an RFP is an offer to contract with the District based upon the terms, conditions and specifications contained in the RFP.

5.3 Proposals do not become contracts until a Notice of Award (NOA) is issued.

5.4 The contract shall be governed, construed and interpreted under the laws of the state of Texas.

5.5 The District will not be bound by any communication with Proposers other than the RFP, these General Terms and Conditions, Specifications and Scope of Work, Specifications, any written addendum's issued by District, District Policies and Procedures, and State Law.

5.6 The District shall be sole judge of what constitutes the best interest of the District.

5.7 The District reserves the right to reject proposals requiring minimum orders.

5.8 Fees charged for shipping and handling will be considered in awarding proposals.

5.9 Evaluation Criteria: In determining to whom to award a contract, the District shall consider in accordance with the Texas Education Code, Subchapter B, Section 44.031(b) Purchasing Contracts, Subsection (b): (1) the purchase price; (2) the reputation of the vendor and of the vendor's goods or services; (3) the quality of the vendor's goods or services; (4) the extent to which the goods or services meet the District's needs; (5) the vendor's past relationship with the District; (6) the impact on the ability of the District to comply with laws and rules relating to historically underutilized businesses; (7) the total long-term cost to the District to acquire the vendor's goods or services;(8) for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:(A) has its principal place of business in this state; or (B) employs at least 500 persons in this state; and (9) any other relevant factor specifically listed in the request for bids or proposal.

5.10 Notice of Award (NOA): NOA/Tabulation information is available for download from our website at https://mcallenisdtx.sites.thrillshare.com/page/awarded-vendors. Award information will be posted approximately ninety (90) days from proposal opening. Proposer must advise the District within 10 (ten) days from the date of award by the Board of Trustees of any errors requiring correction.

5.11 Qualified Ordering Entity: All campuses and departments are considered District users and qualified ordering entities. In some instances, other governmental entities may have Interlocal Contracts with the District. These entities may have access to the prices offered to District. Proposers are responsible for identifying and requesting information on these entities.

5.12 To expedite evaluation of the proposals, it is preferable that District forms be used.

5.13 Assignment: The awarded Proposer shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of District.

6. InsuranceRequirements:

6.1 Statutory Workman's Compensation (REQUIRED FOR WORK PERFORMED ON DISTRICTPROPERTY) and Employer's Liability Limits - $500,000.

6.2 Commercial General Insurance (occurrence basis only) $1,000,000 each claim and in the aggregate. The District shall be named as an additional insured by endorsement on the Contractor's policy as to the subject job.

6.3 Business Commercial or Personal Automobile Liability Insurance in the amounts specified by the Texas Tort Claims Act, Chapter 101 of the Texas Practice and Remedies Code for all owned, non-owned and hired vehicles; each person $100,000; each accident $300,000; and for property damage, each occurrence of $100,000; No deletions/exclusions from standard coverage form allowed without written consent of District. The District shall be named as an additional insured by endorsement on the Contractor's policy as to the subject job. (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY).

6.4 Successful Contractor will provide a certificate of insurance, in Acord 25 Form, to the Administrator of the Department evidencing such coverage and will notify the Administrator in writing immediately if any change in coverage occurs for any reason.

6.5 Each insurance policy to be furnished by successful bidder shall include, by endorsement to the policy, a statement that a notice shall be given to District by certified mail thirty (30) days prior to cancellation or upon any materials change in coverage.

6.6 Successful Contractor shall provide Certificates of Insurance evidencing the above- required insurance, prior to commencement of this contract and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies. Said Notices and Certificates of Insurance shall be provided to Purchasing Services.

6.7 For non-subscribers that do not carry Workers' Compensation coverage, the District will, on a case-by-case basis, consider contractors who provide an Occupational Accident Policy, including Employers' Indemnity coverage with a $1,000,000 limit. However, the District reserves the right to require Workers' Compensation coverage if it feels it is in the best interest of the District to do so.

7. Price Changes: During the life of a contract only industry-wide published price changes as reflected in a manufacturer's printed price list, published documentation, or other approved method in an RFP may be submitted to the District for price adjustment consideration.

7.1 Procedures to Follow:

7.1.1 Firm Bids: No price increases allowed unless approved by DISTRICT in accordance with Section 7.2.

7.1.2 Catalog Bids: Submit a copy of the new manufacturer's price/cost list. Proposer shall compute new unit prices at the same percentage as reflected in the original proposal (See Sec. II. B. for formula). Prices will be verified for accuracy.

7.1.3 Requirement Contracts: No price increases allowed unless approved by DISTRICT in accordance with Section 7.2.

7.2 Acceptance of Price Increases: The District will accept or reject increases within seven (7) working days after receipt of a properly submitted request. If a properly submitted increase is rejected, Proposer may cancel such items from the contract by giving the District written notice. Cancellation will not go into effect for thirty (30) working days after receipt of the written request. Old prices must be honored on orders dated up to the official date of cancellation.

7.3 Price Decreases: Proposers are required to implement immediately any price decreases, roll backs, etc. that may become available. The District must be notified in writing of any decreases for file updating purposes and notice to contract users.

8. Administrative Procedure for Bid/Proposal Complaints: Members of the public having complaints regarding the District's purchasing procedures or operations may present their complaints or concerns to the District following this procedure. Please contact Purchasing Services for a copy of the procedures at (956) 657-4480.

9. Invoicing:

9.1 Original invoices must be submitted in duplicate to the Accounting Department in compliance with the following procedure: INVOICES shall show purchase order number, copy of signed delivery ticket and proposal name and shall be mailed directly to:

McAllen Independent School District
ATTN: Director of Accounting
2000 North 23 Street

699

McAllen, TX 78501

9.2 The invoice must show name of Proposer exactly as shown on the purchase order and the correct "Remit to:" address.
9.3 Invoice must show name of receiving entity.
9.4 Invoice should include a description of each item. Items should be shown in numerical order and must correspond with the item numbers shown on the purchase order.
9.5 Quantity, unit and price of each item must be shown. All prices should be extended on the invoice.
9.6 Total all extensions on invoice.
9.7 Discount, if applicable, must be stated, extended and deducted to arrive at a NET TOTAL for invoice.
9.8 Shipment date of merchandise must be shown.
9.9 Date of purchase order must be shown.

10. Payment:
10.1 Payment normally will be made to Proposer within 30 days after receipt of a properly prepared original invoice or the receipt of and the acceptance of goods ordered, whichever is later.
10.2 Payments for merchandise purchased with District appropriated funds will be made through District approved and manually signed purchase orders issued by District's Purchasing Services. Payments by qualified ordering entities will be made through the District's Accounting System.
10.3 Partial payments are an exception, but may be made with the prior written approval of the District.
10.4 A purchase for goods or services cannot be made using District funds without prior approval from Purchasing Services in the form of an approved Purchase Order. All invoices shall reflect Purchase Order dates that are on or after Purchasing Services' final approval print date.
10.5 The District reserves the right to adjust any invoice which is in error due to incorrect quantity(s), printing errors or pricing of services or goods on this contract. Upon either written or verbal notification the provider will promptly adjust the error within thirty (30) days from the date the provider is notified of the error.

11. Cancellation:
11.1 Cancellation of Contract Orders: Orders are canceled in writing by the District. Orders may be canceled without the consent of Proposer for failure to meet contractual obligations. If cancellation is requested by District for some other reason, through no fault of Proposer, Proposer's permission to cancel is required. All correspondence from Proposer pertaining to the cancellation of an order is to be addressed to the District. In the event the awarded Proposer shall fail to perform, keep or observe any of the terms and conditions to be performed, kept or observed, District shall give the awarded Proposer written notice of such default; and in the event said default is not remedied to the satisfaction and approval of District within five (5) working days of receipt of such notice by the awarded Proposer, default will be declared and all the awarded Proposer's rights shall terminate.
11.2 Authorized Relief from Performance (Force Majeure): The District will grant relief, as necessary, from performance of the contract if Proposer is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of Proposer. The burden of proof for the need of such relief rests with Proposer. To obtain release based on Force Majeure, Proposer must provide the District with sufficient documentation to show that suitable merchandise or service is unobtainable from any source.
11.3 Termination/Cancellation of Contract: The District reserves the right to cancel entire contract or any portion of a contract with any vendor that fails to perform in accordance with contract terms and conditions. The District and Proposer each shall have the right to terminate Contract without cause on thirty (30) days written notice to the other. The Contract will be monitored for acceptable services rendered throughout the contract period. The District will have the option to cancel the Contract within thirty (30) days from notification. In the event of any actual contract termination/cancellation, District will not be held responsible for loss of business or any termination expenses incurred by the vendor.
11.4 Non-Appropriation of Funds – The District intends to remit to the Contractor all payments for the full term if funds are legally available. In the event no funds or insufficient funds are appropriated and budgeted for the services and funds are otherwise unavailable, by any means whatsoever, in any fiscal period in which the Payments for the services are due under any Agreement as a result of this RFP, the District shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify the Contractor and any assignee of such occurrence. The Agreement(s) shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made, without penalty, liability or expense to the District of any kind, except as to (i) the portions of the Payments herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available and (ii) District's other obligations and liabilities under the Agreement(s) relating to, accruing or arising prior to such termination. In the event of such termination, Contractor, at their expense, shall retrieve the equipment, effective on the date of such termination.
11.5 Termination for Default: District reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of District in the event of breach or default of this contract. District reserves the right to terminate the contract immediately in the event the awarded Proposer fails to:
11.5.1 Meet schedules;
11.5.2 defaults in the payment of any fees;
11.5.3 otherwise perform in accordance with these specifications.
11.6 Breach of contract or default authorizes District to exercise any or all of the following rights:
11.6.1 District may take possession of the assigned premises and any fees accrued or becoming due to date;
11.6.2 District may take possession of all goods, fixtures and materials of awarded Proposer therein and may foreclose its lien against such personal property, applying the proceeds toward fees due or thereinafter becoming due.
11.6.3 District reserves the right to award canceled contract to next lowest and best Proposer as it deems to be in the best interest of District. In such event, the District shall charge the canceled Proposer the difference for any additional cost of such proposal item(s) from the next lowest and best Proposer.

12 Other Provisions:
12.1 Texas state law requires that a purchasing preference be given to any product made from recycled material if the product meets written specifications as to quality and quantity. If a product proposal on this solicitation contains recycled material, please identify the item number and report the percent of all recycled material in the product and the percent of post-consumer material used in the product. "Post-consumer" means material that has been recycled after sale to a consumer as opposed to reuse of manufacturing waste material prior to sale. In addition, identify any products that meet the criteria of "Environmentally Sensitive." Information Request: Please send information on any products not listed in this contract that are related and available through your company which contain recycled material

along with the percent of post- and pre- consumer content to:

McAllen Independent School District
ATTN: Purchasing Services
2000 N. 23rd Street
McAllen, TX 78501

12.1.1 When proposing, please consider the following:

12.1.2 Packing & Packaging: Use of the minimum amount of packing and packaging material consistent with assuring no damage to product in transit. The use of recyclable and recycled material content packing and packaging material is preferred.

12.1.3 New or Un-used: The terms shall not be interpreted to exclude the use of recycled content materials in products supplied. Nothing in a solicitation shall be construed to preclude the use of recycled content materials in a product regardless of any referenced specifications such as ANSI, ASTM, or Federal specifications so long as the material meets the performance requirements of such specifications and all required laws and regulations.

12.1.4 Material Safety Data Sheets: A Proposer must provide, at no cost, at least one copy of any applicable Manufacturer's Material Safety Data Sheet(s) (MSDS) with each shipment during the term of the contract. If OSHA or Federal or State laws provide for additional requirements, those requirements are in addition to the MSDS requirement. OSHA: All items must meet all applicable OSHA standards and regulations and all electrical items must bear the appropriate listing from UL, FMRC or NEMA.

12.1.5 Asbestos Management Plan: All proposers are required to review the Asbestos Management Plan for all District-owned facilities prior to performing any work or services at District-owned facilities. Asbestos Management Plans may be reviewed at each school site or at the Facilities Maintenance and Operations Department.

12.1.6 AHERA: All work must be in compliance with AHERA.

12.1.7 All contracts awarded in excess of $10,000 by school districts and their contractors or sub-grantees shall contain a provision requiring compliance with executive order 11246, entitled "Equal employment Opportunity", as amended by executive order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

12.1.8 All contracts and sub-grants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USD 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3). This Act provides that each contractor or sub-grantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work to give up any part of the compensation, to which he is otherwise entitled. School districts shall report all suspected or reported violations to TEA.

12.1.9 All contracts awarded by school districts and sub-grantees in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor Regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of eight hours and a standard workweek of 40 hours. Work in excess of the eight hours per day or 40 hours per week shall be compensated at a rate of not less than 1 1/2 times the basic rate of pay. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor.

12.1.10 Contracts, subcontracts, and sub-grants of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non- exempt federal contracts, grants, or loans of facilities included on the EPA list of violating facilities. The provision shall require reporting of violations to the Texas Education Agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

12.1.11 Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

12.1.12 Advertisement: Proposers are prohibited from using contract award information, sales values/ volumes and/or District customers in sales brochures or other promotions, including press releases.

12.2 Services/items supplied under this contract shall be subject to District's approval. Items found defective or not meeting specifications shall be picked up and replaced by the awarded Proposer at the next service date at no expense to District. If item is not picked up within one (1) week after notification, the item will become a donation to District for disposition.

13 Contract Provisions for contracts under Federal Awards – By submission of this proposal, Proposer agrees to comply with the following provisions.

13.1 Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where proposers violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

13.2 All contracts in excess of $10,000 must address termination for cause and for convenience including the manner by which it will be effected and the basis for settlement.

13.3 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

13.4 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 must include a provision for compliance with the Davis- Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The entity must report all suspected or reported violations to the

Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The entity must report all suspected or reported violations to the Federal awarding agency.

13.5 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

13.6 Rights to Inventions Made Under a Grants Contract or Cooperative Contract. If the Federal award meets the definition of "funding contract" under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding contract," the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts," and any implementing regulations issued by the awarding agency.

13.7 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub grants of amounts in excess of $150,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

13.8 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Proposers that apply or submit a proposal for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the award.

13.9 An entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Any questions regarding this RFP must be submitted through the "questions" tab located within the solicitation on the Ionwave website https://mcallenisd.ionwave.net/Login.aspx.

McALLEN INDEPENDENT SCHOOL DISTRICT
Request for Proposal No. 2023-1004 Branding Rights
for
McAllen ISD's Game Day Athletic Uniforms
Specifications and Scope of Work

1.0 BACKGROUND

McAllen Independent School District (the "District") is a multicultural community of over 20,000 students. The District's vision is to educate all students to become lifelong learners and productive citizens in a global society through a program of educational excellence utilizing technology and actively involving parents and the community. The District consists of eighteen (18) elementary schools, six (6) middle schools, three (3) traditional high schools, and two (2) non-traditional high schools.

Officers of the District are:

Debbie Crane-Aliseda, Trustee
Conrado Alvarado, Trustee
Tony Forina, Trustee
Sofia Pena, Trustee
Sam Saldivar, Jr., Trustee
Marco Suarez, Trustee
Daniel D. Vela, Trustee
Dr. Jose A. Gonzalez, Superintendent

2.0 INTENT

It is the intent of the District, through this Request for Proposal ("RFP"), to select a respondent ("Respondent"), offering the best value for branding rights for game day athletic uniforms, on as-needed basis.

3.0 REQUIREMENTS

The Specifications and Scope of Work ("SOW") will take precedence over the General Terms and Conditions when they are in conflict. Please read the General Terms and Conditions and the following information carefully. Any exceptions to these General Terms and Conditions and SOW may be cause for a Respondent to be disqualified.

4.0 TERM AND TERMINATION OF AGREEMENT

The period of the contract ("Contract") resulting from this Proposal will be for a term of three (3) years with the option to renew for two (2) additional one (1) year terms.

4.1 Termination without Cause. District shall have the right to terminate this contract without cause on thirty (30) days written notice to the Respondent.

4.2 Termination with Cause.

4.2.1 Termination by District. District may terminate this Contract immediately upon the occurrence of any of the following events:

4.2.1.1 Any conduct of the Respondent, which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the District.

4.2.1.2 Failure to provide evidence of liability insurance, as required.

4.2.1.3 Failure of Respondent to immediately bar any individual from performing services under this Contract, if such individual does not meet the qualifications required by this Contract or if such individual commits a material breach of one of the terms of this Contract.

4.2.1.4 In addition, if the Respondent commits a material breach of any of the terms of this Contract, other than those listed in subsections 4.2.1.1 through 4.2.1.3 above, District may terminate this Contract upon no less than thirty (30) days written notice.

4.3 Respondent shall not be entitled to lost profits or any further compensation not earned prior to the time of cancellation.

5.0 PRICING, INVOICING AND PAYMENT

The pricing offered through this RFP must remain firm for the term of the Contract. Price decreases and/or discount percentage in favor of the District are acceptable at any time throughout the term of the contract. In case of a price increase required due to market shortage or market change, documentation must be submitted for approval to Alejandra Gonzalez, Director of Purchasing Services at alejandra.gonzalez@mcallenisd.net.

6.0 EVALUATION CRITERIA

In determining who will be awarded, the District shall consider:

6.1 the purchase price;
6.2 the reputation of the vendor and of the vendor's goods or services;
6.3 the quality of the vendor's goods or services;
6.4 the extent to which the goods or services meet the District's needs;
6.5 the vendor's past relationship with the District;
6.6 the impact on the ability of the District to comply with laws and rules relating to historically underutilized businesses (in accordance with 2 CFR 200.320);
6.7 the total long-term cost to the District to acquire the vendor's goods or service;
6.8 for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:
  6.8.1 has its principal place of business in this state; or
  6.8.2 employs at least 500 persons in this state; and
6.9 any other relevant factor specifically listed in the request for bids or proposals.

Refer to Attachment "A" for weights.

7.0 RE-SOLICIT

The District has the right to reject all responses or re-solicit if only one solicitation is received by the deadline or extend the deadline.

8.0 EVALUATION COMMITTEE.

The evaluation committee, which will be comprised of Brian McClenny, Director of Athletics; Raul Vega, Assistant Athletics Director; Lorena Lopez, Assistant Athletics Director; Alejandra Gonzalez, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Carol Quintanilla, Senior Buyer, will evaluate the proposals and recommend the successful vendor(s).

McALLEN INDEPENDENT SCHOOL DISTRICT
Request for Proposal No. 2023-1004 Branding Rights
for
McAllen ISD's Game Day Athletic Uniforms
Specifications and Scope of Work

9.0 COMMUNICATION WITH DISTRICT PERSONNEL

Respondent submitting a proposal shall not discuss this RFP with employees of District or members of the Board of Trustees. Communication includes, but is not limited to, unsolicited literature, email, faxes or phone calls related to any aspect of this RFP. If discussion is necessary, you will be notified in writing. Failure to abide by this requirement will result in automatic disqualification at the discretion of the District. All questions must be posted on the Questions tab.

Respondents shall only communicate with members of the Purchasing Services team regarding all matters related to this RFP throughout the duration of the RFP. A Respondent shall not contact any other person related to the District, directly or indirectly.

10.0 SCOPE OF WORK

10.1 The District spent approximately $580,637.00 in purchases tied to the previous RFP over a three (3) year period between August 2019 and August 2022 (numbers may have been affected due to COVID-19) and approximately $978,028.00 over a three (3) year period between August 2016 and August 2019. This data is for information purposes only and the District does not guarantee a specific amount of business, expressed or implied.

10.2 The District intends to select a respondent that offers the best value for branding rights for **all high schools** for Game Day uniform attire in the following sports:

- **10.2.1** Football
- **10.2.2** Basketball (boys & girls)
- **10.2.3** Volleyball
- **10.2.4** Soccer (boys & girls)
- **10.2.5** Baseball
- **10.2.6** Softball
- **10.2.7** Cross Country (boys & girls)
- **10.2.8** Track (boys & girls)

10.3 The District may elect to phase in additional sports for all high schools during the term of the contract as funds become available. The District reserves the right to negotiate deeper discounts/rebates/compensation package as additional sports are phased in.

10.4 During the term of the contract, sport teams will wear "Game Day" uniform from awarded vendor.

10.5 The District shall award an Exclusive Uniform Contract for Game Day Uniforms to the company providing the best value to the District, based on an evaluation of a number of factors including proposed discounts, potential commission earnings, the quality of proposed products, service and operations, and other proposed contract incentives that best benefit the District, its campuses, facilities and its students.

10.6 Awarded respondent shall be granted the right to reproduce, display and otherwise use game photographs and/or audiovisual footage of the sport's team games subject to applicable the National Collegiate Athletic Association ("NCAA"), National Federation of State High School Associations ("NFHS"), University Interscholastic League ("UIL") and the District's Publications Agreement.

10.7 Pricing: Respondent(s) shall provide Manufacturer Suggested Retail Price ("MSRP") on twelve (12) athletic uniform items listed on the Line Items tab (No. 3 through 14) and provide the total discount (in dollars) for all items (No. 15). Items will be used for evaluation purposes only and do not represent the total items anticipated to be purchased. Failure to respond to line items may result in disqualification.

10.8 Discount: Respondent shall provide the discount (percent) off the manufacturer suggested retail price ("MSRP") that the District will receive on all athletic team uniforms (refer to Line Items tab Category A through Category H). Discounts shall remain firm for the term of the contract award.

10.9 Incentive Program: Respondent shall provide a complete description of sponsorship commitment/compensation package (i.e., rebates, commissions, discounts, merchandise, etc.) and discount structure on all athletic team uniform purchases throughout the duration of this contract. The District seeks an experienced athletic team uniform manufacturer to provide financial support to the District in exchange for certain promotional and availability rights for athletic team uniforms.

10.10 Other Contract Incentives: Respondents may propose other incentives for contract consideration, such as donations to schools, scholarship donations to graduating seniors, educational programs, staff development, or other contract incentives.

10.11 Other Information: Respondents shall provide any other desired information that demonstrates product or service quality. Include requirements and timelines for ordering team uniforms.

10.12 Minimum Sales: Under no circumstances will the District consider proposals requiring any form of minimum sales.

10.13 Awarded vendor shall guarantee delivery of items within sixty (60) days after receipt of order, unless otherwise approved by District.

10.14 Prices quoted shall include shipping costs.

11.0 AWARD INFORMATION

Award information will be available for download from our website within ninety (90) days of opening: https://mcallenisdtx.sites.thrillshare.com/page/awarded-vendors.

12.0 INSTRUCTIONS FOR SUBMITTING A PROPOSAL

The District prefers and encourages Bidders to submit their response through Ionwave (https://mcallenisd.ionwave.net), however, we will accept submittals in a sealed envelope via mail or hand delivered. Email Carol Quintanilla, CTCD, Senior Buyer at carolina.quintanilla@mcallensd.net for address and mailing instructions.

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

_____

Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

_____ _____

Signature of vendor doing business with the governmental entity Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

***

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

▶ **Go to *www.irs.gov/FormW9* for instructions and the latest information.**

Give Form to the requester. Do not send to the IRS.

Print or type. See **Specific Instructions** on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN,* later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

			–		–				

or

Employer identification number

		–							

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here **Signature of U.S. person** ▶ **Date** ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9.*

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting,* later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.

2. The treaty article addressing the income.

3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

4. The type and amount of income that qualifies for the exemption from tax.

5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,

2. You do not certify your TIN when required (see the instructions for Part II for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code,* later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships,* earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code,* later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)

2—The United States or any of its agencies or instrumentalities

3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

4—A foreign government or any of its political subdivisions, agencies, or instrumentalities

5—A corporation

6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession

7—A futures commission merchant registered with the Commodity Futures Trading Commission

8—A real estate investment trust

9—An entity registered at all times during the tax year under the Investment Company Act of 1940

10—A common trust fund operated by a bank under section 584(a)

11—A financial institution

12—A middleman known in the investment community as a nominee or custodian

13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over $600 required to be reported and direct sales over $5,000[1]	Generally, exempt payees 1 through 5[2]
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

[1] See Form 1099-MISC, Miscellaneous Income, and its instructions.

[2] However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester,* later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at *www.SSA.gov*. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at *www.irs.gov/Businesses* and clicking on Employer Identification Number (EIN) under Starting a Business. Go to *www.irs.gov/Forms* to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to *www.irs.gov/OrderForms* to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code,* earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account[1]
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor[2]
5. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee[1] The actual owner[1]
6. Sole proprietorship or disregarded entity owned by an individual	The owner[3]
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	**Give name and EIN of:**
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity[4]
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

[1] List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

[2] Circle the minor's name and furnish the minor's SSN.

[3] You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

[4] List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships,* earlier.

***Note:** The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to *phishing@irs.gov.* You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at *spam@uce.gov* or report them at *www.ftc.gov/complaint.* You can contact the FTC at *www.ftc.gov/idtheft* or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see *www.IdentityTheft.gov* and Pub. 5027.

Visit *www.irs.gov/IdentityTheft* to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

Exhibit "B" – Vendor's Services, Products and Fees Pursuant to

Request for Proposal No.2023-1004

DRAFT

BSN SPORTS REWARD PROGRAM

FOR

McAllen ISD TX

BSN SPORTS ("BSN") is pleased to offer **MCALLEN ISD** the **BSN SPORTS REWARDS PROGRAM** for the purchase and supply of athletic apparel and equipment for use by the school and its interscholastic programs.

BSN SPORTS Product Pricing: The school shall be able to purchase products at the following discounts:

-Under Armour Stock Team Apparel / Stock Uniforms	*40% off Retail Price*
-Under Armour Stock Footwear	*35% off Retail Price*
-Under Armour Custom AF Uniforms	*40% off Retail Price*
-BSN Catalog Products	*18% off Catalog Price*
-BSN Catalog Branded products	*10% off Catalog Price*

Custom GameDay Select uniforms , decorated apparel and footwear from any other manufacturers offered by BSN SPORTS will be at team discount pricing.

Decoration charges are not included in the above discounts.

BSN SPORTS Products are identified in our catalog with a black star icon next to the product code. BSN SPORTS catalog branded products are products distributed by BSN from a manufacturer such as Wilson, Spalding, Rawlings, etc.

My Team Shop: BSN SPORTS' online player pay site is available to be used by anyone varsity programs. All other programs including club sports and organizations will be encouraged to participate.

Shipping: The Athletic Program will pay 5.5% freight on all purchases. If a truck is needed for delivery a separate freight quote will be needed for delivery.

Product Allotment: Subject to the terms below, at the end of each school year of this agreement, the Athletic Program will receive a Product Allotment selected from a list of products provided by BSN and subject to availability at the time of order. Product Allotments are available after the requirements below are met and must be utilized during each school budget year. Product Allotments will be redeemed annually. A Product Allotment balance does not carry over from year to year. **Rebates only apply to orders placed under the terms and conditions of this agreement-including pricing.**

FOOTBALL
BASKETBALL
VOLLEYBALL
SOCCER
BASEBALL
LACROSSE
TENNIS
SOFTBALL
UNIFORMS
TRACK&FIELD
STRENGTH&
FITNESS
WRESTLING
SPORTS MED
SPEED
AGILITY
SCOREBOARDS
BENCHES&BLEACHERS
COACHING
AQUATICS

UPFRONT INCENTIVES FOR MCALLEN ISD:

- $45,000 EACH YEAR OF THE AGREEMENT HIGH SCHOOLS @ RETAIL ($15,000 PER HIGH SCHOOL).
- $15,000 EACH YEAR OF THE AGREEMENT MIDDLE SCHOOLS @ RETAIL ($2500 PER MIDDLE SCHOOL).
- $5000 EACH YEAR OF THE AGREEMENT ATHLETIC DEPARTMENT @ RETAIL.
- $5000 EACH YEAR OF THE AGREEMENT IN SPONSORSHIPS @ RETAIL (PRODUCT ONLY)
- MCALLEN ISD WILL RECEIVE 10% BACK ON ALL PURCHASES AT THE END OF EACH CALENDAR YEAR FROM BSN @RETAIL.

UPFRONT CAMPUS BRANDING INCENTIVES FOR MCALLEN ISD:

- $10,000 WATERBOY GRAPHICS EACH HIGH SCHOOL CAMPUS @ RETAIL (YEAR 1 ONLY)
- $10,000 WATERBOY GRAPHICS FOR STADIUM @ RETAIL (YEAR 1 ONLY)
- $500 BRANDING PACKAGE FOR EACH HIGH SCHOOL PROVIDED BY UNDER ARMOUR (YEAR 1 ONLY)
- MOTIVATIONAL SPEAKER ($7000 VALUE)

ADDITIONAL DISTRICT INCENTIVES: RETAIL PRICING

- $500 TO DISTRICT CHAMPION FOR ALL ELIGIBLE VARSITY SPORTS.
- $1000 TO DISTRICT CHAMPION IN FOOTBALL.
- $1000 TO MALE COACH OF THE YEAR (ELIGIBLE SPORTS.)
- $1000 TO FEMALE COACH OF THE YEAR (ELIGIBLE SPORTS.)
- $750 TO MALE COACH OF THE YEAR (MIDDLE SCHOOLS)
- $750 TO FEMALE COACH OF THE YEAR (MIDDLE SCHOOLS)

TOTAL ANNUAL INCENTIVES YEAR 1= $102,000 + 10% BACK
TOTAL ANNUAL INCENTIVES YEAR 2 AND 3= $75,000 + 10% BACK

Any decoration or customization to rebate product is paid for by the Athletic Program.

FOOTBALL
BASKETBALL
VOLLEYBALL
SOCCER
BASEBALL
LACROSSE
TENNIS
SOFTBALL
UNIFORMS
TRACK&FIELD
STRENGTH&
FITNESS
WRESTLING
SPORTS MED
SPEED
AGILITY
SCOREBOARDS
BENCHES&BLEACHERS
COACHING
AQUATICS

Terms and Conditions:

- All Under Armour product must be purchased through BSN SPORTS to be eligible for comp goods and branding materials. All Varsity Programs will convert to Under Armour for all competition uniforms and footwear following uniform buying cycles set forth from the Athletic Department.
- The School and Athletic Program must be current on all payment obligations to BSN to be eligible for the Product Allotment.
- BSN will provide access to online billing for customer to view and/or pay invoices

Term: Duration of this agreement is three (3) years from **September 1, 2022, to August 31, 2025** ("Term").

Acknowledged and agreed to:

McAllen ISD

_____

Brian McClenny– Athletic Director

BSN SPORTS

_____

Rodney Mayo – Sales Manager

Cust # 1002181
Sales Pro Name: David Keith
ZEMP # 106837

FOOTBALL
BASKETBALL
VOLLEYBALL
SOCCER
BASEBALL
LACROSSE
TENNIS
SOFTBALL
UNIFORMS
TRACK&FIELD
STRENGTH&
FITNESS
WRESTLING
SPORTS MED
SPEED
AGILITY
SCOREBOARDS
BENCHES&BLEACHERS
COACHING
AQUATICS

2023-1004 Addendum 1
BSN Sports, LLC
Varsity Brands Holding Co., Inc.
Supplier Response

Event Information

Number: 2023-1004 Addendum 1
Title: Branding Rights for McAllen ISD's Game Day Athletic Uniforms
Type: Request for Proposal
Issue Date: 5/18/2022
Deadline: 6/8/2022 10:00 AM (CT)
Notes: McAllen Independent School District (the "District") invites your submittal on the above referenced project.

Interested respondents may obtain details through IonWave. The District prefers and encourages respondents to submit their proposals electronically, through IonWave.

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.

Contact Information

Contact: Carol Quintanilla, CTCD, Senior Buyer

Address: Purchasing Services
Administration Office
2000 N 23rd St
McAllen, TX 78501-6126
Phone: (956) 6574486
Fax: (956) 6574481
Email: carolina.quintanilla@mcallenisd.net

BSN Sports, LLC Information

Contact: Chris Bloomfield
Address: PO Box 7726
Dallas, TX 75209-0726
Phone: (800) 527-7510 x47324
Fax: (800) 365-7653
Email: bsnbid@bsnsports.com
Web Address: https://www.bsnsports.com/

By submitting your response, you certify that you are authorized to represent and bind your company.

John Stafford
Signature

BSNBID@BSNSPORTS.COM
Email

Submitted at 5/31/2022 12:08:41 PM

Requested Attachments

Completed W9 Form — W9 FORM.pdf

Please upload your completed W9 form.

Assumed Name Certificate/Fictitious Name Documentation/Disregarded Entity Documentation — *No response*

Upload your Assumed Name Certificate/Fictitious Name Documentation/Disregarded Entity Documentation (if applicable).

Proof of Insurance (Acord Certificate of Insurance Form) — VarsityBrandsLLC - Client Pack - 2541490.PDF

Please upload your certificate of insurance in Acord form.

Completed Conflict of Interest Questionnaire. — CIQ FORM.pdf

Please upload your completed CIQ.

Note: If no conflict, please indicate "N/A" on the form.

Completed Form 1295 Form or Exemption Statement — 1295 FORM.pdf

Please upload your completed 1295 Form.
Form must be completed online: http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

If not applicable to your company, please attach a statement indicating the reason.

HUB Certificate — BSN Sports- Nike & Under Armour Reward Program Details.pdf

Upload your HUB Certificate, if applicable.

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. (I have read, understand and accept.)

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. (I hereby acknowledge.)

3 Deviations and Exceptions

If your company intends to deviate from the Specifications listed in the solicitation attached documents, all such deviations and exceptions must be listed here, with complete and detailed conditions and information included. The District reserves the right to accept or reject any proposals based upon any deviations indicated below. **If none, enter N/A (Not Applicable)**.

The Athletic Program will pay 5.5% freight on all purchases. If a Truck is needed for delivery a separate freight quote will be needed for delivery.
We bid on Nike & Under Armour - see attachments for Rewards Program under the HUB Tab attachment area (We are not a HUB)- Clarifications need to be addressed to Rodney Mayo- rmayo@bsnsports.com

4 Form 1295 - Certificate of Interested Parties

The Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 before the District may enter into a contract with that business entity. Form 1295 must be submitted with your proposal and is required as condition of award. Form must be completed online.
Access form at:

- http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
- Complete the form
- Enter solicitation number and name
- Print and sign form
- Attach form on "Response Attachments" tab

If exempt, attach documentation.

☑ I have read and understand. (I have read and understand.)

5 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 any proposer indebted to the District.

**This is your electronic signature.

I am NOT a delinquent taxpayer to McAllen ISD

6 Provide the business name as it is registered with the Texas Comptroller, or similar. *Note: the name must match IRS registration and W-9 form.

BSN Sports, LLC

7 Does your company have a business name on Line 2 of the W-9? If yes, attach an Assumed Name Certificate/Fictitious Name issued by the State/County (on the "Response Attachments" tab).

☐ Yes (upload Assumed Name Certificate) (Yes (upload Assumed Name Certificate))

☑ No (No)

8	**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. B. My company is not owned nor operated by a felon
9	**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). N/A

10

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.

11

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. (I have read and agree.)

12 **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.

B. Principal place employs 500+ in Texas

13 **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.

Farmers Branch, TX- Corporate Office

14 **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. (I have read and hereby certify.)

15 **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, 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 is your electronic signature.

☑ I have read and hereby certify. (I have read and hereby certify.)

16 **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. (I agree and hereby certify.)

17 **TEXAS GOVERNMENT CODE 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. (I have read and hereby certify.)

18 **TEXAS GOVERNMENT CODE 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. (I have read and hereby certify.)

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. (I have read and hereby certify.)

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. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
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. (I have read and hereby certify.)
22	**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. (I have read and hereby certify.)
23	**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 sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The 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. (I have read and hereby certify.)

24	**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. (I have read and hereby certify.)
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. (I have read and hereby certify.)
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. (I have read and hereby certify.)
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. (I have read and hereby certify.)

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. (I have read and hereby certify.)

29

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. (I have read and hereby certify.)

30

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. (I have read and hereby certify.)

31 **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. (I have read and hereby certify.)

32 **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. (I have read and hereby certify.)

33 **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.

I am neither.

34	**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. (I have read and hereby certify.)
35	**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. (I have read and hereby certify.)
36	**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. (I have read and hereby certify.)
37	**Addendum** 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. (I have read and hereby acknowledge.)

Bid Lines

1	**Vendor Information** **Item Attributes** **1. Vendor's Authorized Representative Name** David Keith- Sales Pro and/or Rodney Mayo-Sales Manager **2. Vendor's Authorized Representative Title** Sales Professional **3. Vendor's Authorized Representative E-mail** dkeith@bsnsports.com **4. Vendor's Authorized Representative Phone** (956) 432-8207

2 **Pricing (Items 3 through 14) - Specify Manufacturer Suggested Retail Price ("MSRP") (Refer to Specifications and SOW 10.7)**

3 MSRP - Football Jersey, Under Armour Gameday Compfit 2, UF029JM or equal

Quantity: 1 UOM: EA Price: $123.00 Total: $123.00

Manufacturer: Under Armour

Manufacturer #: UF029JM

Alternate 1

NIKE - 2 color light stretch twill jersey

Quantity: 1 UOM: EA Price: $111.00 Total: $111.00

Manufacturer: Nike

Manufacturer #: 397645

4 MSRP - Football Pant, Under Amour Armourfuse, UJFP1 or equal

Quantity: 1 UOM: EA Price: $75.00 Total: $75.00

Manufacturer: Under Armour

Manufacturer #: UJFP1

Supplier Notes: This Pant will not match a gameday Select Jersey if you are doing a dark color on dark color. 2 different materials.

Alternate 1

Custom Vapor Pro Pant (Extra charge for custom logos)

Quantity: 1 UOM: EA Price: $66.00 Total: $66.00

Manufacturer: Nike

Manufacturer #: A04797

5 MSRP **-** Basketball Jersey, Under Armour Armourfuse Primetime Plus Drive, DG, UJKJP2WUA or equal

Quantity: 1 UOM: EA Price: $72.00 Total: $72.00

Manufacturer: Under Armour

Manufacturer #: UJKJP2W

Alternate 1

Nike Digital Pinnacle Premier Jersey (Extra Charge for custom logos)

Quantity: 1 UOM: EA Price: $54.00 Total: $54.00

Manufacturer: Nike

Manufacturer #: Nike Digital Pinnacle Premier Jersey

6 MSRP - Basketball Short, Under Armour Armourfuse Primetime Plus Drive, DG, UJKSP2W or equal

Quantity: 1 UOM: EA Price: $72.00 Total: $72.00

Manufacturer: Under Armour

Manufacturer #: UJKSP2W

Alternate 1

Nike Digital Pinnacle Premier Short

Quantity: 1 UOM: EA Price: $54.00 Total: $54.00

Manufacturer: Nike

Manufacturer #: CQ4308

7 MSRP - Volleyball Shorty, Under Armour, 4" Shorty, UA1351243 or equal

Quantity: 1 UOM: EA Price: $18.00 Total: $18.00

Manufacturer: Under Armour

Manufacturer #: UA1351243

Alternate 1

Nike Stock Hyperlite Stock Short Custom Options available

Quantity: 1 UOM: EA Price: $24.00 Total: $24.00

Manufacturer: Nike

Manufacturer #: BV1020

8 MSRP - Volleyball, Jersey, Under Armour Armourfuse Showtime, V-Neck, Long Sleeve,UJVJ4LW or equal

Quantity: 1 UOM: EA Price: $58.80 Total: $58.80

Manufacturer: Under Armour

Manufacturer #: UJUJ4LW

Alternate 1

Nike Digital Elite LS Jersey (Extra Charge for Custom Logos)

Quantity: 1 UOM: EA Price: $60.00 Total: $60.00

Manufacturer: Nike

Manufacturer #: DJ8535

9 MSRP - Softball, Jersey, Under Armour Armourfuse, Gametime Faux Placket, UJSJX1W or equal

Quantity: 1 UOM: EA Price: $70.80 Total: $70.80

Manufacturer: Under Armour

Manufacturer #: UJSJX1W

Supplier Notes: This is the sublimated price off retail

Alternate 1

Digital Vapor Select Jersey (Extra Charge for Custom Logos)

Quantity: 1 UOM: EA Price: $60.00 Total: $60.00

Manufacturer: Nike

Manufacturer #: AV6684

10

MSRP - Softball, Knicker Pants, Under Armour Gameday Select Thief Pant, UB015PM or equal

Quantity: 1 UOM: EA Price: $60.00 Total: $60.00

Manufacturer: Under Armour

Manufacturer #: U5015 PW

Supplier Notes: UB015PM is not a Thief knicker pant & the M at the end indicates mens. I have quoted womens

Alternate 1

This pant should go with a custom top. Sublimated are different material & Shade of color

Quantity: 1 UOM: EA Price: $75.00 Total: $75.00

Manufacturer: Nike

Manufacturer #: AV6785

11

MSRP - Baseball, Jersey, Under Armour Armourfuse, Showtime, V-Neck, UJBJV3M or equal

Quantity: 1 UOM: EA Price: $61.80 Total: $61.80

Manufacturer: Under Armour

Manufacturer #: UJBJV3M

Supplier Notes: Sublimated Jersey

Alternate 1

Digital Throw back V Neck Jersey (Extra Charge for Custom Logos)

Quantity: 1 UOM: EA Price: $51.00 Total: $51.00

Manufacturer: Nike

Manufacturer #: AA9769

12

MSRP - Baseball, Taper Pant, Under Armour Game Day Select Legend,UB019PM or equal

Quantity: 1 UOM: EA Price: $54.00 Total: $54.00

Manufacturer: Under Armour

Manufacturer #: UB019PM

Supplier Notes: Solid Pant Quoted

Alternate 1

Custom Vapor Select Pant (Extra Charge for Custom Logos)

Quantity: 1 UOM: EA Price: $39.00 Total: $39.00

Manufacturer: Nike

Manufacturer #: Custom Vapor Select Pant

13

MSRP - Track, Singlet, Under Armour Armourfuse, UJTJ1 or equal

Quantity: 1 UOM: EA Price: $54.00 Total: $54.00

Manufacturer: Under Armour

Manufacturer #: UJTJC3M

Supplier Notes: UJTJ1 not available

Alternate 1

Digital Elite Fast Singlet (Extra Charge for Custom Logos)

Quantity: 1 UOM: EA Price: $39.00 Total: $39.00

Manufacturer: Nike

Manufacturer #: CV3015

14

MSRP - Track, Short, Under Armour Armourfuse, UJTSSPM or equal

Quantity: 1 UOM: EA Price: $40.80 Total: $40.80

Manufacturer: Under Armour

Manufacturer #: UJTSSPM

Supplier Notes: AF Loose Bottom

Alternate 1

Digital Elite Fast Short (Extra Charge for Custom Logos)

Quantity: 1 UOM: EA Price: $39.00 Total: $39.00

Manufacturer: Nike

Manufacturer #: CV3014

15

Total Discount for Items 3 through 14 (Enter your discount as a negative dollar amount. i.e., -$1.00)

Quantity: 1 UOM: EA Price: $40.00 Total: $40.00

Supplier Notes: Total Discount for all above lines 3-14 are already discounted on all items requested

Alternate 1

Total Discount for all nike items in the above lines 3-14 are priced in the item

Quantity: 1 UOM: EA Price: $40.00 Total: $40.00

Manufacturer: Nike

Manufacturer #: 1

16 **Category A: Football Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

17 Jersey (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

18 Jersey (Middle School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

19 Pants (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

20 Pants (Middle School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

21 Socks (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse.

22 Socks (Middle School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse.

23 Shoes (High School), Under Armour or equal

Total: 35%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse.

24 Shoes (Middle School), Under Armour or equal

Total: 35%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse.

25 Belt (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse.

26 Belt (Middle School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse.

27 **Category B: Basketball Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

28 Jersey (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

29 Jersey (Middle School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

30 Shorts (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

31 Shorts (Middle School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

32 Socks (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

33 Socks (Middle School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in warehouse

34 Shoes (High School), Under Armour or equal

Total: 35%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in warehouse

35 Shoes (Middle School), Under Armour or equal

Total: 35%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in warehouse

36	**Category C: Volleyball Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

37	Jersey (High School), Under Armour or equal Total: 40% **Item Attributes** **1. Specify Brand** Under Armour & Nike **2. Specify Estimated Delivery** 7-14 days- in our warehouse. 4-8 weeks custom

38	Jersey (Middle School), Under Armour or equal Total: 40% **Item Attributes** **1. Specify Brand** Under Armour & Nike **2. Specify Estimated Delivery** 7-14 days- in our warehouse. 4-8 weeks custom

39	Tights (High School), Under Armour or equal Total: 40% **Item Attributes** **1. Specify Brand** Under Armour & Nike **2. Specify Estimated Delivery** 7-14 days- in our warehouse. 4-8 weeks custom

40	Tights (Middle School), Under Armour or equal Total: 40% **Item Attributes** **1. Specify Brand** Under Armour & Nike **2. Specify Estimated Delivery** 7-14 days- in our warehouse. 4-8 weeks custom

41	Socks (High School), Under Armour or equal Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock

42 Socks (Middle School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock

43 Shoes (High School), Under Armour or equal

Total: 35%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock

44 Shoes (Middle School), Under Armour or equal

Total: 35%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock

45 **Category D: Soccer Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

46 Jersey (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

47 Jersey (Middle School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

48 Shorts (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

49 Shorts (Middle School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

50 Socks (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock in our warehouse

51 Socks (Middle School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock in our warehouse

52 Shoes (High School), Under Armour or equal

Total: 35%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock

53 Shoes (Middle School), Under Armour or equal

Total: 35%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock

54 **Category E: Baseball Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

55 Jersey (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

56 Pants (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

57 Socks (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock

58 Shoes (High School), Under Armour or equal

Total: 35%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock

59 Belt (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock

60 Cap (High School), Under Armour or equal

Total: 30%

Item Attributes

1. Specify Brand

Nike stock caps

2. Specify Estimated Delivery

6-8 weeks

61 **Category F: Softball Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

62 Jersey (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

63 Pants (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock

64 Socks (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock

65 Shoes (High School), Under Armour or equal

Total: 35%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock

66 Belt (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock

67 Cap (High School), Under Armour or equal

Total: 30%

Supplier Notes: Under Armour & Nike stock caps

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

6-8 weeks

68 **Category G: Cross Country Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

69 Jersey (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

70 Shorts (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

71 **Category H: Track Catalog Discount - Proposed discount (percentage) off manufacturer suggested retail price (MSRP)**

72 Jersey (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days- in our warehouse. 4-8 weeks custom

73 Shorts (High School), Under Armour or equal

Total: 40%

Item Attributes

1. Specify Brand

Under Armour & Nike

2. Specify Estimated Delivery

7-14 days in stock

74 **Additional Costs**

75 Additional Cost for Screen Printing/Logo

Quantity: 1 UOM: EA Price: $0.00 Total: $0.00

Supplier Notes: Prices vary on quantity and colors of logos. Our price on decorated item is included in the price of the garment

76 Additional Cost for Embroidery

Quantity: 1 UOM: EA Price: $0.00 Total: $0.00

Supplier Notes: Price of decoration is included in the price of the item.

77 **Incentive Program for Each of the High Schools (refer to Specifications and SOW 10.9)**

78 Rebates

Item Attributes

1. Provide details on rebates proposed (If none, enter "N/A").

10 % rebate on any item purchased through BSN Sports. This includes: cloth, uniforms, equipment, and other services provided by BSN.

79 Commissions

Item Attributes

1. Provide details on commission proposed (if none, enter "N/A").

N/A

80 Discounts

Item Attributes

1. Provide details on additional discounts proposed (If none, enter "N/A").

Nike added incentive: each sport that is eligible through the RFP will receive Buy 1 get 1 free uniforms year one only. Year 2 & 3 of the RFP McAllen ISD will receive $10,000 each High School in Nike switchovers.

81 Merchandise

Item Attributes

1. Provide details on merchandise incentives proposed (if none, enter "N/A").

$45,000 in retail price per year for HS (15,000 each campus)
$15,000 in retail price per year for MS ($5,000 each campus)
$5,000 in retail price per year for Athletic Department SEE attached Docs as well - PUT UNDER THE HUB ATTACHMENT AREA

82 Advertising

Item Attributes

1. Specify any advertising/logo programs that will be expected of the District to follow (if none, enter "N/A").

N/A

83 **Other Contract Incentives (refer to Specifications and SOW 10.10)**

84 Other Incentives

Item Attributes

1. Provide details on other incentives proposed (if none, enter "N/A").

CAMPUS BRANDING:
$40,000 in retail price in Campus Banding (10,000 per campus) year 1 only
$5,000 in retail price per campus for sponsorships. (product only)
$7,000 value for Motivational speaker that is provided

85 Added Value

Item Attributes

1. Added Value

Provide an overview of the benefits to and obligations of the District and Vendor associated with the offer for exclusivity. Provide details of the benefits offered. Clearly outline all obligations the District will incur if accepting your offer (include requirements such as advertising and/or promotion).

If none, enter "N/A".

$500 in retail to each sport winning a district Championship.
$1000 in retail to District Champion in Football
$1000 in retail price to male HS Coach of the year
$1000 in retail price to female HS Coach of the year
$750 in retail price to male MS Coach of the year
$750 in retail price to female MS Coach of the year

86 **Other Information (refer to Specifications and SOW 10.11)**

87 Quality of products/services

Item Attributes

1. Provide any other relevant factor/information that demonstrates product or service quality (if none, enter "N/A").

BSN Sports is the largest Team Dealer in the US. All of our products are guaranteed for 1 year. The relationship built in the district & service provided by our local rep David Keith. 1.2 million dollars in Dallas for any supply chain.

88 Requirements/Timelines

Item Attributes

1. Provide requirements and timelines for ordering team uniforms (if none, enter "N/A").

4-8 weeks in Advance

89 **References - List three (3) references with whom your company has had branding rights.**

Item Notes: The District reserves the right to contact any reference listed.

90 **Reference 1**

Item Attributes

1. Organization Name

Edinburg CISD

2. Contact Person

Roy Garza

3. Contact Person Email Address

roy.garza@ecisd.us

4. Contact Person Phone Number

(956) 289-2300

91 **Reference 2**

Item Attributes

1. Organization Name

Harlingen CISD

2. Contact Person

Robert Davies

3. Contact Person Email Address

robert.davies@hcisd.org

4. Contact Person Phone Number

(956) 427-3600

92 **Reference 3**

Item Attributes

1. Organization Name

Brownsville CISD

2. Contact Person

Gilbert Leal

3. Contact Person Email Address

gdleal@bisd.us

4. Contact Person Phone Number

(956) 546-4357

Response Total: $800.20

Exhibit "C" – Certificate of Insurance

DRAFT

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 05/27/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Willis Towers Watson Certificate Center	
Willis Towers Watson Insurance Services West, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	PHONE (A/C, No, Ext): 1-877-945-7378	FAX (A/C, No): 1-888-467-2378
	E-MAIL ADDRESS: certificates@willis.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : James River Insurance Company	12203
INSURED BSN Sports, LLC 14460 Varsity Brands Way Farmers Branch, TX 75244	INSURER B : Travelers Property Casualty Company of Ame	25674
	INSURER C : Travelers Indemnity Company of CT	25682
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** W24891716 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:			0067824-7	07/30/2021	07/30/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ $ 1,000,000 $ 2,000,000 $ 2,000,000
B	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY [X] Comp/Coll. Ded. $1,000 [X] Hired Autos			TJ-CAP-6E004847-TIL-21	07/30/2021	07/30/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
	[ ] UMBRELLA LIAB [ ] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: No (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		UB-6P863791-21-51-K	07/30/2021	07/30/2022	[X] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: 2023-1004 - Branding Rights for McAllen ISD's Game Day Athletic Uniforms

The District is included as an Additional Insured as respects to General Liability and Auto Liability.

CERTIFICATE HOLDER

McAllen Independent School District
Attn: Carol Quintanilla, CTCD, Senior Buyer
Administration Office
2000 N 23rd St
McAllen, TX 78501-6126

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

752

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Where required by written contract or written agreement.	All operations of the named insureds.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Where required by written contract or written agreement.	All operations of the named insureds.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

A. BROAD FORM NAMED INSURED

B. BLANKET ADDITIONAL INSURED

C. EMPLOYEE HIRED AUTO

D. EMPLOYEES AS INSURED

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

G. WAIVER OF DEDUCTIBLE – GLASS

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

J. PERSONAL PROPERTY

K. AIRBAGS

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

M. BLANKET WAIVER OF SUBROGATION

N. UNINTENTIONAL ERRORS OR OMISSIONS

PROVISIONS

A. BROAD FORM NAMED INSURED

The following is added to Paragraph **A.1.**, **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph **c.** in **A.1.**, **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section **II**.

C. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph **A.1.**, **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph **b.** in **B.5.**, **Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

(1) Any covered "auto" you lease, hire, rent or borrow; and

(2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

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permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

The following is added to Paragraph **A.1.**, **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph **A.2.a.(2)**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(2) Up to $3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph **A.2.a.(4)**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph **(5)** in Paragraph **B.7.**, **Policy Period, Coverage Territory**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph **C.**, Limits Of Insurance, of SECTION **II** – COVERED AUTOS LIABILITY COVERAGE.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph **C.**, Limits Of Insurance, of SECTION **II** – COVERED AUTOS LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

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You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

(d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph **D.**, **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

The following replaces the last sentence of Paragraph **A.4.b.**, **Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is $65 per day, to a maximum of $750 for any one "accident".

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph **A.4.a.**, **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to $50 per day to a maximum of $1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL PROPERTY

The following is added to Paragraph **A.4.**, **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Personal Property

We will pay up to $400 for "loss" to wearing apparel and other personal property which is:

(1) Owned by an "insured"; and

(2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. AIRBAGS

The following is added to Paragraph **B.3.**, **Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion **3.a.** does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;

b. The airbags are not covered under any warranty; and

c. The airbags were not intentionally inflated.

We will pay up to a maximum of $1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph **A.2.a.**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

(a) You (if you are an individual);

(b) A partner (if you are a partnership);

(c) A member (if you are a limited liability company);

(d) An executive officer, director or insurance manager (if you are a corporation or other organization); or

(e) Any "employee" authorized by you to give notice of the "accident" or "loss".

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph **A.5.**, **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

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such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph **B.2.**, **Concealment, Misrepresentation, Or Fraud**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Compensation Plan for School Year 2022-2023

REFERENCE: Goal 2: People Development; Strategy 2: Attract/Retain High Quality Staff

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION: Per Board Policy DEA (Local) - Compensation and Benefits, Compensation Plan - The Superintendent shall recommend an annual compensation plan for all District employees. The compensation plan may include wage and salary structures, stipends, benefits, and incentives. The recommended plan shall support District goals for hiring and retaining highly qualified employees. Texas Education Code Sections 44.001 through 44.006 and Texas Tax Code Chapter 26 requires that districts with a fiscal year beginning July 1st must adopt their budget no later than June 30th.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS: The recommended salary increase for the teachers and librarians is a minimum of $1,140. Entry level salary for teachers with zero (0) years experience is recommended at $278.88 ($52,150) as the minimum salary for this compensation plan with $331.93 ($62,070) for new teachers to McAllen ISD with 20+ years of experience as the maximum salary for this compensation plan. The recommended salary increase for non-teaching professionals, para-professionals, and auxiliary staff is 2.0% from their midpoint as per their classification within the compensation plan. The salary increases or General Pay Increases (GPI) will also include implementation of equity adjustments that are being recommended by TASB HR Services for some staff across all pay groups including our teachers. Upon approval and final revisions, the salary increases will be implemented for the 2022-2023 school year and included in the 2022-2023 Proposed Annual Budget Book.

Administration is recommending the approval of a one-time Holiday pay stipend in the amount of $500 for all employees who are employed by the district on a full time basis as of September 15, 2022, and remain employed as of December 1, 2022. Eligible full time employees are defined as persons employed by the district for at least 27.5 hours per week to include bus drivers and bus aides. This one-time stipend will be paid during December 2022, and is contingent upon the availability of funds and in consideration of the District's revenues and fund balances at the time plans for such payments are presented. This one-time stipend would be considered as non-TRS compensable. Additional payments made to staff are a part of the compensation structure and are conducted with the intent to recognize and honor the dedication, loyalty, and contributions of our employees.

LEGAL REVIEW: O'Hanlon, Demerath, & Castillo

BUDGETARY CONSIDERATIONS:
- Salary increases ($1,140) and GPI (2.0%): General Funds and Special Revenue Funds estimated at $5,427,308
- One-time payments: General Fund funds estimated at $1,712,500 from assigned fund balance and/or operating budget, and Special Revenue funds estimated at $53,000 from operating budget, as applicable

RECOMMENDED BOARD ACTION: That the Board of Trustees approve the above compensation plan for school year 2022-2023.

SUBMITTED BY: _____ **SUPERVISOR:** Todd Miller

For further information contact:
Name: Todd Miller
Office: Human Resources (956) 618-6009
eMail: todd.miller@mcallenisd.net

Approved for presentation to the Board of Education:

759

Superintendent of Schools Jun 9, 2022

Approval of Compensation Plan for School Year 2022 - 2023

June 13, 2022

Todd Miller
Asst. Superintendent for Human Resources

ADMINISTRATIVE CONSIDERATIONS / FACTS AND ANALYSIS

- The recommended salary increase for the teachers and librarians is a minimum of $1,140.
- Entry level salary for teachers with zero (0) years experience is recommended at $278.88 ($52,150) as the minimum salary for this compensation plan with $331.93 ($62,070) for new teachers to McAllen ISD with 20+ years of experience as the maximum salary for this compensation plan.
- The recommended salary increase for non-teaching professionals, para-professionals, and auxiliary staff is 2.0% from their midpoint as per their classification within the compensation plan.
- The salary increases or general pay increases will also include implementation of equity adjustments that are being recommended by TASB HR Services for some staff across all pay groups including our teachers.
- Upon approval and final revisions, the salary increases will be implemented for the 2022-2023 school year and included in the 2022-2023 Proposed Annual Budget Book.

ADMINISTRATIVE CONSIDERATIONS / FACTS AND ANALYSIS (cont.)

- Administration is recommending the approval of a one-time Holiday pay stipend in the amount of $500 for all employees who are employed by the district on a full time basis as of September 15, 2022, and remain employed as of December 1, 2022.
  - Eligible full time employees are defined as persons employed by the district for at least 27.5 hours per week to include bus drivers and bus aides.

- This one-time stipend will be paid during December 2022, and is contingent upon the availability of funds and in consideration of the District's revenues and fund balances at the time plans for such payments are presented. This one-time stipend would be considered as non-TRS compensable.

- Additional payments made to staff are a part of the compensation structure and are conducted with the intent to recognize and honor the dedication, loyalty, and contributions of our employees.

- BUDGETARY CONSIDERATIONS:
  - Salary increases ($1,140) and GPI (2.0%): General Funds and Special Revenue Funds estimated at $5,427,308
  - One-time payments: General Fund funds estimated at $1,712,500 from assigned fund balance and/or operating budget, and Special Revenue funds estimated at $53,000 from operating budget, as applicable

- RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the above compensation plan for school year 2022-2023.

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of the McAllen Independent School District June Budget Amendment for Fiscal Year Beginning July 1, 2021 and Ending June 30, 2022

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

In accordance with TEA budget and accounting procedures guidelines, the District's official budget is comprised of the General Fund which includes Food Service and the Debt Service Fund. The District has administratively opted to officially adopt the Capital Projects Fund budget. The adoption of the budgets associated with these funds, and subsequent amendments, should be approved by the Board of Trustees. The authority to approve a budget or a budget amendment for a grant program, however, lies with the granting agency and not with the District's Board.

The administration will routinely allow amendments of existing budgeted funds between major function levels, in order to accommodate the necessary operations of the requesting department or campus. These amendments usually become necessary due to account coding requirements. These requests allowed at the administrative level are subject to final approval by the Board of Trustees.

The budget amendments are broken down into the following two categories:

1. Revisions – amendments that are necessary because of policy changes or revisions to programs that increase/decrease the budget.

2. Transfers – amendments that are necessary and/or amounts require adjustments but do not increase/decrease the budget.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The budget amendment detail provides explanations for the revisions and transfers.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

	General Fund	Debt Service Fund	Capital Projects Fund
Audited Fund Balance	$ 107,594,997	$ 2,639,059	$ 23,254,983
Revenues	249,533,589	7,511,046	2,438,223
Expenditures	260,101,629	6,805,900	25,667,998
Preliminary Ending Fund Balance	$ 97,026,957	$ 3,344,205	$ 25,208

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of the McAllen Independent School District June Budget Amendment for Fiscal Year Beginning July 1, 2021 and Ending June 30, 2022.

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the McAllen Independent School District June Budget Amendment for the General Fund, Debt Service Fund and Capital Projects Fund for Fiscal Year Beginning July 1, 2021 and Ending June 30, 2022.

SUBMITTED BY: _____ **SUPERVISOR:** Cynthia Medrano-Richards

For further information contact:
Name: Iris Luna, RTSBA
Office: (956) 618-6016
eMail: iris.luna@mcallenisd.net

Approved for presentation to the Board of Education:

_____
Superintendent of Schools

McAllen Independent School District
Summary Report as of June 8, 2022
Review of Budget Amendments and Proposed Amendments

GENERAL FUND

	A	B	C	D	E
			Budget Amendments Under Consideration		
Description	Original Budget	Revised Budget 04/30/2022	Revisions	Transfers	Revised Budget 06/08/2022
Audited Fund Balance	**107,594,997**	**107,594,997**			**107,594,997**
Revenues:					
Local:					
Property Taxes	84,787,994	85,696,013			85,696,013
Interest Income	878,000	243,000	12,000		255,000
Other Local Income	2,431,586	2,696,933	9,145,767		11,842,700
State:	133,383,459	122,444,354	562,155		123,006,509
Federal:	20,132,664	27,575,027	946,105		28,521,132
Other Sources:	0	202,697	9,538		212,235
Total Revenues	**241,613,703**	**238,858,024**	**10,675,565**	**0**	**249,533,589**
Expenditures:					
11 Instruction	126,586,945	125,639,968	175,829	(8,919,192)	116,896,605
12 Inst. Res. & Media Services	3,568,402	3,438,074	150	27,409	3,465,633
13 Curriculum Dev. & Inst. Staff Dev.	4,557,240	4,755,723	58,605	49,188	4,863,516
21 Inst. Leadership	3,450,687	3,327,939	19,500	86,489	3,433,928
23 School Leadership	13,393,257	13,350,377	9,700	36,293	13,396,370
31 Guid., Counseling & Eval. Ser.	9,820,599	10,008,246	78,600	72,637	10,159,483
32 Social Work Services	1,957,232	2,069,633	25,200	(5,647)	2,089,186
33 Health Services	2,885,127	3,045,238	(4,080)	35,243	3,076,401
34 Student (Pupil) Trans.	4,049,716	4,800,442	405,226	960,251	6,165,919
35 Food Services	17,265,197	20,377,723	840,641	6,015	21,224,379
36 Curricular/Extracurricular Act.	9,738,355	10,338,339	438,861	(78,508)	10,698,692
41 General Administration	8,043,476	8,432,465	12,130	(63,376)	8,381,219
51 Plant Maint. & Operations	20,349,685	25,547,074	(88,310)	(16,265)	25,442,499
52 Security and Monitoring Serv.	4,415,229	5,562,754	21,000	195,057	5,778,811
53 Data Processing Services	4,429,511	6,428,734	20,301	(120,667)	6,328,368
61 Community Services	36,710	97,327	4,000	1,806	103,133
71 Debt Service	5,905,151	6,017,528		50,000	6,067,528
81 Fac. Acquisition & Const.	6,000	3,693,642	40,000	6,273,267	10,006,909
95 Pmt. to Juv. Justice Alt. Ed. Prg.	40,000	40,000		5,000	45,000
99 Other Intergovernmental Charges	939,270	939,270		5,000	944,270
Other Uses	85,000	133,780		1,400,000	1,533,780
Total Expenditures	**241,522,789**	**258,044,276**	**2,057,353**	**0**	**260,101,629**
		765			
Preliminary Ending Fund Balance	**107,685,911**	**88,408,745**	**8,618,212**	**0**	**97,026,957**

GENERAL FUND
Revisions

REVENUES:

Local				
Interest Income	- Increase to Interest Revenue for Fund 197 Maintenance Tax Notes	$ 12,000		
				12,000
Other Local Income	- Increase to Ticket Sales for Fund 183 Athletics	$ 27,490		
	- Instrument Maintenance Fees for Fund 184 Fine Arts	5,229		
	- Donation from Michael Anthony Larson for Fund 184 Fine Arts for SpongeBob Musical Royalties	1,000		
	- HEB Excellence in Education Award for Fund 199 General Fund	100,000		
	- Settlement for Fund 199 General Fund	8,931,007		
	- Increase to Tax Penalties/Interest for Fund 199 General Fund	74,109		
	- Increase to Local Revenues for Fund 199 General Fund	6,932		
			$	9,145,767
State				
	- Increase to TRS On-behalf	$ 562,155		
				562,155
Federal				
	- Increase to National School Lunch Program, School Breakfast Program and Federal Revenue through State for Fund 101 Food Service	$ 793,227		
	- Increase to SHARS Revenue for Fund 199 General Fund	152,878		
				946,105
Other Sources				
	- Increase to Sale of Real/Personal Property for Fund 101 Food Service	$ 14		
	- Increase to Sale of Real/Personal Property for Fund 199 General Fund	7,524		
	- Transfer to Fund 199 General Fund from Fund 713 Safe and Secure for Employee Travel to National Spelling Bee Competition for Garza Elementary	2,000		
				9,538
		Grand Total		$ 10,675,565

EXPENDITURES:

Function 11	- Increase to Contracted Maintenance and Repairs for Instruments for Fund 184 Fine Arts	$ 5,229		
	- Increase to TRS On-behalf	170,600		
				175,829
Function 12	- Increase to TRS On-behalf	$ 150		
				150
Function 13	- Increase to TRS On-behalf	$ 58,605		
				58,605
Function 21	- Increase to TRS On-behalf	$ 19,500		
				19,500
Function 23	- Increase to Employee Travel to National Spelling Bee Competition for Garza Elementary	$ 2,000		
	- Increase to TRS On-behalf	7,700		
				9,700
Function 31	- Increase to TRS On-behalf	$ 78,600		
				78,600
Function 32	- Increase to TRS On-behalf	$ 25,200		
				25,200

GENERAL FUND
Revisions

Function 33	- Increase to TRS On-behalf	$ 6,500	
	- Transfer to Fund Balance for Fund 199 General Fund	(10,580)	
			(4,080)
Function 34	- Increase for School Buses for the Transportation Department for Fund 199 General Fund	$ 355,226	
	- Increase to TRS On-behalf	50,000	
			405,226
Function 35	- Increase to Food, Non-Food, Support Staff Extra Duty/Overtime and Fringe Benefits for Fund 101 Food Service	$ 793,241	
	- Increase to TRS On-behalf	47,400	
			840,641
Function 36	- Increase to Transportation Costs for Fund 183 Athletics	$ 25,000	
	- Increase to Royalties for Fund 184 Fine Arts for SpongeBob Musical Royalties	1,000	
	- Increase for Baseball and Softball Equipment/Uniforms for all Middle Schools and Uniform Replacement Schedules for Fund 183 Athletics	390,858	
	- Increase for Trailer Wraps, Band Props and Dance Team Fillers for McAllen, Memorial and Rowe High Schools for Fund 184 Fine Arts	59,000	
	- Increase to TRS On-behalf	1,500	
	- Transfer to Fund Balance for Fund 199 General Fund	(38,497)	
			438,861
Function 41	- Increase to TRS On-behalf	$ 23,300	
	- Transfer to Fund Balance for Fund 199 General Fund	(11,170)	
			12,130
Function 51	- Increase to Fuel for Fund 183 Athletics	$ 2,490	
	- Increase to TRS On-behalf	15,200	
	- Transfer to Fund Balance for Fund 199 General Fund	(106,000)	
			(88,310)
Function 52	- Increase to TRS On-behalf	$ 21,000	
			21,000
Function 53	- Increase for Google Workspace Education Plus for the Department of Technology for Fund 199 General Fund	$ 7,296	
	- Increase to TRS On-behalf	32,900	
	- Transfer to Fund Balance for Fund 199 General Fund	(19,895)	
			20,301
Function 61	- Increase to TRS On-behalf	$ 4,000	
			4,000
Function 81	- Increase to Secure Front Entrance at Memorial High School for Fund 199 General Fund	$ 40,000	
			40,000
	Grand Total		$ 2,057,353

McAllen Independent School District
Summary Report as of June 8, 2022
Review of Budget Amendments and Proposed Amendments

DEBT SERVICE

	A	B	C	D	E
			Budget Amendments Under Consideration		
Description	Original Budget	Revised Budget 04/30/2022	Revisions	Transfers	Revised Budget 06/08/2022
Audited Fund Balance	**2,639,059**				**2,639,059**
Revenues:					
Local					
Property Taxes	6,581,732	7,206,732			7,206,732
Interest Income	2,000	2,000	500		2,500
Other Local Income	61,000	92,065	11,000		103,065
State	161,168	198,749			198,749
Federal	0	0			0
Other Sources	0	0			0
Total Revenues	**6,805,900**	**7,499,546**	**11,500**	**0**	**7,511,046**
Expenditures:					
71 Debt Service	6,805,900	6,805,900			6,805,900
Total Expenditures	**6,805,900**	**6,805,900**	**0**	**0**	**6,805,900**
Preliminary Ending Fund Balance	**2,639,059**	**693,646**	**11,500**	**0**	**3,344,205**

DEBT SERVICE
Revisions

REVENUES:

Local

Interest Revenue	- Increase to Interest Revenue for Fund 599 Debt Service Fund	$ 500	
			500
Other Local Income	- Increase to Royalties for Fund 599 Debt Service Fund	$ 1,000	
	- Increase to Tax Penalties/Interest for Fund 599 Debt Service Fund	10,000	
			11,000
	Grand Total		$ 11,500

McAllen Independent School District
Summary Report as of June 8, 2022
Review of Budget Amendments and Proposed Amendments

CAPITAL PROJECTS

	A	B	C	D	E
			Budget Amendments Under Consideration		
Description	Original Budget	Revised Budget 01/31/2022	Revisions	Transfers	Revised Budget 06/08/2022
Audited Fund Balance	**23,254,983**	**23,254,983**			**23,254,983**
Revenues:					
Local					
Other Local Income		1,000,000			1,000,000
Other Sources		38,223	1,400,000		1,438,223
Total Revenues	**0**	**1,038,223**	**1,400,000**	**0**	**2,438,223**
Expenditures:					
51 Plant Maint. & Operations	186,000	1,062,607		15,350	1,077,957
81 Fac. Acquisition & Const.	15,291,696	23,205,391	1,400,000	(15,350)	24,590,041
Total Expenditures	**15,477,696**	**24,267,998**	**1,400,000**	**0**	**25,667,998**
Preliminary Ending Fund Balance	**7,777,287**	**25,208**	**0**	**0**	**25,208**

CAPITAL PROJECTS FUND
Revisions

REVENUES:

Other Sources

	- Increase to Operating Transfers In from Fund 199 General Fund to Fund 698 MISD Capital Projects for Press Box	$ 1,400,000	1,400,000
	Grand Total		$ 1,400,000

EXPENDITURES:

Function 81	- Increase for Press Box for Fund 698 MISD Capital Projects	$ 1,400,000	1,400,000
	Grand Total		$ 1,400,000

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval and Adoption of the McAllen Independent School District Budget for Fiscal Year Beginning July 1, 2022 and Ending June 30, 2023

REFERENCE: Goal 4; Strategy 7: Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The Texas Education Code and Board Policy CE require every local education agency to prepare a budget of anticipated expenditures and revenues on or before June 19th. The budget is to be approved by the District's Board of Trustees no later than June 30th or earlier. The official budget is comprised of the General Fund, which includes Food Service, and the Debt Service Fund. The District has administratively opted to officially adopt the Capital Projects Fund budget.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
Budgets are estimates of what the District originally anticipates spending in the fiscal year. Budgets serve at least three important functions.

(1) Planning future operations.
(2) Controlling expenditures in accordance with the appropriations approved by the Board of Trustees of the local education agency.
(3) Communicating to Administrators of the District's organizational units the resources set aside for the operations of their respective units.

LEGAL REVIEW:
None Required.

BUDGETARY CONSIDERATIONS:
The fiscal year 2022-2023 budget was planned on an Average Daily Attendance of 19,030 and 96% of the estimated total tax levy at a rate of $1.0964.

RECOMMENDED BOARD ACTION:
That the Board of Trustees approve and adopt the McAllen Independent School District's budgets as follows:

A. Approval and Adoption of the Accelerated Instruction Funds budget of $90,600 for fiscal year beginning July 1, 2022 and ending June 30, 2023.

B. Approval and Adoption of the General Fund budget of $270,432,014, the Debt Service Fund budget of $6,813,200 and the Capital Projects Fund budget of $22,636,181, for a total budget of $299,881,395 for fiscal year beginning July 1, 2022 and ending June 30, 2023.

SUBMITTED BY: _____ **SUPERVISOR:** Cynthia Medrano-Richards

For further information contact:
Name: Iris Luna, RTSBA
Office: (956)618-6016
eMail: iris.luna@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

McALLEN INDEPENDENT SCHOOL DISTRICT

2022-2023 ANNUAL BUDGET

FISCAL YEAR JULY 1, 2022 TO JUNE 30, 2023

2000 N. 23RD. STREET | MCALLEN, TX 78501 | HIDALGO COUNTY | (956)618-6000 | MCALLENISD.ORG

Table of Contents

Executive Summary 5
Principal Officers 6
Transmittal Letter 7
Budget Introduction 17
Budget Process 19
Budget Overview 21
ASBO Meritorious Budget Award 33
GFOA Distinguished Budget Presentation Award 35
GFOA Certificate of Achievement for Excellence in Financial Reporting 36
Schools First Financial Integrity Rating System of Texas (FIRST) 37
Texas Comptroller Transparency Stars 38
Texas Comptroller Leadership Circle Awards 39
Purchasing Services Awards 40

Organizational Section 41
Where is McAllen, Texas? 42
Who is McAllen ISD? 43
2022-2023 School Calendar 52
School Zone Official Map 53
Campus Listing 54
2021-2022 Organizational Chart 57
Superintendent 58
A Letter from the Superintendent 63
Administrative Staff 64
Board of Trustees 65
Our Vision and Our Mission 68
Our Goals and Strategies 69
Long Term Financial Planning and Major Initiatives 71
Facilities Education Master Plan 72
Prekindergarten Program 74
District Policies 75
Budget Planning 108
Budget Process 110
Budget Development Calendar 111
Account Code Structure 125

Financial Section 128
Introduction 129
All Funds Combined
Revenue and Expenditure Assumptions and Trends 130
Capital Outlay Projects 133
Summary All Funds Forecast 134
Two Year Budget Comparison of General, Debt Service and Capital Projects Funds 135
Two Year Budget Comparison of Revenues by Object Code – General, Debt Service and Capital Projects Funds 136
Appropriations – Budget Summary – General, Debt Service and Capital Projects Funds 137
Two Year Budget Comparison of Appropriations by Object Code – General, Debt Service and Capital Projects Funds 138
Two Year Budget Comparison of Appropriations by Function – General, Debt Service and Capital Projects Funds 139
Appropriations by Function - Two Year Budget Comparison of General, Debt Service and Capital Projects Funds 140
Appropriations by Function – General, Debt Service and Capital Projects Funds 141
Budget Summary – General, Debt Service and Capital Projects Funds 144
State Compensatory Education Program 145
Appropriations by Function – Accelerated Instruction Funds 146
General Fund
General Fund Balance 147
General Fund Forecast (Funds 1xx) 148
Revenues – General Fund 149
Appropriations – General Fund 150
Budget Summary – General Fund 154
Debt Service Fund and Capital Projects Fund
Debt Service Fund Balance 155
Debt Service Fund Forecast 156
Capital Projects Fund 157
Capital Projects Fund Forecast (Funds 6xx) 158
Revenues – Debt Service and Capital Projects Funds 159
Appropriations – Debt Service and Capital Projects Funds 159
Special Revenue, Enterprise and Internal Service Funds 160
Budget Summary – Special Revenue and Proprietary Funds 164

Informational Section 165
Assessed Values 166
Property Tax Rates and Collections 166
Maintenance & Operations Tax Limitation 167
Tax Supported Debt Limitation 167
Tax Rate History 168
Effect of Tax Levy on Single Family Residence 168
Principal Property Taxpayers 169

Student Enrollment 170
Performance Measures 171
Debt Service Bond Amortization Schedule 177
Bond Ratings 177
Issue by Issue Outstanding Debt Obligations 178
Definition of Overlapping Debt 179
Maintenance Tax Notes Fund Balance 180
Maintenance Tax Notes Amortization Schedule 181
Tax Rate Worksheets 184
Pay Information 190
- Teacher/Librarian Minimum Hiring Pay Structure 191
- Administrative Education Pay Structure 192
- Administrative Management Pay Structure 195
- Clerical/Technical Pay Structure 197
- Instructional Support Pay Structure 199
- Auxiliary Pay Structure 200
- Part Time Rates 202
- Athletic Program Rates 203
- Substitute Rates 204
- Summer School Rates – Remediation/Recovery Program 205
- Summer School Rates – Enrichment Program 206
- Evening Study Center Rates and Safe and Secure Child Care Rates 207

Stipends 208
- Athletic Programs 209
- Advanced Academics and Bilingual Program 210
- Career Technical Education Program 211
- Fine Arts Program 212
- Regional Day School Program for the Deaf (RDSPD) 213
- Special Education Program 214
- Special Duty Assignments 215
- Grant Funded Stipends – Dyslexia Program, Reading Academy, State & Federal Programs 216
- Grant Funded Stipends – ESSER Stipends 217
- Department/Grade Level Chair/UIL/Extracurricular Stipends 218
- Extra Duty Pay 219

Staffing Guidelines 221
- Staff Count – All Funds 222
- Elementary Schools Staffing Guidelines 223
- Middle Schools Staffing Guidelines 225
- High Schools Staffing Guidelines 228

Glossary of Terms 231
Works Cited 239

Executive Summary

777

Principal Officers

Board of Trustees	Length of Service	Term Expires
Mr. Tony Forina, Place 4 President	7 Years	2023
Mrs. Debbie Crane Aliseda, Place 3 Vice President	9 Years	2025
Mr. Marco Suarez, Place 1 Secretary	7 Years	2023
Mr. Conrado Alvarado, Place 2 Trustee	11 Years	2023
Ms. Sofia M. Peña, Place 6 Trustee	1 Year	2025
Mr. Sam Saldivar, Jr., Place 7 Trustee	13 Years	2025
Mr. Daniel D. Vela, Place 5 Trustee	15 Years	2023

Administrative Officials	Position	Length of Service
J. A. Gonzalez, Ed. D.	Superintendent of Schools	24 Years
Bridgette Vieh	Associate Superintendent for Instructional Leadership	26 Years
Cynthia Medrano-Richards, RTSBA, CPA	Assistant Superintendent for Business Operations	29 Years
Rosalba De Hoyos, Ed. D.	Assistant Superintendent for Instructional Services	10 Years
Adel Felix, CPA, CFE	Interim Assistant Superintendent for District Operations	4 Years
Todd Miller	Assistant Superintendent for Human Resources	7 Years
Iris Luna, RTSBA	Chief Financial Officer	8 Years

June 13, 2022

Board of Trustees
McAllen Independent School District
McAllen, Texas

To the Honorable Members of McAllen ISD Board of Trustees:

We are pleased to present the McAllen Independent School District's (hereinafter referred to as "District") 2022-2023 Budget Book. The Budget Book and the Annual Comprehensive Financial Report (ACFR) are the primary tools used to present the financial plan and the results of operations of the District. The information included in this budget document is structured to meet the requirements of the Meritorious Budget Award (MBA) of the Association of School Business Officials International (ASBO). This award represents the highest level of recognition in budgeting for school entities.

The Budget Book has been prepared in accordance with State regulations and local policies covering the required twelve month period from July 1, 2022 through June 30, 2023. The primary purpose of this budget book is to provide timely and useful information concerning the past, current, and projected financial status of the District, in order to facilitate financial decisions that support the education goals of the District.

In accordance with Texas Education Agency (TEA) budget and accounting procedures guidelines, the District's official budget is comprised of the General Fund (which includes Food Service) and Debt Service Fund. The District has administratively opted to officially adopt the Capital Projects Fund.

The adoption of the budgets associated with these funds, and subsequent amendments, should be approved by the Board of Trustees. The authority to approve a budget or a budget amendment for a grant program, however, lies with the granting agency and not with the District's Board. For informational purposes only, budgets for grant programs are included throughout this presentation in order to present a comprehensive overview of District resources.

The District follows Federal, State, and Local guidelines during the budget development process. The two main fund types the District uses are Governmental and Proprietary Funds.

GOVERNMENTAL FUNDS

Governmental Funds are reported using the current financial resources measurement focus and the modified accrual basis of accounting. This basis of accounting recognizes revenues in the accounting period in which they become available and measurable. Expenditures are recognized when the related fund liability is incurred. For budgetary purposes, the cash basis of accounting is used. This basis of accounting recognizes revenue when it is received and expenses when they are paid.

Governmental fund types consist of four governmental fund groups. The four fund groups include the General, Special Revenue, Debt Service, and Capital Projects. Although most of the District's basic services are included in governmental funds, the District's General Fund is the chief operating fund.

The General Fund is used to show transactions resulting from operations of ongoing organizations and activities from a variety of revenue sources for which fund balance is controlled by and retained for the use of the local educational agency. Some of the General Fund's major functions include Instruction and Instructional Related Services, Instructional and School Leadership, Support Services – Student (Pupil), and Support Services – Non-Student Based. The General Fund's major revenue sources are State funding and property taxes.

Included in the General Fund is Food Service. The Food Service Fund is considered a part of the General Fund if no user fees are charged; i.e., students are not charged for meals. The fund balance of the Food Service Fund may not exceed three months of food service operations, and such balances are to be used exclusively for the allowable child nutrition program purposes.

In addition, the District utilizes Special Revenue Funds which are used to account for the proceeds of specific revenue sources (other than trust for individuals, private organizations, or other governments or for major capital projects) that are legally restricted to expenditures for specific purposes. Some of the District's Special Revenue Funds include Grants and Campus Activity Funds. In developing the 2022-2023 fiscal year budget, the District has included the Elementary and Secondary School Emergency Relief Fund (ESSER III) supplemental funding. Allowable costs to address the learning loss, as a result of the Covid-19 pandemic, as well as technology needs, personnel, Reading Academies, Math IXL program and other items are included as part of the original budget for fiscal year 2022-2023. As additional allowable needs are identified, funding will be appropriately budgeted throughout the grant period.

Debt Service Funds must be used to account for general long-term debt principal and interest for debt issues and other long-term debts for which a tax has been dedicated.

Capital Projects Funds must be used to account, on a project basis, for projects financed by the proceeds from bond issues and maintenance tax notes, and other sources as identified by the Board of Trustees.

PROPRIETARY FUNDS

Proprietary fund types are used to account for a school district's ongoing organizations and activities where net income and capital maintenance are measured. Generally accepted accounting principles that apply to similar businesses in the private sector are applicable to proprietary type funds. There are two proprietary fund types, Enterprise Funds and Internal Service Funds.

The District's Enterprise Funds are made up of fees charged to customers to help cover the costs of certain services it provides. The funds are the same as business-type activities. The District currently operates eight (8) after school programs referred to as Project Safe and Secure and a full day tuition based Pre-K program where children have hands-on purposeful opportunities for learning.

Internal Service Funds may be used to account for the financing of goods or services provided by one organizational unit of the school district to other organizational units of the school district on a cost reimbursement basis.

The District's Budget Book will provide a detailed overview of the District's various budgeted funds and will define, and illustrate, each of the major funds. The Budget Book was developed within the guidelines of the Texas Education Agency. The financial goal of the District is to have a sufficient fund balance to be able to maintain fiscal independence in case of a financial need or crisis. With this in mind, the District's purpose in the presentation of the budget data is to improve the quality of information provided to the Board of Trustees and the community.

Respectfully,

J.A. Gonzalez, Ed. D.
Superintendent of Schools

Cynthia Medrano-Richards, RTSBA, CPA
Assistant Superintendent for Business Operations

Iris Luna, RTSBA
Chief Financial Officer

MCALLEN ISD HAS THE BEST LARGE DISTRICT IN TEXAS

J. A. Gonzalez, Ed.D.
McALLEN ISD
Superintendent of Schools
McALLEN ISD
Earns State's Highest
Accountability Rating
TEXAS SUPERINTENDENT
OF THE YEAR 2020

Jennifer Han

2022 TEXAS ELEMENTARY TEACHER OF THE YEAR

McALLEN
INDEPENDENT SCHOOL DISTRICT
BEST
HIGH SCHOOLS
U.S.News & WORLD REPORT
RANKINGS
OUR HIGH SCHOOLS HAVE BEEN RANKED AMONG AMERICA'S BEST HIGH SCHOOLS FOR 7 STRAIGHT YEARS.

ALLIANCE FOR A
HEALTHIER
GENERATION
We are proud to be named one of
America's Healthiest Schools
for creating a healthier school that promotes nutritious eating and physical activity.
CATHEY
ALL ELIGIBLE CAMPUSES NAMED AMONG AMERICA'S HEALTHIEST SCHOOLS SINCE 2014
GREATNESS STARTS HERE.

McALLEN
INDEPENDENT SCHOOL DISTRICT

BEST Communities for MUSIC EDUCATION

THE DISTRICT HAS BEEN NAMED A NATIONAL BEST COMMUNITY FOR MUSIC EDUCATION FOR 10 STRAIGHT YEARS.

2 NATIONAL BLUE RIBBON AWARDS FOR ACHIEVE EARLY COLLEGE HIGH SCHOOL

(2015 & 2021)

Budget Introduction

The following document represents the financial plan for McAllen Independent School District for the 2022-2023 fiscal year. This budget provides the financial resources necessary to offer a competitive compensation package to our employees, maintain our existing facilities and provide the funds necessary to support our thirty existing campuses.

This budget document is organized into the following major sections:

- Executive Summary – Introduces the reader to the document as a whole. This section highlights and summarizes important information contained in the budget. Users rely on this section to get an overview of the information found in the remainder of the document.
- Organizational Section – Provides the context and framework within which the budget is developed and managed. This framework includes the District's mission statement and goals, organizational and financial structure, as well as the financial policies and procedures that regulate the development and administration of the budget.
- Financial Section – Contains the financial schedules that present the adopted budgets for the District and comparisons to the previous year. Also, includes additional explanation and analysis of significant changes from the prior year and trends that affect the adopted budgets.
- Informational Section – Contains additional financial information related to past and future budgets to help put the budget into context.

Our Vision: The McAllen Independent School District is a multicultural community in which students are enthusiastically and actively engaged in the learning process. Students demonstrate academic excellence in a safe, nurturing and challenging environment enhanced by technology and the contributions of the total community.

Our Mission: The mission of the McAllen Independent School District is to educate all students to become lifelong learners and productive citizens in a global society through a program of educational excellence utilizing technology and actively involving parents and the community.

Strategic Plan

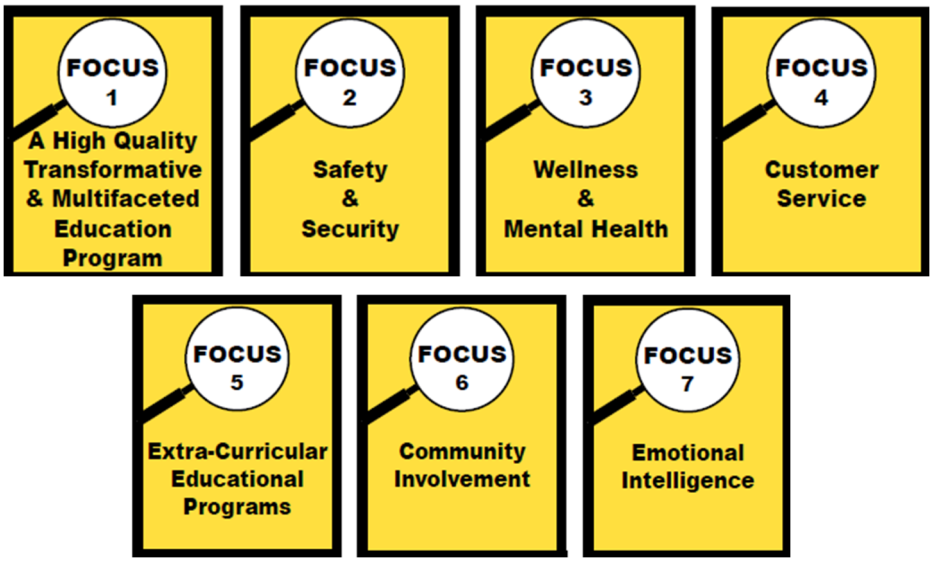
The District's strategic plan was created through focus group sessions, surveys, town hall meetings, and a series of full-day workshop meetings, students, parents, and other members of our community joined teachers and other employees in identifying our call to action, establishing our mission, identifying goals, and beginning the process of pinpointing key actions. The goals for the McAllen Independent School District are as follows:

1. Student Achievement/Student Focus
2. People Development
3. Facility Priorities
4. Financial Priorities

Along with the creation of our Districts goals, seven strategies were also created to further define our four goals. The seven strategies are as follows:

1. Branding
2. Attract/Retain High Quality Staff
3. Engaging Learning Environment
4. Rigorous World Class Standards Customized for Every Learner
5. Partnerships with Business/Civic/Education/Organizations
6. Future-Ready Students
7. Financial Priorities

In support of our current strategic plan, our District launched a Champion Project in fiscal year 2020-2021. Through conversation with students, parents, teachers, and other staff, McAllen ISD identified Seven Focus Areas. McAllen ISD then targeted those Focus Areas to develop an interactive collection of material - in digital formats - to spotlight the many programs and services that we provide to our community. Through this virtual Parent Symposium, our community can access information on any of the outstanding programs that make McAllen ISD an A+ District.

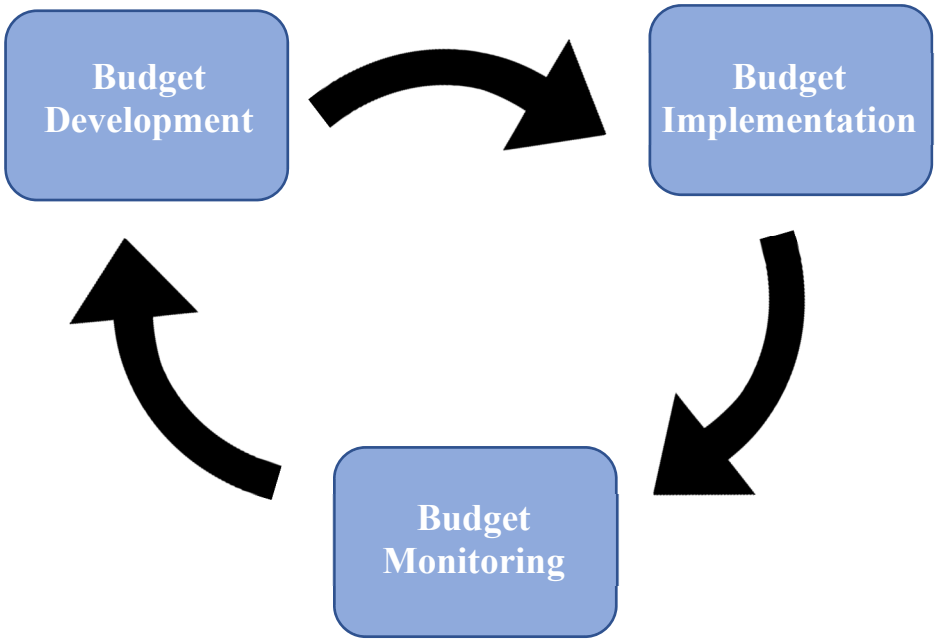


For additional information on our goals and strategies see page 69 in the Organization Section.

Budget Process

Federal, state and local guidelines set the foundation for the budget development process. The process begins in January of each year with the preparation of the budget calendar and enrollment projections. These enrollment forecasts are used extensively during the budget development stage to determine available resources and staffing allocations. The Board of Trustees has the responsibility of adopting the budget no later than June 30.

The budgeting process is composed of three major phases: Development, Implementation and Monitoring. The Budget Development phase aligns the budget plan to assure the optimum fund balance is maintained, the percentage of total payroll cost, net of Texas Retirement System (TRS) on-behalf, is not more than 80%, provide reasonable staff compensation plan, maintain a reasonable tax collection rate, provide for a stable per pupil expenditure and contingency plan. The recommended budget is in line with established assumptions and District priorities based on the District's Vision, Mission, Goals and Strategies in the Budget Implementation phase. In the last phase, the Budget Monitoring phase, monthly financial reports show implementation compared to adopted budget and provide information that includes evidence that the District practices are sound, cost effective and consistent with District policy and law.



Key dates in the budget development process are as follows:

- January 31, 2022 — Preliminary State Property Values
- February 16, 2022 — Final Calendar for 2022-2023 budget approved
- February 22, 2022 — Discuss Staffing and Salary Projections for 2022-2023
- March 22, 2022 — Finalize Staffing
- April 1, 2022 — Start Inputting 2022-2023 Budget
- April 1, 2022 — Budget Training for Campus and Department Bookkeepers/Secretaries
- April 18, 2022 — Federal Program Budgets – Input of budgets completed
- April 18, 2022 — Campus, Department and State and Local Budgets – Input of all budgets completed
- April 30, 2022 — Preliminary Certified Property Tax Values
- June 13, 2022 — Approval of the 2022-2023 District Budget by Board of Trustees
- July 26, 2022 — Certified Local Property Tax Values
- August 22, 2022 — Approval and Adoption of the Resolution for the 2022 School Tax Rate

Each campus receives an allotment per student enrollment to be used for supplies, materials, equipment and other appropriate instructional costs. For 2022-2023, the District campus allotments are as follows:

Campus Allotments

	2021-2022	2022-2023
High Schools	$90	$90
Alternative Schools	$140	$140
Middle Schools	$75	$75
Elementary Schools	$60	$60

792

Budget Overview

Revenue Key Factors

1. Enrollment is expected to decrease based on prior year trends and the effect of a charter school opening grade levels within city boundaries. Additionally, as a result of the COVID-19 Pandemic, parent choice of possible homeschool programs could negatively impact enrollment.
2. Preliminary Certified Assessed Values increased 5.05% from 2021 to 2022. For future year budgets, an estimated 4% increase per year will be used to remain conservative.
3. House Bill (HB) 3, passed in the 86th Legislature, allows for continued tax compression of the tier one tax rate. In tax year 2022 and fiscal year 2022-2023, state compression of the Maintenance and Operations (M&O) tax rate will apply to the District's tier one tax rate. The M&O tax rate has been compressed from $1.0486 to $1.0197. The Interest and Sinking (I&S) tax rate decreased from $.0884 to $.0767 for a total tax rate decrease of $0.0406 from $1.1370 to $1.0964.
4. Decrease in Interest Revenue due to current market conditions resulting in low interest rates.
5. Child Nutrition Program revenues include an increase in breakfast and lunch participation due to projecting 100% of students in face-to-face instruction.
6. Decrease in State Funding due to a decrease in ADA.
7. Increase in the School Health and Related Services (SHARS) interim and Prior Year Settle-up revenues due to an increase in face-to-face instruction, therefore, increasing allowable claims for reimbursement.

Expenditure Key Factors

1. All expenditures that are not essential to the direct instructional process will be analyzed carefully each year.
2. Expenses will be focused on improving the District's academic performance rating.
3. Staffing levels and positions will continuously be monitored and reviewed. The District will strive to continue to make future staff reductions through attrition.
4. Payroll indicates a salary increase for teachers, librarians, non-teaching professionals, paraprofessionals and auxiliary staff. The minimum general salary increase for the teachers and librarians is $1,140. The compensation plan indicates the entry level salary for beginning "zero" year teachers at a minimum of $52,150 and new to McAllen ISD with "20+" years' experience at a maximum of $62,070 salary. The compensation plan indicates a 2% of pay range midpoint increase for non-teaching professionals, paraprofessionals, and auxiliary staff. In addition, as per TASB recommendations, additional pay adjustments are made across all pay groups to ascertain all salaries fall within the 10% pay range of market value, teachers schedule adjustments made to improve competitiveness for specific years, and that all salaries are at least at pay range minimum.
5. Administration is recommending the approval of a one-time Holiday pay stipend in the amount of $500 for all employees who are employed by the district on a full-time basis as of September 15, 2022, and remain employed as of December 1, 2022. Eligible full-time employees are defined as persons employed by the district for at least 27.5 hours per week to include bus drivers and bus aides. This one-time stipend will be paid during December 2022, and is contingent upon the availability of funds and in consideration of the District's revenues and fund balances at the time plans for such payments are presented.

Total Revenue and Expenditures by Fund Comparisons

Revenues

General Fund (which includes Food Service), Debt Service Fund, and Capital Projects Fund revenues are budgeted to decrease by $1,049,870 or 0.41% from 2021-2022 forecasted budget. Revenues include local, state and federal sources. Other Sources which come from transfers and sale of personal/real property are also included. The major difference in revenues from 2021-2022 to 2022-2023 is due to the Operating Transfer In from Fund 199 General Fund to the Capital Projects Fund for the UTRGV Collegiate Academy. The difference between revenues and expenditures for 2022-2023 is due to intended fund balance reserves for our Food Service program totaling $1,221,336 and carry-forward projects for Fund 194 ESSER II Local totaling $36,882,064.

Total Revenues by Fund Comparison

	Forecasted Budget 2021-2022	Adopted Budget 2022-2023	Percentage Change
General Fund	$ 248,582,273	$ 234,771,286	-5.56%
Debt Service Fund	7,499,546	6,813,200	-9.15%
Capital Projects Fund	52,537	13,500,000	25596.18%
Total	$ 256,134,356	$ 255,084,486	-0.41%

Expenditures

General Fund (which includes Food Service), Debt Service Fund, and Capital Projects Fund expenditures are budgeted to increase by $69,495,502 or 30.16% from the 2021-2022 forecasted budget. The major difference in expenditures is due to Fund 194 ESSER II Local carry-forward projects from 2021-2022 and Capital Projects Fund UTRGV Collegiate Academy one-time expenditure. This plan provides the resources necessary for reaching the goals established in the District's Strategic Plan.

Total Expenditures by Fund Comparison

	Forecasted Budget 2021-2022	Adopted Budget 2022-2023	Percentage Change
General Fund	$ 209,408,654	$ 270,432,014	29.14%
Debt Service Fund	6,805,900	6,813,200	0.11%
Capital Projects Fund	14,171,339	22,636,181	59.73%
Total	$ 230,385,893	$ 299,881,395	30.16%

General Fund

Revenues

General Fund revenues are budgeted to decrease $13,810,987 or 5.56% from 2021-2022 forecasted budget. The following table provides a comparison of revenues by source for the 2022-2023 adopted year and the 2021-2022 forecasted budget year. The decrease is due to a one-time settlement payment received in 2021-2022.

General Fund Revenue Sources Comparison

	Forecasted Budget 2021-2022	Adopted Budget 2022-2023	Percentage Change
Local Sources	$ 97,566,954	$ 87,854,590	-9.95%
State Sources	122,444,354	122,747,887	0.25%
Federal Sources	28,368,268	24,168,809	-14.80%
Other Sources	202,697	-	-100.00%
Total	$ 248,582,273	$ 234,771,286	-5.56%

Expenditures

General Fund expenditures are budgeted to increase $61,023,360 or 29.14% from the 2021-2022 forecasted budget. The increase is due to a one-time payroll expense reclass in 2021-2022 from Fund 199 General Fund to Fund 281 ESSER II as allowed by the Grant and establishing Fund 194 ESSER II Local projects. Total reflects Fund 194 projects that will be carry-forward to the 2022-2023 school year. An additional one-time payroll expense reclass in 2022-2023 from Fund 199 General Fund to Fund 282 ESSER III as allowed by the grant is reflected as an Operating Transfer Out to the Capital Projects Fund for the UTRGV Collegiate Academy.

General Fund Expenditures by Object Comparison

	Forecasted Budget 2021-2022	Adopted Budget 2022-2023	Percentage Change
Payroll Cost	$ 151,461,938	$ 180,423,905	19.12%
Professional and Contracted Services	16,042,028	12,220,930	-23.82%
Supplies and Materials	23,813,705	20,024,736	-15.91%
Other Operating Expenses	5,060,800	5,968,259	17.93%
Debt Service	5,879,229	6,265,094	6.56%
Capital Outlay	7,102,254	33,029,090	365.05%
Other Uses	48,700	12,500,000	25567.35%
Total	$ 209,408,654	$ 270,432,014	29.14%

MCALLEN INDEPENDENT SCHOOL DISTRICT
General Fund Forecast (Funds 1xx)
2018-2019 to 2025-2026

	Audited FY 2019	Audited FY 2020	Audited FY 2021	Estimated Actuals FY 2022	Adopted FY 2023	Projected FY 2024	Projected FY 2025	Projected FY 2026
Beginning Fund Balance	**$ 91,688,034**	**$ 98,070,422**	**$ 97,700,231**	**$ 107,594,997**	**$ 146,768,615**	**$ 111,107,887**	**$ 111,107,887**	**$ 111,107,887**
Revenues								
5700 Local	88,576,261	83,754,535	83,646,750	97,566,954	87,854,590	91,163,822	94,605,423	98,184,688
5800 State	125,937,148	136,420,168	138,989,204	122,444,354	122,747,887	115,439,278	109,826,145	104,059,923
5900 Federal	21,271,071	19,052,998	22,818,861	28,368,268	24,168,809	24,168,809	24,168,809	24,168,809
7900 Other Sources	298,506	5,794,060	6,539,516	202,697	-	-	-	-
Total Revenues	**$ 236,082,986**	**$ 245,021,761**	**$ 251,994,331**	**$ 248,582,273**	**$ 234,771,286**	**$ 230,771,909**	**$ 228,600,377**	**$ 226,413,420**
Expenditures								
6100 Payroll Cost	166,016,647	171,537,906	179,718,449	140,997,242 *	170,017,866 **	179,740,311	177,568,779	175,381,822
6100 TRS On-Behalf	10,355,983	12,089,639	11,722,594	10,464,696	10,406,039	10,406,039	10,406,039	10,406,039
6200 Prof & Contracted Services	13,315,546	13,913,755	12,537,499	16,042,028	12,220,930	12,185,610	12,185,610	12,185,610
6300 Supplies & Materials	19,352,910	24,700,038	25,899,436	23,813,705	20,024,736	17,146,338	17,146,338	17,146,338
6400 Other Operating Costs	4,555,250	4,129,113	3,507,857	5,060,800	5,968,259	5,028,517	5,028,517	5,028,517
6500 Debt Service	2,603,986	2,869,367	4,996,383	5,879,229	6,265,094	6,265,094	6,265,094	6,265,094
6600 Capital Outlay	5,634,861	10,993,798	2,527,196	7,102,254	33,029,090	-	-	-
8900 Other Uses	7,865,415	5,158,348	1,190,151	48,700	12,500,000	-	-	-
Total Expenditures	**$ 229,700,598**	**$ 245,391,965**	**$ 242,099,565**	**$ 209,408,654**	**$ 270,432,014**	**$ 230,771,909**	**$ 228,600,377**	**$ 226,413,420**
Net Income / (Loss)	6,382,387	(370,191)	9,894,766	39,173,619 ***	(35,660,728)	-	-	-
Ending Fund Balance	**$ 98,070,422**	**$ 97,700,231**	**$ 107,594,997**	**$ 146,768,615**	**$ 111,107,887**	**$ 111,107,887**	**$ 111,107,887**	**$ 111,107,887**
ADA	21,161	20,645	19,923	18,647	19,030	18,506	17,996	17,501
Decrease in ADA				(1,276)	383	(524)	(510)	(495)
ADM	22,802	22,354	21,540	20,282	20,486	19,922	19,373	18,840
Decrease in ADM				(1,258)	204	(565)	(549)	(534)

*Includes $40,196,746 one-time payroll expense reclass from Fund 199 General Fund to Fund 281 ESSER II as allowed by the Grant and establishing Fund 194 ESSER II Local projects
**Includes $18,000,000 one-time payroll expense reclasses from Fund 199 General Fund to Fund 282 ESSER III as allowed by the Grant
***Net Income includes Fund 194 ESSER II Local carry-forward projects of $36,882,064 as reflected in 2022-2023 Adopted Budget

Future Year Projections 2023-2024 to 2025-2026:

Revenues include an increase in local tax revenue as a result of an estimated 4% increase in property values. State revenue includes decreases in ADA as shown above.
Expenditures are kept constant with the exception of payroll. Decreases in payroll are shown to reflect adjustments made to align with District staffing guidelines as a result from declining enrollment.

Debt Service Fund

Revenues
Debt Service Fund revenue is budgeted to decrease $686,346 or 9.15% over 2021-2022 forecasted budgeted revenue. The decrease in State Revenues from 2020-2021 to 2022-2023 was due to a decrease in Average Daily Attendance (ADA).

The following table provides a comparison of revenues by source for the 2022-2023 adopted year and the 2021-2022 forecasted budget.

Debt Service Fund Revenue Sources Comparison

	Forecasted Budget 2021-2022	Adopted Budget 2022-2023	Percentage Change
Local Sources	$ 7,300,797	$ 6,813,200	-6.68%
State Sources	198,749	-	-100.00%
Total	$ 7,499,546	$ 6,813,200	-9.15%

Expenditures
Debt Service Fund expenditures are budgeted to increase $8,200 or .12% from the 2021-2022 forecasted budget year.

The following table provides a comparison of expenditures by object for the 2022-2023 adopted year and the 2021-2022 forecasted budget.

Debt Service Fund Expenditures by Object Comparison

	Forecasted Budget 2021-2022	Adopted Budget 2022-2023	Percentage Change
Principal	$ 4,935,000	$ 5,175,000	4.86%
Interest and Fees	1,870,000	1,638,200	-12.40%
Total	$ 6,805,000	$ 6,813,200	0.12%

MCALLEN INDEPENDENT SCHOOL DISTRICT
Debt Service Fund Forecast
2018-2019 to 2025-2026

Fiscal Year	**Audited FY 2019**	**Audited FY 2020**	**Audited FY 2021**	**Estimated Actuals FY 2022**	**Adopted FY 2023**	**Projected FY 2024**	**Projected FY 2025**	**Projected FY 2026**
Debt Service Tax Rate	0.0000	0.0942	0.0936	0.0884	0.0767	0.0767	0.0767	0.0767
Beginning Fund Balance	**$ 2,646,444**	**$ 1,740,717**	**$ 2,046,425**	**$ 2,639,059**	**$ 3,332,705**	**$ 3,332,705**	**$ 3,332,705**	**$ 3,332,705**
Current Taxes	-	6,879,014	7,067,470	7,024,057	6,558,470	6,479,270	6,205,770	6,211,170
Delinquent Taxes	36,239	74,060	164,556	182,675	171,730	171,730	171,730	171,730
Sub-Total	36,239	6,953,074	7,232,026	7,206,732	6,730,200	6,651,000	6,377,500	6,382,900
EDA Funding	29,554	-	159,435	153,563	-	-	-	-
IFA Funding	5,229	-	-	-	-	-	-	-
Hold Harmless	13	174,103	-	-	-	-	-	-
Prior Year Adjustments	0	-	11,644	45,186	-	-	-	-
Operating Transfer In from General Fund	7,865,415	-	-	-	-	-	-	-
Sub-Total	7,900,211	174,103	171,079	198,749	-	-	-	-
Issuance of Bonds (Bond Refunding)	-	-	40,875,000	-	-	-	-	-
Premium/Discount on Issuance of Bonds	-	-	5,332,904	-	-	-	-	-
	-	-	46,207,904	-	-	-	-	-
Penalties & Interest	18,267	54,925	86,523	88,680	80,000	80,000	80,000	80,000
Interest	126,543	27,597	2,019	2,000	2,000	2,000	2,000	2,000
Royalties	4,293	2,614	2,217	3,385	1,000	1,000	1,000	1,000
Revenues	**$ 8,085,553**	**$ 7,212,313**	**$ 53,701,768**	**$ 7,499,546**	**$ 6,813,200**	**$ 6,734,000**	**$ 6,460,500**	**$ 6,465,900**
Principal	(6,140,000)	(4,320,000)	(4,955,000)	(4,935,000)	(5,175,000)	(5,340,000)	(5,290,000)	(5,475,000)
Interest	(2,849,900)	(2,584,500)	(1,946,583)	(1,865,900)	(1,633,200)	(1,389,000)	(1,165,500)	(985,900)
Sub-Total	(8,989,900)	(6,904,500)	(6,901,583)	(6,800,900)	(6,808,200)	(6,729,000)	(6,455,500)	(6,460,900)
Non-Operating Expenses	-	-	(45,750,006)	-	-	-	-	-
Other Fees	(1,380)	(2,105)	(457,545)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)
Expenses	**$ (8,991,280)**	**$ (6,906,605)**	**$ (53,109,134)**	**$ (6,805,900)**	**$ (6,813,200)**	**$ (6,734,000)**	**$ (6,460,500)**	**$ (6,465,900)**
Net Income / (Loss)	(905,727)	305,708	592,634	693,646	-	-	-	-
Preliminary Ending Fund Balance	**$ 1,740,717**	**$ 2,046,425**	**$ 2,639,059**	**$ 3,332,705**	**$ 3,332,705**	**$ 3,332,705**	**$ 3,332,705**	**$ 3,332,705**

For 2022-2023 and future years, the projected I&S tax rate remains constant at $0.0767 due to a steady bond payment. At the time of tax rate adoption each September, the tax worksheets prepared in conjunction with the Hidalgo County Tax Office will be considered for any reduction in tax rate.

Capital Projects Fund

Revenues
Capital Projects Fund revenue is budgeted to increase $13,447,463 or 25596% over 2021-2022 forecasted budgeted revenue. The increase in Local Sources is due to an interlocal agreement with the City of McAllen to reimburse the District for the press box project and the increase in Other Resources is the Operating Transfer In from Fund 199 General Fund for the UTRGV Collegiate Academy.

The following table provides a comparison of revenues by source for the 2022-2023 adopted year and the 2021-2022 forecasted budget.

Capital Projects Fund Revenue Sources Comparison

	Forecasted Budget 2021-2022	Adopted Budget 2022-2023	Percentage Change
Local Sources	$ 14,314	$ 1,000,000	6886.17%
Other Resources	38,223	12,500,000	32602.82%
Total	$ 52,537	$ 13,500,000	25596.18%

Expenditures
Capital Projects Fund expenditures are budgeted to increase $8,464,842 or 59.73% from the 2021-2022 forecasted budget year due to Maintenance Tax Notes Series 2020 and Fund 194 ESSER II Local outstanding projects. Capital Outlay also includes $12.5 million expenditure for the UTRGV Collegiate Academy. Outstanding projects are expected to be completed in 2022-2023, therefore, future year projections do not show budget amounts as shown on page 28.

Capital Projects Fund Expenditures by Object Comparison

	Forecasted Budget 2021-2022	Adopted Budget 2022-2023	Percentage Change
Professional and Contracted Services	$ 15,350	$ -	-100.00%
Supplies and Materials	-	186,000	100.00%
Capital Outlay	14,155,989	22,450,181	58.59%
Total	$ 14,171,339	$ 22,636,181	59.73%

MCALLEN INDEPENDENT SCHOOL DISTRICT
Capital Projects Fund (Funds 6xx)
2018-2019 to 2025-2026

	Audited FY 2019	Audited FY 2020	Audited FY 2021	Estimated Actuals FY 2022	Adopted FY 2023	Projected FY 2024	Projected FY 2025	Projected FY 2026
Beginning Fund Balance	**$ -**	**$ -**	**$ 30,187,039**	**$ 23,254,983**	**$ 9,136,181**	**$ -**	**$ -**	**$ -**
Revenues								
5700 Local	-	129,706	74,342	14,314	1,000,000	-	-	-
7900 Other Sources	-	33,741,907	824,000	38,223	12,500,000	-	-	-
Total Revenues	**$ -**	**$ 33,871,613**	**$ 898,342**	**$ 52,537**	**$ 13,500,000**	**$ -**	**$ -**	**$ -**
Expenditures								
6200 Prof & Contracted Services	-	-	-	15,350	-	-	-	-
6300 Supplies & Materials	-	-	-	-	186,000	-	-	-
6400 Other Operating Costs	-	-	-	-	-	-	-	-
6500 Debt Service	-	261,259		-	-	-	-	-
6600 Capital Outlay	-	3,423,315	7,830,398	14,155,989	22,450,181	-	-	-
8900 Other Uses	-	-	-	-	-	-	-	-
Total Expenditures	**$ -**	**$ 3,684,574**	**$ 7,830,398**	**$ 14,171,339**	**$ 22,636,181**	**$ -**	**$ -**	**$ -**
Net Income / (Loss)	-	30,187,039	(6,932,056)	(14,118,802)	(9,136,181)	-	-	-
Ending Fund Balance	**$ -**	**$ 30,187,039**	**$ 23,254,983**	**$ 9,136,181**	**$ -**	**$ -**	**$ -**	$ -

Property Tax Values

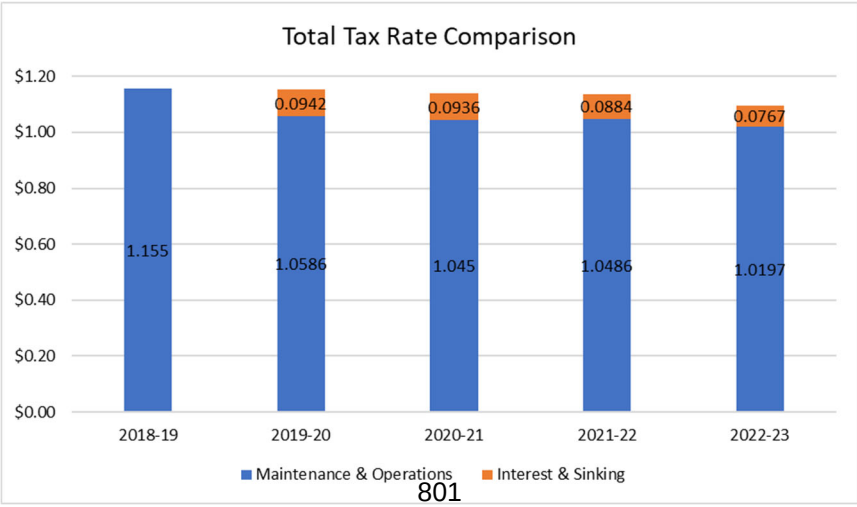
The Hidalgo County Appraisal District (HCAD) submits Preliminary Certified Assessed Values to the District by April 30th. These values are usually a conservative estimate of the certified values that come in July. The preliminary values are good estimates upon which to base the tax levies for the General Fund and Debt Service Fund Budgets. Once the certified values are received by the District, the tax rate adoption and budgeting process can be completed for the new fiscal year. The District is basing the tax revenue budget based on the HCAD preliminary values which reflect a $431,824,601 or 5.05% increase in property values.

	FY 2019	FY 2020	FY 2021	FY 2022	Preliminary FY 2023
HCAD Certified Value	$7,382,229,025	$7,810,461,629	$8,110,766,130	$8,549,360,079	$8,981,184,680
Average HCAD Change From Prior Year		5.80%	3.84%	5.41%	5.05%
Texas Comptroller Value	$7,006,204,393	$7,544,931,198	$7,793,865,257	$8,250,159,288	$8,601,815,463

Tax Rate

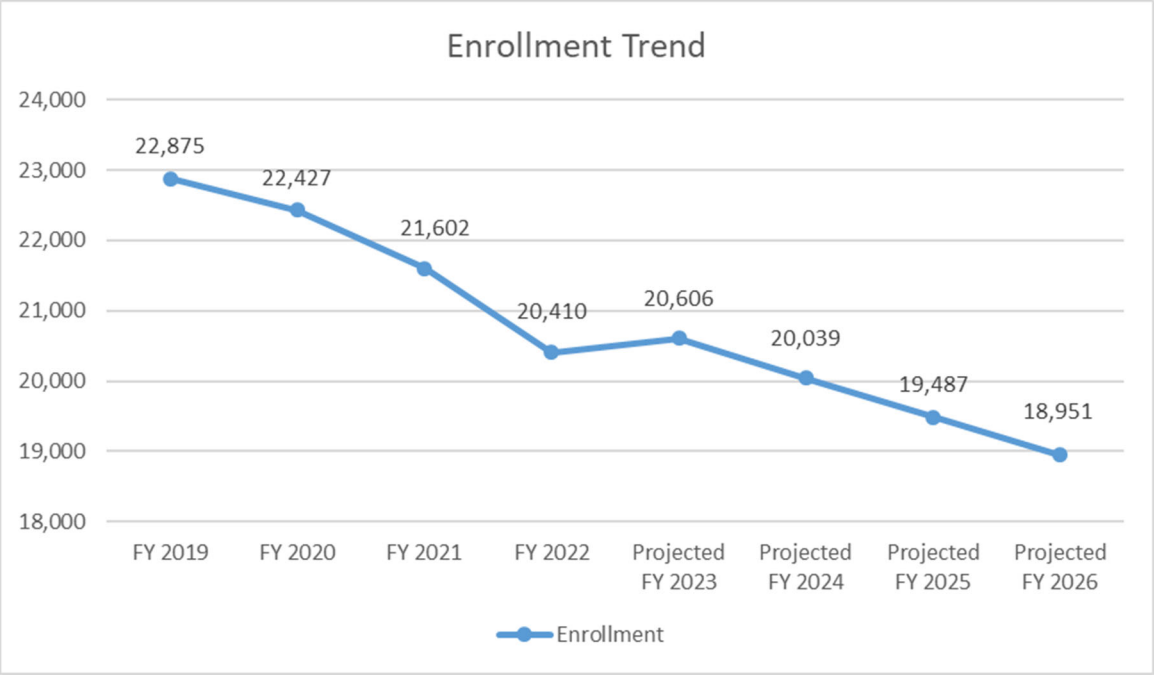
The total tax rate for 2022-2023 will decrease from $1.1370 to $1.0964.

In September 2018, the voters of McAllen approved a Tax Ratification Election (TRE) conducted by the District. This allowed the District to maintain the M&O tax rate at $1.155 and the I&S tax rate at $0.00 for the 2018-2019 school year. In 2019-2020, State Legislation compressed the tier I M&O tax rate to $0.93 (previously $1.00) reducing the M&O rate to $1.0586. Due to the decreased M&O rate, the District adopted an I&S rate of $0.0942 to meet bond obligations for the fiscal year for a total tax rate of $1.1528. In 2020-2021, the tier I M&O tax rate was compressed to $0.9164 reducing the M&O tax rate to $1.0450 and the I&S tax rate decreased to $0.0936. For 2021-2022, the District elected the Declared Disaster Tax Rate Option allowing the District to increase the M&O tax rate from $1.0450 to $1.0486 as the I&S tax rate decreased from $.0936 to $.0884 for a total tax rate decrease of $0.0016 from $1.1386 to $1.1370. For 2022-2023, the M&O rate will decrease to $1.0197 and the I&S tax rate will decrease to $.0767 for a total tax rate decrease of $0.0406 from $1.1370 to $1.0964.



Student Enrollment

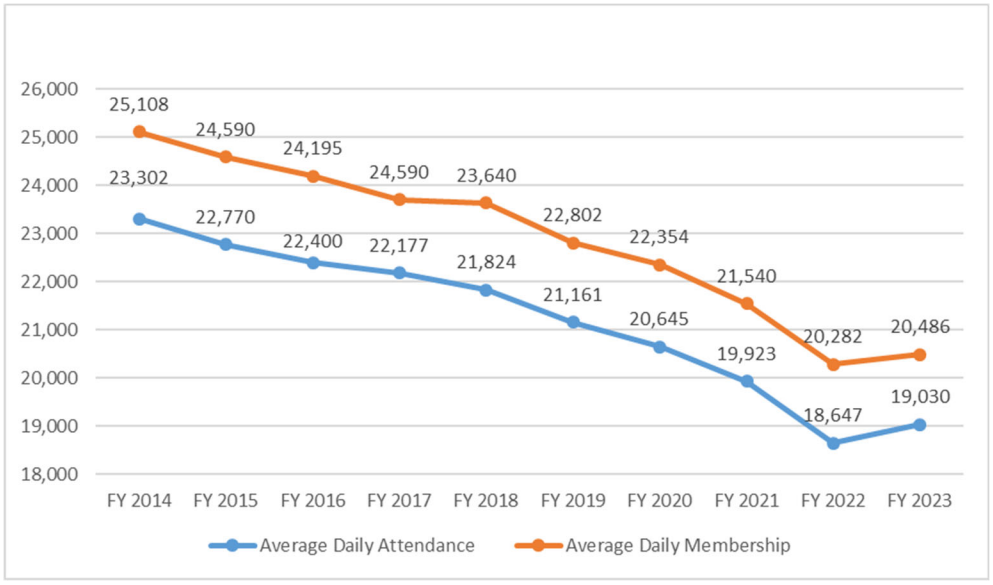
Student enrollment trends are reviewed on a six weeks basis. Enrollment projections for fiscal year 2022-2023 were based on a 5-year analysis of the average percentage decrease in enrollment; increase in second semester 2021-2022 enrollment after PEIMS Fall Snapshot; as well as the residual effect of the COVID-19 Pandemic. These factors were considered when projecting enrollment beyond fiscal year 2022-2023.



802

Average Daily Attendance (ADA) is used to distribute funding to Texas public school districts. The number of students in ADA can be found by adding the number of students who are in attendance each day of the school year for the entire school year and dividing by the number of days of instruction to compute average daily attendance. Average Daily Membership (ADM) is the total number of public school students who were reported in membership as of the October snapshot date at any grade, from early childhood education through grade 12. Membership is a slightly different number from enrollment because it does not include those students who are served in the District for fewer than 2 hours per day.

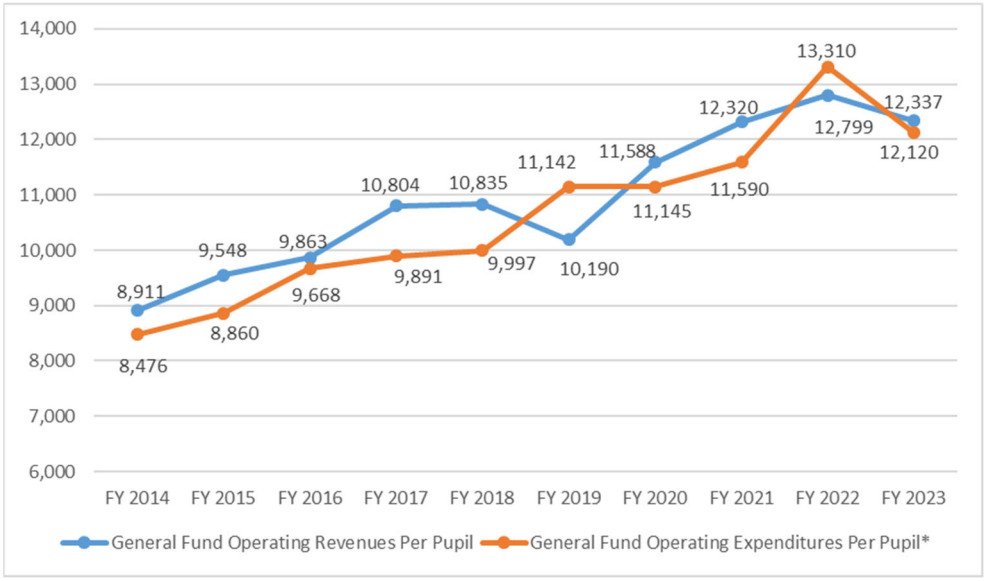
The following graph provides the District's ADA and ADM:



ACFR
Table L-23
6/30/2021

Average Daily Attendance (ADA) is used to calculate the General Fund Operating Revenues Per Pupil and the Operating Cost Per Pupil paid by the General Fund.

The following graph provides the General Fund Operating Revenues and Expenditures per pupil:



ACFR
Table L-24
6/30/2021

*General Fund Operating Expenditures less debt service and capital projects (Function 70 and 80)

Staffing

Budgeted expenditures for salaries are determined in accordance with established staffing guidelines along with Goal 2: People Development, Strategy 2: Attract/Retain High Quality Staff. We will attract, recruit, develop and retain high quality staff. The following chart outlines district-wide staffing by position for the previous six years and changes between fiscal years 2022 and 2023 to comply with our staffing models.

Note: Please see page 222 for detailed full size chart.

Staff Count - All Funds

Sorce: PEIMS

	2017-18	2018-19	2019-20	2020-21	2021-22	Proposed 2022-23	Change from Current to Previous Year
Teachers	1,600.85	1,557.49	1,555.30	1,540.41	1,491.01	1,459.00	(32.01)
Substitute Teacher	-	-	5.58	-	6.53	-	(6.53)
Professional Support	370.90	342.04	372.59	391.24	429.13	443.00	13.87
Campus Administration (School Leadership)	88.01	86.07	79.87	77.34	78.98	79.00	0.02
Central Administration	34.00	31.00	34.00	37.00	32.00	32.00	0.00
Educational Aides	366.54	353.80	388.50	382.82	408.27	407.00	(1.27)
Auxilary Staff	887.00	869.25	865.75	898.69	894.64	901.00	6.36
Total Staff	**3,347.30**	**3,239.65**	**3,301.59**	**3,327.50**	**3,340.56**	**3,321.00**	**(19.56)**

Changes from 2021-2022 to 2022-2023 are due to reductions in Enrollment which result in adjustments to staffing guidelines.

ASSOCIATION OF SCHOOL BUSINESS OFFICIALS INTERNATIONAL

This Meritorious Budget Award is presented to

MCALLEN INDEPENDENT SCHOOL DISTRICT

for excellence in the preparation and issuance of its budget
for the Fiscal Year 2021–2022.

The budget adheres to the principles and standards
of ASBO International's Meritorious Budget Award criteria.

MERITORIOUS BUDGET AWARD

W. Edward Chabal
President

David J. Lewis
Executive Director

805

BUSINESS SERVICES AWARDS

ASSOCIATION OF SCHOOL BUSINESS OFFICIALS INTERNATIONAL

For the Fiscal Years:

July 1, 2017 - June 30, 2018
July 1, 2018 - June 30, 2019
July 1, 2019 - June 30, 2020
July 1, 2020 - June 30, 2021
July 1, 2021 - June 30, 2022

McALLEN INDEPENDENT SCHOOL DISTRICT

Government Finance Officers Association

For the Fiscal Years:

July 1, 2015 - June 30, 2016
July 1, 2016 - June 30, 2017

807

Government Finance Officers Association

For its Annual Comprehensive Financial Report for the Fiscal Years Ended

June 30, 2010 through June 30, 2020

808

McALLEN INDEPENDENT SCHOOL DISTRICT

2019-2020	**Superior**
2018-2019	**Superior**
2017-2018	**Superior**
2016-2017	**Superior**
2015-2016	**Superior**
2014-2015	**Superior**
2013-2014	**Passed**
2012-2013	**Superior Achievement**
2011-2012	**Superior Achievement**
2010-2011	**Superior Achievement**
2009-2010	**Superior Achievement**
2008-2009	**Above Standard Achievement**
2007-2008	**Superior Achievement**
2006-2007	**Superior Achievement**
2005-2006	**Superior Achievement**
2004-2005	**Superior Achievement**
2003-2004	**Superior Achievement**
2002-2003	**Superior Achievement**
2001-2002	**Superior Achievement**

Transparency Stars

Recognizing Local Transparency Achievements

McALLEN INDEPENDENT SCHOOL DISTRICT

The Texas Comptroller of Public Accounts awards McAllen ISD the Traditional Finances and Debt Obligations Stars for exemplary efforts in creating financial transparency in these two areas.

The Transparency Stars program recognizes local governments across Texas that are striving to meet a high standard for financial transparency online. These efforts provide citizens with clear, consistent information about public spending in user-friendly formats.

THIRD YEAR AWARD

Texas Comptroller Leadership Circle Platinum Member

2014 AND 2015

Texas Comptroller Leadership Circle Gold Member

2013

811

McALLEN INDEPENDENT SCHOOL DISTRICT

Purchasing Services Awards

Organizational Section

Where is McAllen, Texas?

McAllen is located on the southern tip of Texas. In 1904 the Hidalgo and San Miguel Extension (now the Sam Fordyce Branch) of the St. Louis, Brownsville and Mexico Railway reached the Santa Anita Ranch, now known as McAllen. John McAllen and his son James donated land to the railroad to guarantee it would cross their land. On December 5, 1904, the McAllen Townsite Company was formed by Uriah Lott, Leonidas C. Hill, Sr., John McAllen, James Ballí McAllen, and John J. Young. The new community, which was named after John McAllen, had the depot nearest the county seat, Hidalgo, eight miles to the south.

By 1911, 5,000 acres were under cultivation in East McAllen with produce consisting of cotton, alfalfa, broom corn, citrus fruits, grapes, and figs. East McAllen had an estimated population of 1,000 that year, and West McAllen had ceased to exist. In 1911 the town applied for and was issued a charter of incorporation under the name McAllen.

In 1941 a suspension bridge replaced the old bridge to Reynosa Tamaulipas; the new toll bridge was purchased by the city and was officially called the McAllen-Hidalgo-Reynosa International Bridge. Its construction resulted in an increased tourist trade that made McAllen a winter resort and port of entry to Mexico.

Today, McAllen is one of the fastest growing cities in America. It has grown from an agricultural based economy to a strong retail, manufacturing and trade center. According to the 2020 census, McAllen had a population of 142,210. Per the McAllen Chamber of Commerce as of June 30, 2021, McAllen's population has grown to 149,447. As McAllen continues to grow, it has remained affordable. The average cost of a home in McAllen is $217,824, while a two bedroom, two bath apartment rents for $1,017. The cost of living in McAllen is 23.6 percent cheaper than the national average.

Who is McAllen ISD?

In 1908, one teacher began instruction in a one room frame structure to twenty pupils of all grades. More and more children were enrolling in school that it soon became overcrowded and the common school was then transferred to the Presbyterian Church on the corner of 12th and Austin Street. They were taught the fundamental courses such as reading, writing, arithmetic, grammar and geography.

The question of making McAllen an independent school district arose. On March 22, 1915, the Texas Legislature passed an act allowing McAllen to become an independent school district. The District included the town of McAllen and the lands that were adjacent to it. With the creation of this District a unified effort was made by everyone in McAllen in educating the children.

Today, the McAllen Independent School District consists of eighteen elementary, six middle schools, three high schools, one early college high school, one alternative education campus of choice and one alternative education discipline campus for a total of thirty campuses. The District is now providing educational services to a total of 20,410 students in grade levels beginning from Early Education through 12th grade.

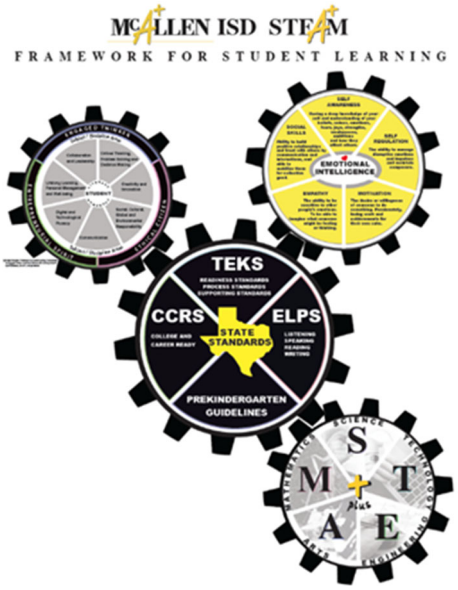
BASIC FACTS

- 20,410 Students
- 30 Campuses
- 3,348 Employees
- 1,503 Teachers

DEMOGRAPHICS

- 93.46% Hispanic
- 59.40% At-Risk
- 73.79% Economically Disadvantaged
- 34.62% Limited English Proficient

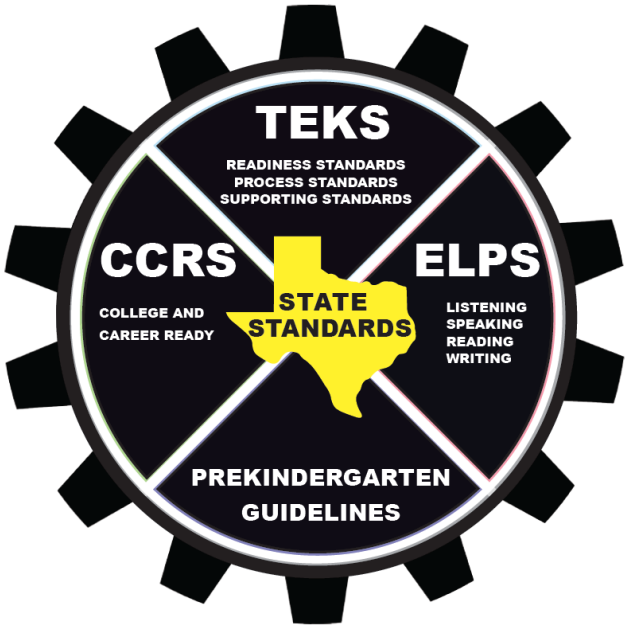
In its continuous effort to bring students the very latest and most progressive education possible, McAllen ISD has created STEAM Plus (Science, Technology, Engineering, Arts and Mathematics; "Plus" refers to developing students' emotional intelligence.)



STEAM Plus is one of a series of interlocking gears that are all, ultimately, student-focused. At the center are the TEKS, or state standards. Three other gears connect with the TEKS; including STEAM Plus, Emotional Intelligence and targeted competencies for students.

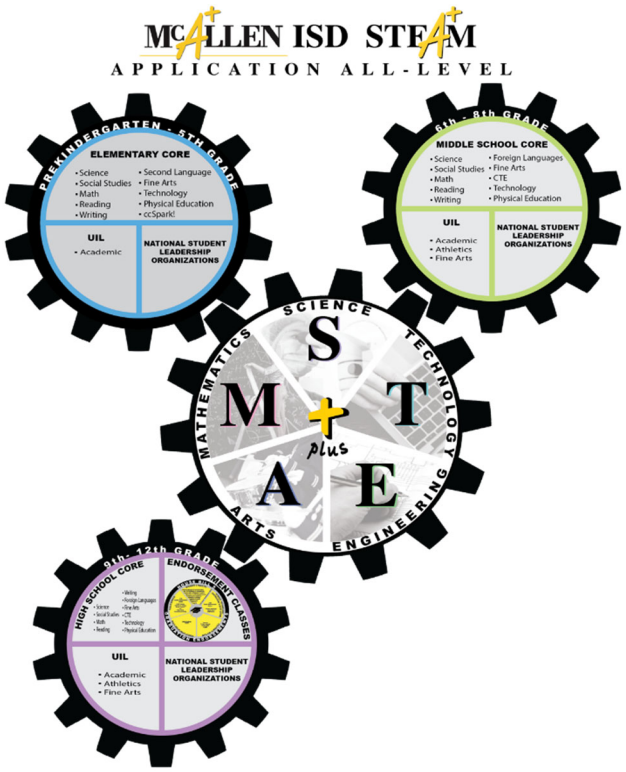
What the State Requires

- Everything revolves around the TEKS (Texas Essential Knowledge and Skills). These are the requirements set by the state and must be followed by every public school district in Texas. The TEKS encompass the following:



- English Language Arts and Reading
- Mathematics
- Science
- Social Studies
- Languages Other than English
- Health Education
- Physical Education
- Fine Arts
- Economics
- Technology Applications
- Career Development
- Spanish Language Arts and Reading
- Career and Technical Education
- English Language Proficiency Standards (ELPS)
- College and Career Readiness Standards (CCRS)
- Prekindergarten Guidelines

STEAM Plus Incorporates Key Subject Areas



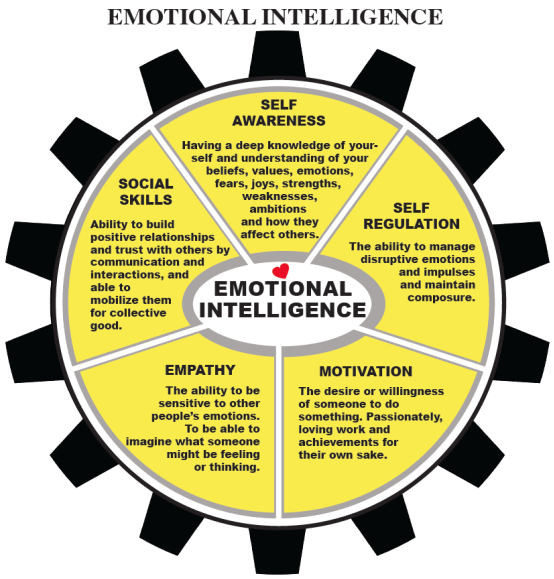
STEAM Plus breaks down into components for elementary, middle school and high school. In addition to subject areas, UIL (University Interscholastic League) competition and national student leadership organizations play a role. The high school gear also includes the five endorsement areas offered by the state. Unlike some school districts, McAllen ISD is able to offer all five.

- Science
- Technology
- Engineering
- Art
- Mathematics

Emotional Intelligence

"Students will be exposed to the importance of being self-aware, self-regulating their emotions, being motivated, having empathy and having social skills that will be common threads all across their educational experience," Dr. Gonzalez said. "When they walk the stage at their graduation, we believe that their EQ – emotional quotient – will be above average or very high."

- **Self-awareness**: This consists of having a deep knowledge of yourself and understanding of your beliefs, values, emotions, fears, joys, strengths, weaknesses, ambitions and how they affect others.
- **Self-regulation**: This is the ability to manage disruptive emotions and impulses and maintaining composure.
- **Motivation**: Motivation is the desire or willingness of someone to something. Passionately loving work and achievements for their own sake.
- **Empathy**: Empathy is the ability to be sensitive to other people's emotions. To be able to imagine what someone might be feeling or thinking.
- **Social Skills**: This is the ability to build positive relationships and trust with others by communication and interactions and be able to mobilize them for collective good.



"This is just going to align good teaching practices along with our TEKS and getting the emotional intelligence side of identifying what each student needs to be successful," Lisa Franklin, a teacher at Dr. Rodney D. Cathey Middle School, said.

The Sense of Belonging Perspective deals with culture and climate while the Instructional Core Perspective focuses on High Level Content, Teacher Skill and Student Engagement. The Business Perspective illustrates the different educator meetings which will take place and center on relationships, continuous improvement, systems, processes and leadership.

Seven Competencies

Near the center of the wheel, the terms Literacy and Numeracy circle the word Student.

Student: The student is at the center of all decisions and discussions related to curriculum.

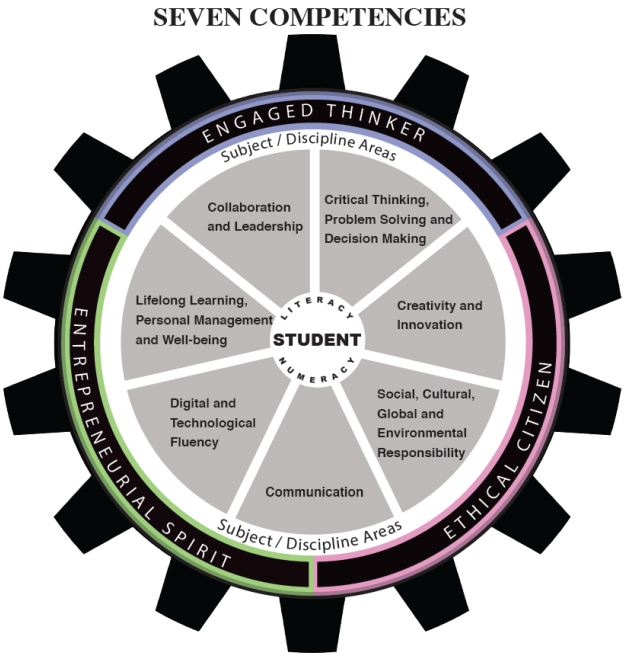
Literacy & Numeracy: Literacy and numeracy are foundational to student learning. Being literate and numerate means going beyond the basic skills of reading, writing and solving simple arithmetic problems to acquiring, creating, connecting and understanding information.

One of the goals are for students to be creative in using different ways of communicating in different situations. In everyday life, mathematical information and ideas can be represented in various ways.

Moving outward from the center of the wheel are the seven competencies all encompassed by the term Subject/Discipline Areas. The Subject and discipline areas are organized bodies of knowledge that have unique ways by which knowledge is created, changed, verified, communicated and generalized. Subject areas provide a context for the development of competencies and opportunities for interdisciplinary learning. The learning outcomes within a subject or discipline help students to develop and gain a deeper understanding and appreciation of competencies.

Competencies: A competency is an interrelated set of attitudes, skills and knowledge that is drawn upon and applied to a particular context for successful learning and living. Competencies are developed over time and through a set of related student outcomes.

The following competency groupings contain descriptions of the attitudes, skills and knowledge that contribute to students becoming engaged thinkers and ethical citizens with an entrepreneurial spirit. Students will use these skills both inside and outside of school.



- Critical Thinking, Problem Solving & Decision Making
- Creativity & Innovation
- Social, Cultural, Global & Environmental Responsibility
- Communication
- Digital Technological Fluency
- Lifelong Learning, Personal Management & Well-Being
- Collaboration and Leadership

What it leads to

Engaged Thinker: One who thinks critically and makes discoveries; who uses technology to learn, innovate, communicate and discover; who works with multiple perspectives and disciplines to identify problems and find the best solutions; who communicates these ideas to others; and who, as a lifelong learner, adapts to change with an attitude of optimism and hope for the future.

Ethical Citizen: One who builds relationships based on humility, fairness and open-mindedness; who demonstrates respect, empathy and compassion; and who through teamwork, collaboration and communication contributes fully to the community and the world.

Entrepreneurial Spirit: One who creates opportunities and achieves goals through hard work, perseverance and discipline; who strives for excellence and earns success; who explores ideas and challenges the status quo; who is competitive, adaptable and resilient; and who has the confidence to take risks and make bold decisions in the face of adversity.

STEAM Plus will prepare students to become independent, lifelong learners with competencies that will continue to push McAllen ISD to shift from teacher centered instruction to student centered learning. Students will be the center of decisions related to learning and education.
Teachers will be the architects of student learning as they plan, design and oversee activities. Teachers will consider a student's interests, passions, talents, and curiosities to truly personalize learning for them. This becomes shared ownership in a student's learning.

Research shows that the strategic use of feedback can double the rate of student learning and that students who are self-directed do well in school and life. It also shows that providing students with choice acts as a motivator that increases and deepens their learning. Students who work collaboratively on complex tasks increase and deepen their learning.

As STEAM Plus grows, teams will study programs in higher education to adjust what is being taught in elementary, middle and high school. A team will gather information from an engineering department at universities, for example, the University of Texas at Austin. They inquire what they seek in their students, what skills are needed, what community service they want to see from applicants and so on.

Offering Excellence at Every Level

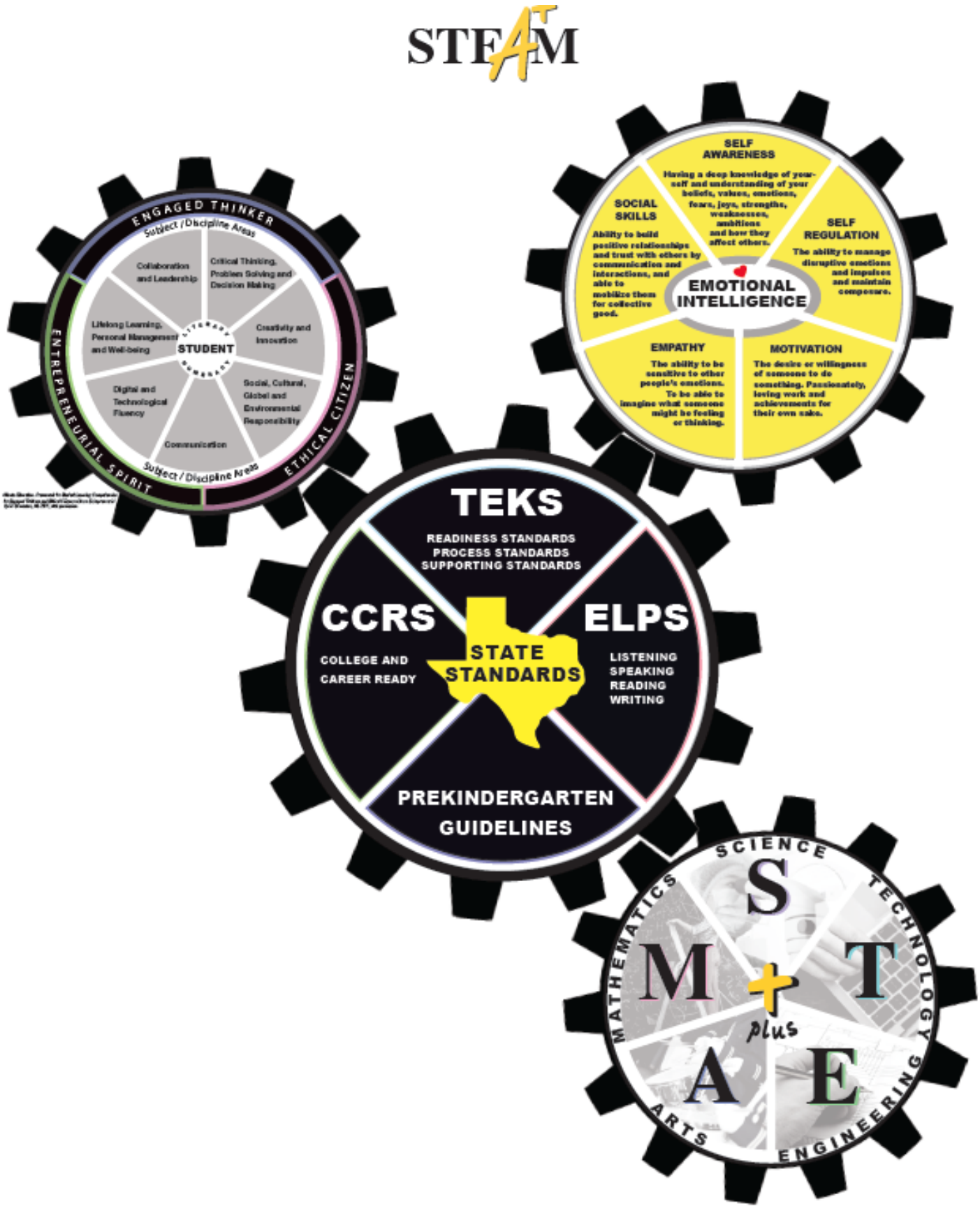
We offer choice: professional licenses, certifications, and Associate's Degrees alongside high school degrees, Academies in Medical Science, Computer Science, and Engineering, and the full experience of a comprehensive high school with our International Baccalaureate Programme provides students with a highly rigorous curriculum set to global standards.

College-Level Instruction

Our comprehensive high schools offer students Advanced Placement college-level instruction in our high school classrooms, a concurrent enrollment program with students attending a local university or college, and a dual enrollment program with students acquiring credit at both levels (high school and university) simultaneously. They offer the full experience of a comprehensive high school with the arts, athleticism, and other extracurricular offerings that enrich a student's life, while at the same time providing the rich, full-rounded skill sets that universities seek.

Through a special agreement with a local institution of higher learning, our students may also enroll in one of a multitude of specialized academies where students can earn specific Associates Degrees even before they finish high school. Our programs also offer three-year plans for early graduates.

820


STEAM
ENGAGED THINKER
Subject / Discipline Areas
Collaboration and Leadership
Critical Thinking, Problem Solving and Decision Making
Creativity and Innovation
Social, Cultural, Global and Environmental Responsibility
Communication
Digital and Technological Fluency
Lifelong Learning, Personal Management and Well-being
STUDENT
ENTREPRENEURIAL SPIRIT
ETHICAL CITIZEN
SELF AWARENESS
Having a deep knowledge of yourself and understanding of your beliefs, values, emotions, fears, joys, strengths, weaknesses, ambitions and how they affect others.
SOCIAL SKILLS
Ability to build positive relationships and trust with others by communication and interactions, and able to mobilize them for collective good.
SELF REGULATION
The ability to manage disruptive emotions and impulses and maintain composure.
EMOTIONAL INTELLIGENCE
EMPATHY
The ability to be sensitive to other people's emotions. To be able to imagine what someone might be feeling or thinking.
MOTIVATION
The desire or willingness of someone to do something. Passionately, loving work and achievements for their own sake.
TEKS
READINESS STANDARDS
PROCESS STANDARDS
SUPPORTING STANDARDS
CCRS
COLLEGE AND CAREER READY
STATE STANDARDS
ELPS
LISTENING
SPEAKING
READING
WRITING
PREKINDERGARTEN GUIDELINES
SCIENCE
TECHNOLOGY
MATHEMATICS
ENGINEERING
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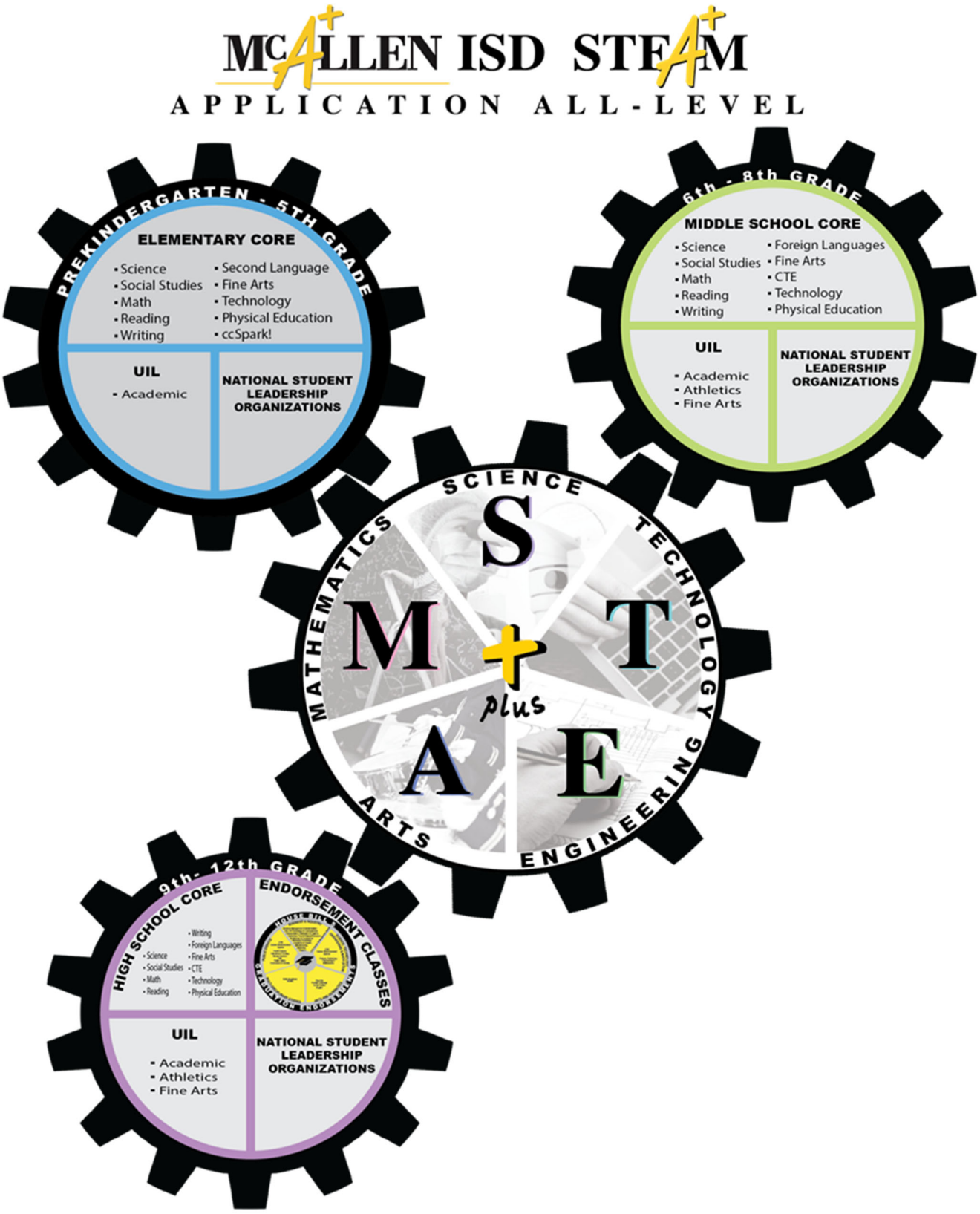
McALLEN ISD STEAM
APPLICATION ALL-LEVEL
PREKINDERGARTEN - 5TH GRADE
ELEMENTARY CORE
• Science
• Social Studies
• Math
• Reading
• Writing
• Second Language
• Fine Arts
• Technology
• Physical Education
• ccSpark!
UIL
• Academic
NATIONAL STUDENT LEADERSHIP ORGANIZATIONS
6th - 8th GRADE
MIDDLE SCHOOL CORE
• Science
• Social Studies
• Math
• Reading
• Writing
• Foreign Languages
• Fine Arts
• CTE
• Technology
• Physical Education
UIL
• Academic
• Athletics
• Fine Arts
NATIONAL STUDENT LEADERSHIP ORGANIZATIONS
SCIENCE
TECHNOLOGY
ENGINEERING
ARTS
MATHEMATICS
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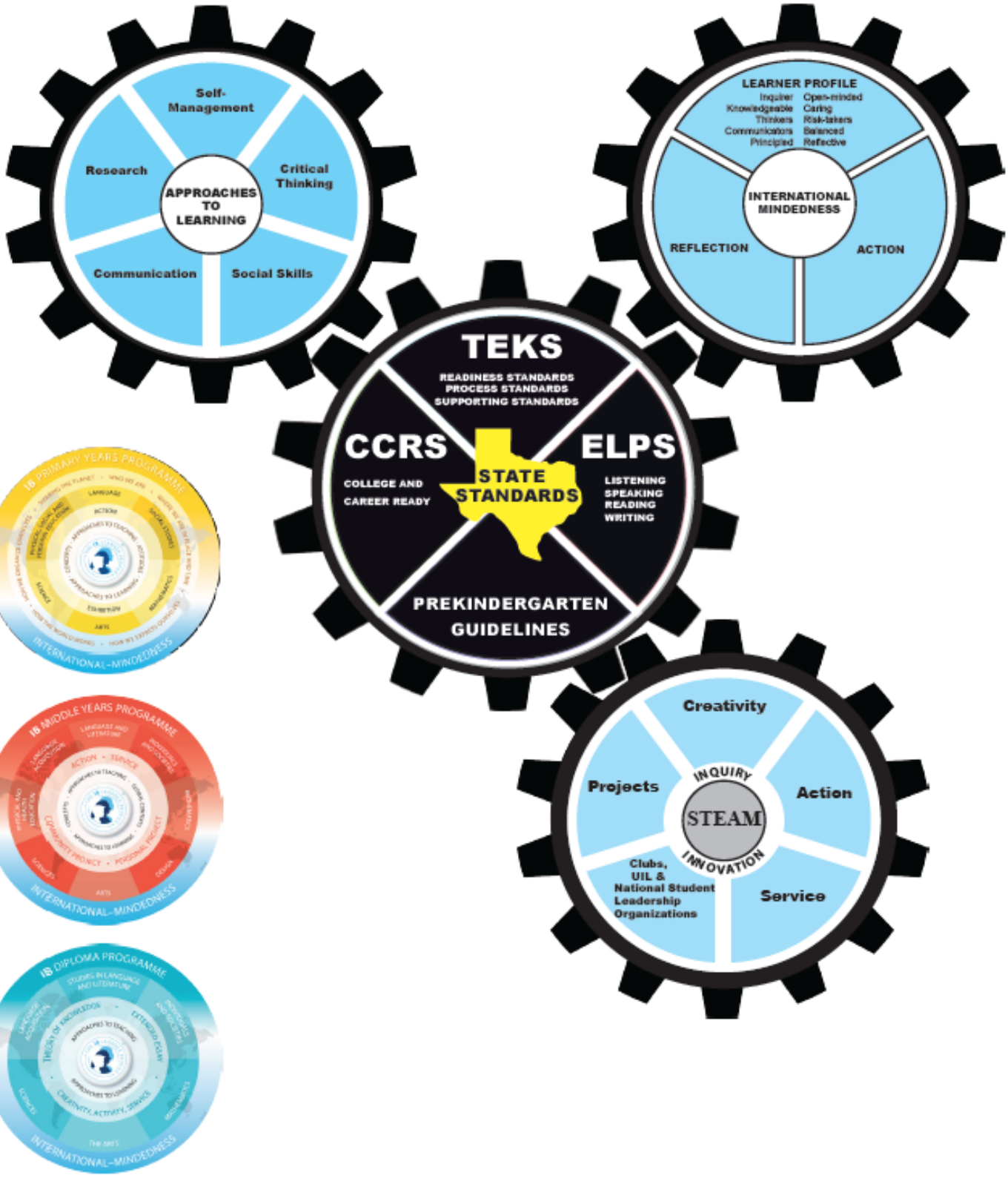
plus
9th - 12th GRADE
HIGH SCHOOL CORE
• Science
• Social Studies
• Math
• Reading
• Writing
• Foreign Languages
• Fine Arts
• CTE
• Technology
• Physical Education
ENDORSEMENT CLASSES
UIL
• Academic
• Athletics
• Fine Arts
NATIONAL STUDENT LEADERSHIP ORGANIZATIONS

FRAMEWORK FOR STUDENT LEARNING

International Baccalaureate



2022 - 2023 District Calendar

Board Approved 01/24/22

2022

JULY

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31						

AUGUST

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SEPTEMBER

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OCTOBER

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NOVEMBER

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DECEMBER

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2023

JANUARY

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29	30	31				

FEBRUARY

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MARCH

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APRIL

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						1
2	(3)	4	5	6]	7	8
9	[10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

MAY

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	(22)	23	24	25	26]]	27
28	29	30	31			

JUNE

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

REPORTING PERIODS

FIRST DAY OF SCHOOL - August 22, 2022

FALL SEMESTER

1st SW	August 22, 2022	TO	September 30, 2022	29	DAYS
2nd SW	October 3, 2022	TO	November 4, 2022	24	DAYS
3rd SW	November 7, 2022	TO	December 21, 2022	28	DAYS
			TOTAL	81	DAYS

SPRING SEMESTER

4th SW	January 9, 2023	TO	February 17, 2023	30	DAYS
5th SW	February 21, 2023	TO	April 6, 2023	28	DAYS
6th SW	April 10, 2023	TO	May 26, 2023	35	DAYS
			TOTAL	93	DAYS

81 DAYS (FALL) + 93 DAYS (SPRING) = 174 DAYS

LAST DAY OF SCHOOL - May 26, 2023

REPORT CARDS (WEEK OF)

1)	September 26, 2022	4)	February 13, 2023
2)	October 31, 2022	5)	April 3, 2023
3)	December 19, 2022	6)	May 22, 2023

STAFF PROFESSIONAL LEARNING DAYS, WORKDAYS, WEATHER DAYS & HOLIDAYS

PROFESSIONAL LEARNING DAYS

1)	August 8-11, 2022	4	days
2)	August 15-18, 2022	4	days
3)	January 5, 2023	1	day
4)	February 20, 2023	1	day

TEACHER WORKDAYS

1)	August 12, 2022	1	day
2)	August 19, 2022	1	day
3)	January 6, 2023	1	day

WEATHER MAKE-UP DAYS

1) October 10, 2022 2) April 7, 2023

STAFF/STUDENT HOLIDAYS

September 5, 2022	Labor Day
November 21 - 25, 2022	Thanksgiving Break
December 22, 2022 - January 4, 2023	Winter Break
March 13 - 17, 2023	Spring Break

STUDENT EARLY RELEASE DAYS

1) December 21, 2022 2) May 26, 2023

MCALLEN ISD GRADUATION DATES

TBD

LEGEND

PL = PROFESSIONAL LEARNING DAY	
W/D = WORKDAY	
HOLIDAYS	
STATE ASSESSMENT DAYS	
WEATHER DAYS	
STUDENT EARLY RELEASE DAYS	/
BEGIN SIX WEEKS	[
END SIX WEEKS	]
BEGIN SEMESTER	[[
END SEMESTER	]]
REPORT CARDS (WEEK OF)	( )

Official Map

McALLEN INDEPENDENT SCHOOL DISTRICT

2000 North 23rd Street
McAllen, Texas 78501-6126
(956) 618-6000

ELEMENTARY SCHOOLS

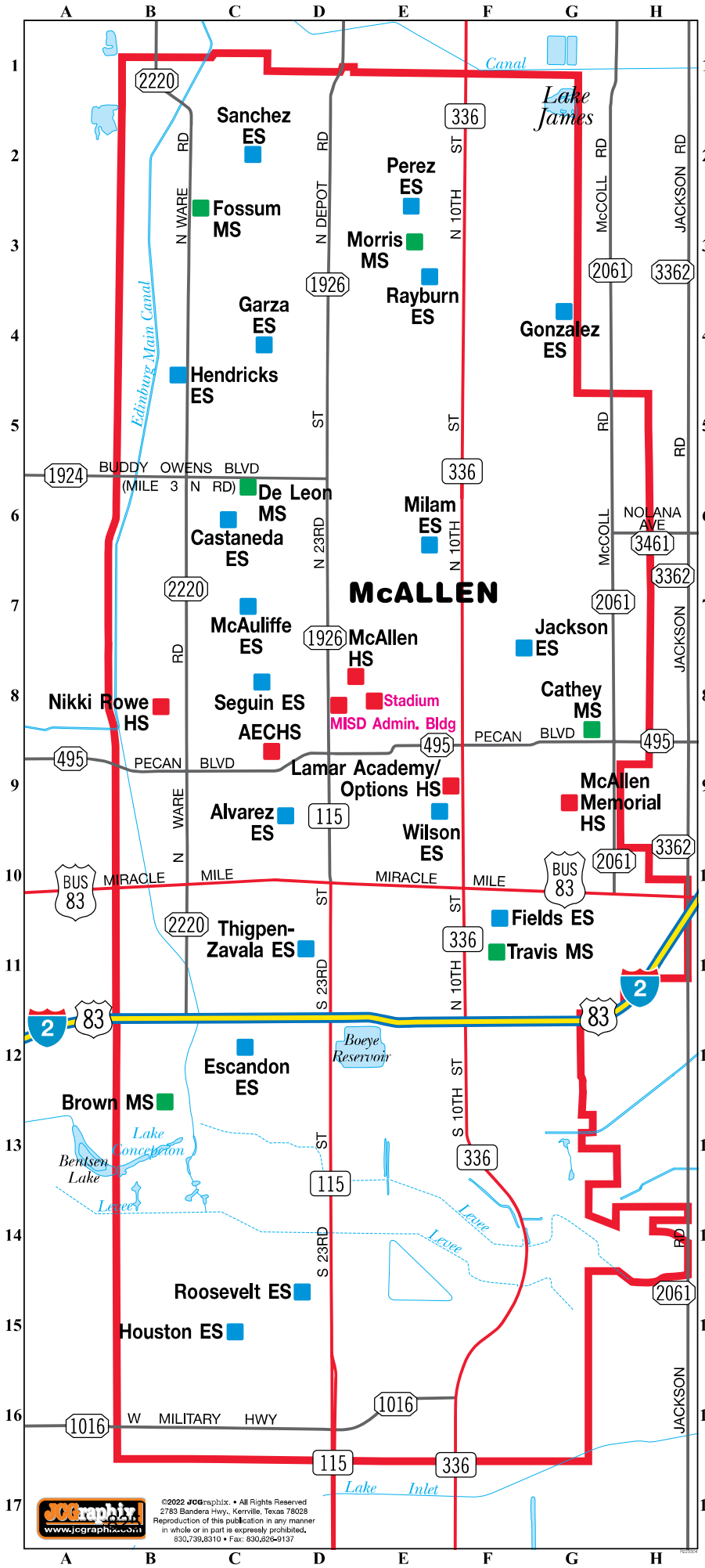
Alvarez D-9
Escandon C-12
Castaneda C-6
Fields F-11
Garza C-4
Gonzalez G-4
Hendricks B-4
Houston C-15
Jackson F-7
McAuliffe C-7
Milam E-6
Perez E-3
Rayburn E-3
Roosevelt D-15
Sanchez C-2
Seguin C-8
Thigpen-Zavala D-11
Wilson E-9

MIDDLE SCHOOLS

Brown B-13
Cathey G-8
De Leon C-6
Fossum C-3
Morris E-3
Travis F-11

HIGH SCHOOLS

Lamar Academy/Options High F-9
McAllen High D-8
Memorial High G-9
Nikki Rowe High B-8
M.I.S.D. Administration Building . . . D-8
McAllen Memorial Stadium E-8
Achieve Early College High School (AECHS) C-9



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Campus Listing

High Schools

McAllen High School
2021 La Vista
Albert Canales, Principal

Memorial High School
101 East Hackberry
Pedro Alvarez Jr., Principal

James "Nikki" Rowe High School
2101 North Ware Road
Monica Kaufmann, Principal

Lamar Academy
1009 North 10th Street
Jeanette Nino, Principal

Achieve Early College High School
1601 North 27th Street
Miguel Carmona, Principal

Instruction & Guidance Center
2604 Galveston Street
Fernando X. Gutierrez, Principal

Middle Schools

Dorothea Brown Middle School 2700 South Ware Road
Alfredo Gutierrez, Principal

Dr. Rodney D. Cathey Middle School
1800 North Cynthia Street
Melvin L. Benford, Principal

Alonzo De Leon Middle School
4201 North 29th Street
Samuel Cazares, Principal

Michael E. Fossum Middle School
7800 North Ware Road
Dr. Connie Camacho, Principal

Homer J. Morris Middle School
1400 Trenton Road
Allen Garza, Principal

William B. Travis Middle School
600 Houston Street
Efrain Amaya, Principal

Elementary Schools

Francisca Alvarez Elementary
2606 Gumwood Street
Melissa Lara, Principal

Jose De Escandon Elementary
2901 Colbath Street
Karla Rodriguez, Principal

Reynaldo G. Garza Elementary
6300 North 29th Street
Nancy Valenzuela, Principal

Lucile McKee Hendricks Elementary
3900 Goldcrest Street
Carlos Mora, Principal

Andrew Jackson Elementary
501 Harvey Street
Miguel A. Herrera, Principal

Ben Milam Elementary
3800 North Main Street
Christian Quintanilla, Principal

Sam Rayburn Elementary
7000 North Main Street
Clarissa Partida, Principal

Blanca E. Sanchez Elementary
2901 Incarnate Word Street
Veronica Rodriguez, Principal

Thigpen-Zavala Elementary
2500 Galveston Avenue
Sonia S. Casas, Principal

Dr. Carlos Castañeda Elementary
4100 North 34th Street
Jessica P. Rodriguez, Principal

Victor Fields Elementary
500 West Dallas Avenue
Teresa Trdla, Principal

Leonelo H. Gonzalez Elementary
201 East Martin Street
Christina Hernandez, Principal

Sam Houston Elementary
3221 Olga Street
Jessica Lowe, Principal

Christa McAuliffe Elementary
3221 Olga Street
Elizabeth Gonzalez, Principal

Dr. Pablo Perez Elementary
7801 North Main Street
Veronica Delgado, Principal

Theodore Roosevelt Elementary
4801 South 26th Street
Albert G. Irlas, Principal

Juan Seguin Elementary
2200 North 29th Street
Juan P. Nevarez, Principal

Woodrow Wilson Elementary
1200 Hackberry Street
Erika Garcia, Principal

2021-2022 Organizational Chart

McALLEN INDEPENDENT SCHOOL DISTRICT

Board of Trustees

Stephanie Garcia
Internal Auditor

Dr. J. A. Gonzalez
Superintendent of Schools

Bridgette Vieh
Associate Superintendent Instructional Leadership

Todd Miller
Assistant Superintendent Human Resources

- **John Cavazos** — Human Resources Director
- **Stan Crounse** — Human Resources Director
- **Andy Silva** — Employee Benefits & Safety Risk Management Director
- **John Wilde** — Student Support Services Director

Dr. Rosalba De Hoyos
Assistant Superintendent Instructional Services

- **Maribelle Elizondo** — Special Education Services Executive Director
- **Liza Lara** — Regional Day School for the Deaf Director
- **Dr. Sandra Pitchford** — Sp.Ed. Teaching & Learning Director
- **Norma Cabrera** — Counseling Director
- **Sal Flores** — 504/RTI/Dyslexia Director
- **Rocio Nava** — Bilingual/ESL/Foreign Languages Director
- **Karen Nitsch** — Advanced Academics Director
- **Cynthia Olivarez** — State & Federal Programs Director
- **Lilia Sandoval Silva** — Career Technical Education Director
- **Ann Vega** — Digital Learning & Library Services Director

Campus Principals

McAllen High School — **Albert Canales**	McAllen Memorial High School — **Pedro Alvarez Jr.**	James "Nikki" Rowe High School — **Monica Kaufmann**
Achieve Early College High School — **Miguel Carmona**	Instruction & Guidance Center — **Fernando X. Gutierrez**	Lamar Academy — **Jeanette Nino**
Homer J. Morris Middle School — **Allen Garza**	Dorothea Brown Middle School — **Alfredo Gutierrez**	Alonso De Leon Middle School — **Samuel Cazares**
William B. Travis Middle School — **Efrain Amaya**	Dr. Rodney D. Cathey Middle School — **Melvin L. Benford**	Michael E Fossum Middle School — **Dr. Connie Camacho**
Victor Fields Elementary — **Teresa Trdla**	Jose de Escandon Elementary — **Karla Rodriguez**	Francisca Alvarez Elementary — **Melissa Lara**
Ben Milam Elementary — **Christian Quintanilla**	Leonelo H. Gonzalez Elementary — **Christina Hernandez**	Dr. Carlos Castaneda Elementary — **Jessica P. Rodriguez**
Dr. Pablo Perez Elementary — **Veronica Delgado**	Sam Houston Elementary — **Jessica Lowe**	Reynaldo G. Garza Elementary — **Nancy Valenzuela**
Sam Rayburn Elementary — **Clarissa Partida**	Andrew Jackson Elementary — **Miguel Herrera**	Lucile McKee Hendricks Elementary — **Carlos Mora**
Woodrow Wilson Elementary — **Erika Garcia**	Theodore Roosevelt Elementary — **Albert G. Irlas**	Christa McAuliffe Elementary — **Elizabeth Gonzalez**
Thigpen-Zavala Elementary — **Sonia S. Casas**		Blanca E. Sanchez Elementary — **Veronica Rodriguez**
		Juan Seguin Elementary — **Juan P. Nevarez**

McAllen ISD - UT Rio Grande Valley Collegiate Academy Program Director

- **Patricia Pena** — Professional Learning & Literacy Director
- **Dr. Cynthia Noel** — Student Assessment Director

District Content Coordinators (Campus Support)

Richard Roberts — ELA (Secondary)	**Lynda Farias** — Math (Secondary)	**Celeste Garza** — Science (Secondary)
Sandra Garcia — ELA (Elementary)	**Sandra Garza** — Math (Elementary)/UIL	**Stephanie Beltran** — Science (Elementary)
Erica Canales — Early Childhood	**Clarissa Abbott** — Social Studies (Secondary)	

Adel Felix *(Interim)*
Assistant Superintendent District Operations

- **Judith Escamilla** — Technology Executive Director
- **Domingo Ramos** — Technology Director
- **Ruben Trevino** — Facilities Maintenance & Operations Executive Director
- **Elizabeth Cavazos** — Strategic Partnerships & Student Outreach Director
- **Erica Flores** — Transportation Director
- **Robert Garcia** — Student Operations Director
- **Elizabeth Gutierrez** — Health Services Director
- **Alex Molina** — Child Nutrition Director
- **Laura Williams** — Special Funding Director

Cynthia Richards
Assistant Superintendent Business Operations

- **Iris Luna** — Chief Financial Officer
- **Ashley Jaime** — Payroll Director
- **Dyanira Diaz** — Accounting Director
- **Alejandra Gonzalez** — Purchasing Director
- **Jacob Berry** — Community Information Director
- **Debra Loya** — Fine Arts Director
- **Brian McClenny** — Athletics Director
- **Jose Silva** — Chief of Police

"What lies behind us and what lies before us are tiny matters compared to what lies within us."
–Oliver Wendell Holmes Jr. Associate
Justice, US Supreme Court, 1902-32

Dr. J. A. Gonzalez is a teacher at heart. Put a marker in his hand and a blank whiteboard beside him and his eyes light up. Whether his audience is made up of students or fellow professionals, he relishes the opportunity to teach.

"I am fascinated with the art of teaching and learning," he said. "Everyone is some kind of smart —be it mathematical, verbal, kinesthetic, or musical. We all have a particular learning style, and it is our job, as educators, to help our students discover their talents and to build on their natural skill sets."

In October, 2020, a combination of leadership, foresight and determination catapulted him to the top award in the state, Texas Superintendent of the Year. He is the first winner ever from McAllen ISD.

In his acceptance speech, Dr. Gonzalez began by thanking his wife and children.

"To the McAllen ISD Board of Trustees, thank you so very much for believing in me," he added. "Thank you for holding me to a high standard, for holding me accountable and for all the oversight and direction that you provide myself and the district as we continue to thrive in this environment. Each one of you motivates me in a unique way and I thank you all for that."

He also thanked McAllen ISD staff.

"This award would not be possible without the entire McAllen ISD family … all 3,000 employees, thank you so much. To our teachers, thank you for grinding and for pushing hard, even in this remote environment. And, to our wonderful students, thank you for putting us on the map. I have the utmost respect for all of you. And finally, I dedicate this award to my father (Oscar Gonzalez Sr.) and my mother (Elsa Gonzalez). I hope that I made you proud. Thank you."

His state award was preceded by earning the Region One Superintendent of the Year award in the summer of 2020. Following the state award and a TASA nomination, he later became one of just five finalists for the National Superintendent of the Year award.

In 2022, he earned the South Texas Hero award from the United Way of South Texas.

"Dr. Gonzalez was chosen because he exemplifies community service at the highest level and embodies the United Way Mission, to improve lives by mobilizing the caring power of our community to advance the common good," Lilly Lopez-Killelea, President and CPO of United

Way of South Texas explained. “He engages with many organizations, whether they are public, private, government, non-profit, etc. to promote opportunities for children and local families.”

Dr. Gonzalez, who became Superintendent in 2016, oversees a district that is characterized as a District of Champions, with amazing standings, including state-ranked academic and finance programs, as well as nationally ranked high schools, music program, health and PE program, and so much more.

“As educators, we are in the dream business,” he said. “We are entrepreneurs of the human spirit.”

Under his wing, the District has enjoyed some major accomplishments on the state and national stage. Some of these include:

- Earning an “A” designation by the Texas Education Agency for two straight years (2018 and 2019).
- Earning the state’s Post-Secondary Readiness Distinction three consecutive years (2017-19).
- Earning Financial Integrity Rating System of Texas (School FIRST) for the 18th time in 19 years. That includes 14 perfect scores.
- McAllen ISD high schools ranked among America's best schools by either *US News & World Report* or *The Washington Post* for the eighth straight year. All five ranked by *US News & World Report* in spring 2022.
- The District being named Best Large District in Texas in the H-E-B Excellence in Education awards. The District was also a state finalist in 2018.
- Serving a School Board which was a state finalist for the School Board Leadership award in the H-E-B Excellence in Education awards in 2019 and 2022.
- Implementing a State & National award-winning Strategic Plan for the District.
- Leading the District as the community passed a Tax Ratification Election with 76 percent voter approval in 2018.
- The District being named “Favorite School District” in *The Monitor’s* Readers’ Choice Awards three times in the past five years.
- Two schools earning a national Blue Ribbon award – Sam Houston Elementary (2019) and Achieve Early College High School (2021).
- The District being named a national Best Community for Music Education for 10 consecutive years.
- Overseeing the District as all eligible schools have been named among America’s Healthiest Schools since 2014.

It is worth noting that only three school districts in Texas, with an enrollment of at least 20,000 students, earned all three major state awards in 2019 (State “A” ranking, Post-Secondary Readiness Distinction and School FIRST with a perfect score).

He led the transformation in March 2020, to address the COVID-19 pandemic’s impact on our educational community in a way that kept instruction at the forefront, while keeping our students

and staff safe. Through it all, the district continued providing meals for the community, and students did not miss a single day of instruction. This accomplishment was chronicled in the education journal, *Texas Lonestar* magazine, in its July 2020 issue.

"We're a world-class district. In McAllen ISD, it's not about programs," Dr. Gonzalez said. "It's about people, and we have great people in this dynamic community and our district. The key is to work collectively to execute the vision for our district as we move deeper into the twenty-first century."

In addition, Dr. Gonzalez has implemented many new programs and features. These include:

- Initiated the creation of STEAM-Plus teaching and learning framework.
- Established elementary UIL, chess, and robotics programs.
- Initiated the creation of Tech Wars in which high school students competed in a unique robotics competition.
- Initiated the first Esports tournament in the Rio Grande Valley.
- Built relationships with city, chamber of commerce, economic development corporation, and McAllen Boys and Girls Club.
- Created a leadership model.
- Reduced payroll costs for 2016-17 by $1.3 million.
- Created McTalks framework to spotlight alumni, staff, and students.
- Established lifecycle replacement schedule for facilities and equipment.
- Created the STRIDES Program for special needs students who have graduated.
- Created a Parent Education Program.
- Moved Career Technical Education Program to Achieve Early College High.
- Initiated a Mental Health Fair.
- Created golf and fishing tournaments to raise scholarship money, so high school students can visit colleges and universities.
- Created a Youth Apprenticeship Program through South Texas College and Chamber of Commerce.

In March 2022, he signed an agreement to create a Collegiate Academy with the University of Texas Rio Grande Valley. Students will have the opportunity to earn hours toward a bachelor's degree in medical fields on land set aside for state-of-the-art facilities. It is scheduled for launch in the fall of 2023.

Dr. Gonzalez initiated the creation of STEAM-Plus in Pre-K-12 grades. This learning framework places a great emphasis on Science, Technology, Engineering, Arts, and Math, including coding, rocketry, and robotics. STEAM-Plus also systematically addresses a child's emotional intelligence. It focuses on the five key components of emotional intelligence – self-awareness, self-regulation, motivation, empathy, and social skills. McAllen ISD also continues to support the highly acclaimed International Baccalaureate Teaching and Learning Framework at elementary, middle, and high school levels. In fact, the IB Diploma Programme at Lamar Academy was awarded the IB School of Distinction Award in 2017.

A former state finalist for Principal of the Year and a participant in The Principals' Center at Harvard University, Dr. Gonzalez has a wealth of experience and a passion for teaching. He has taught in the Educational Leadership Department as a Practicing Lecturer at the University of Texas-Rio Grande Valley (UTRGV).

Dr. Gonzalez served as the District's Associate Superintendent for Instructional Leadership from 2012-16. His primary role included coaching, supervising and evaluating all principals in the District. He has also served as a Principal, Assistant Principal, Teacher, and Coach in multiple sports during his 26-year educational career (24 with McAllen ISD).

He is active in the community as well. Some of the professional clubs, organizations, and committees he serves on include:

- Texas Association of Secondary School Principals
- Golden Key International Honor Society
- Kappa Delta Pi International Honor Society
- Honorary Member of the McAllen Rotary Club
- Member of Raise Your Hand Texas
- UTPA College of Education Advisory Committee
- The Principals' Center Alumni (at Harvard University)
- Vice Chairman of the Board: Chamber of Commerce Board of Directors, 2019-present
- Member: Chamber of Commerce Executive Committee, 2021-present
- TASA Education Commissioner's Cabinet Member, 2021-Present
- Member: TASA – Texas Association of School Administrators
- Member: AASA – American Association of School Administrators
- Member: TALAS – Texas Association of Latino Administrators and Superintendents
- TASB School Transformation Network
- Member: Friends of Texas Public Schools
- United Way Board of Directors (2021-23)
- McAllen Economic Development Corporation Board of Directors
- Region One Regional Advisory Council of Superintendents: Executive Committee Member
- UIL Executive Committee for Region XV
- South Texas Association of Schools Board of Directors Vice-President 2021-22
- Lower Rio Grande Valley Development Council (LRGVDC member) – the Regional Council of Governments for Hidalgo, Cameron and Willacy Counties
- John Maxwell Team Certified Member (2018)
- Federal Bureau of Investigation (FBI) Citizens Academy (2015)
- Leadership McAllen – Class XXXIII (2014)

Born in Laredo, Texas, Dr. Gonzalez was raised in Hebbronville, Texas. He graduated from Texas A&M University—Kingsville with a Bachelor of Science in 1996 and earned a Master of Science in Educational Administration from the University of Texas-Pan American in 1999. Between 2000

and 2003, he earned his Mid-Management Administrator and Superintendent Certifications. His Doctor of Education with an emphasis in Educational Leadership was completed in 2008 through the University of Texas-Pan American.

Dr. Gonzalez married Shahroo T. Gonzalez, who is also an educator. They have three children – Joe Douglas (10), Samantha Isabella (9), and Joshua Jay (7).

A Letter from the Superintendent

At McAllen ISD, we are in the business of making students' dreams come true.

Our focus is meeting the academic, social and emotional needs of our students. We provide students with the tools, experience and motivation to go out and accomplish their dreams. Whether it is about getting into a certain school, going into a particular profession or serving in the military, McAllen ISD will empower students to make it happen.

At McAllen ISD, we take pride in giving our students quality choices. The many programs and opportunities from which our students choose include:

- Two educational frameworks - STEAM-Plus and International Baccalaureate.
- An Advanced Placement program where students can test for college credit.
- A dual enrollment program where students can take courses and earn college credit while still in high school.
- A National Blue Ribbon nominated Early College High School where students can earn an Associates Degree before they even graduate high school.
- A Career Technical Education program where students can earn a professional license or certification in any of 14 career clusters.
- Athletics, fine arts, UIL, clubs and organizations.
- Dual-language program schools, available in elementary, middle and high school level, to increase the number of students becoming bi-literate.
- Minitropolis schools where students learn "real-life" skills in terms of running a business or city government.

We are committed to ensuring that every child that comes into our District becomes empowered to take control of his or her future. In McAllen ISD, we are not only focused on the academic side of the child, we are also focused on their physical health and emotional intelligence.

When our students graduate, we want them to have job skills and to be college, career and military ready. When you come to McAllen ISD, it is about more than just learning the state curriculum and passing an assessment, it is about being able to perform and produce in the real world. We deliver instruction on a world-class level.

Sincerely,

J.A. Gonzalez, Ed. D.
Superintendent of Schools
McAllen Independent School District

Administrative Staff

J. A. Gonzalez, Ed. D.
Superintendent

Bridgette Vieh
Associate Superintendent for Instructional Leadership

Cynthia Medrano Richards, RTSBA, CPA
Assistant Superintendent for Business Operations

Rosalba De Hoyos, Ed. D.
Assistant Superintendent for Instructional Services

Adel Felix, CPA, CFE
Interim Assistant Superintendent for District Operations

Todd Miller
Assistant Superintendent for Human Resources

Iris Luna, RTSBA
Chief Financial Officer

Board of Trustees

2013 NSBA Magna Award Winner

Texas 2012 Outstanding Board of the Year

2012 Region One School Board of the Year

2020 Region One School Board of the Year

The Board of Trustees are elected by the citizens living in the McAllen Independent School District boundaries to be legally responsible for educating the children in the District. Trustees are elected at-large by position.

Texas law grants the Board of Trustees the power to govern and oversee the management of the District's schools. The Board is the policy-making body within the District and has overall responsibility for curriculum, school taxes, annual budget, employment of the superintendent and other professional staff, facilities and expansions. The Board has complete and final control over school matters within limits established by law and State Board of Education rules.

The McAllen ISD School Board meets in the Dr. Ricardo Chapa Board Room in the Administration Building at 2000 N. 23rd Street in McAllen, Texas. For the majority of the COVID-19 Pandemic, the board met virtually and began face to face meetings in May 2021.

Pursuant to Texas Statutes § 551.043 and § 551.051, the McAllen Independent School District will post the Official Notice of a Board Meeting on the bulletin board at the main entrance on the west side of the District's Administration Building where it remains for at least 72 hours before the scheduled time of the meeting. Though not required by law, the School District also posts an Unofficial Board Meeting Agenda on the District's internet web site as a service to the community.

All McAllen Independent School District Board of Trustee Meetings are open to the public. Meetings are live streamed on MITV and Youtube, or via one of the other public access channels on the cable system serving the McAllen area. Texas law permits the Board of Trustees to convene in closed session for discussion of property acquisition, personnel issues, security matters or consultation with attorneys.

In pursuant to BED(LOCAL), Individuals who wish to participate during the portion of the meeting designated for public comment shall sign up with the presiding officer or designee before the meeting begins as specified in the Board's procedures on public comment and shall indicate the agenda item or topic on which they wish to address the Board. Public comment shall occur at the beginning of the meeting. Except when permitted by this policy, and the Board's procedures on public comment, an individual's comments to the Board shall not exceed two minutes per meeting.

If you have any questions, please contact the Board Secretary, Natalie Goza, at (956) 618-6094.

President

Tony Forina
Place 4, 2019-2023
tony.forina@mcallenisd.net

Vice President

Debbie Crane Aliseda
Place 3, 2021-2025
debbie.aliseda@mcallenisd.net

Secretary

Marco Suarez
Place 1, 2019-2023
marco.suarez@mcallenisd.net

Trustee

Conrado Alvarado
Place 2, 2019-2023
conrado.alvarado @mcallenisd.net

Trustee

Sofia M. Peña
Place 6, 2021-2025
sofia.pena1@mcallenisd.net

Trustee

Sam Saldivar Jr.
Place 7, 2021-2025
sam.saldivar@mcallenisd.net

Trustee

Daniel D. Vela
Place 5, 2019-2023
daniel.vela@mcallenisd.net

Our Vision and Our Mission

McALLEN
INDEPENDENT SCHOOL DISTRICT

Vision

The McAllen Independent School District is a multicultural community in which students are enthusiastically and actively engaged in the learning process. Students demonstrate academic excellence in a safe, nurturing and challenging environment enhanced by technology and the contributions of the total community.

Mission

The mission of the McAllen Independent School District is to educate all students to become lifelong learners and productive citizens in a global society through a program of educational excellence utilizing technology and actively involving parents and the community.

Our Goals and Strategies

Goal 1 – Student Achievement/Student Focus
Goal 2 – People Development
Goal 3 – Facility Priorities
Goal 4 – Financial Priorities

Strategy 1 - Branding
We will effectively and continuously communicate and market the district's mission, strengths, successes and diverse opportunities for every learner.

Strategy 2 – Attract/Retain High Quality Staff
We will attract, recruit, develop and retain high quality staff.

Strategy 3 – Engaging Learning Environment
We will foster secure, supportive, rigorous and engaging learning environments.

Strategy 4 – Rigorous/World Class Standards Customized for Every Learner
We will utilize national and global standards to customize learning for every learner.

Strategy 5 – Partnerships with Business/Civic Education/Organizations
We will develop and strengthen bonds with the business, education and civic community to provide engaging learning opportunities.

Strategy 6 – Future-Ready Students
We will foster principled students who learn, adapt, and innovate in response to their ever-changing environment.

Strategy 7 – Financial Priorities
We will conduct a budget development, implementation and monitoring process that reflects sound business and fiscal practices that support district goals.

Implementation of District Goals & Objectives 2022-2023	Student Achievement/ Student Focus	People Development District	Facilities Priorities District	Financial Priorities District	Branding	Attract/Retain High Quality Staff	Engaging Learning Environment	Rigorous/ World Class Standards Customized for Each Learner	Partnerships with Business/ Civic Education/ Organizations	Future-Ready Students	Financial Priorities
Organization Number/Name	**Goal 1**	**Goal 2**	**Goal 3**	**Goal 4**	**Strategy 1**	**Strategy 2**	**Strategy 3**	**Strategy 4**	**Strategy 5**	**Strategy 6**	**Strategy 7**
701 Superintendent's Office	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
702 Board of Trustees	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
713 Grant Development & Compliance							✓				
714 Department of Community Information	✓	✓			✓						
717 Strategic Partnership and Student Outreach	✓	✓		✓	✓				✓		✓
727 Department of Human Resources		✓				✓					
728 Department of Employee Benefits		✓				✓					
729 Department of Purchasing				✓							✓
730 Department of Business Services				✓							✓
731 Assistant Superintendent for District Operations	✓		✓	✓	✓		✓	✓	✓		✓
732 Department of Internal Audit		✓		✓		✓	✓		✓		✓
733 Assistant Superintendent for Business Operations				✓							✓
734 Department of Accounting				✓							✓
735 Department of Payroll				✓							✓
736 Department of Special Funding	✓	✓	✓	✓		✓	✓	✓		✓	✓
800 Warehouse/Fixed Assets				✓							✓
801 Police Department	✓	✓	✓	✓	✓	✓	✓		✓		✓
802 Division of Instructional Services	✓						✓	✓		✓	
803 Department of Student Support Services	✓				✓						
804 Department of Athletics	✓	✓	✓	✓	✓	✓			✓		✓
805 Department of Fine Arts	✓					✓	✓	✓		✓	
806 Office of Assessment	✓						✓	✓		✓	
807 Department of Technology	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
808 Facilities Maintenance & Operations			✓								
809 Department of Transportation	✓				✓	✓	✓				✓
810 Department of Food Services	✓			✓					✓		✓
811 Department of Instructional Technology	✓						✓	✓		✓	
812 Department of Media Services	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
813 Department of Library Services	✓						✓	✓	✓	✓	✓
814 Department of Special Education Services	✓	✓				✓	✓	✓	✓	✓	
815 Department of Health Services	✓								✓		
817 Department of Special Services	✓						✓	✓		✓	
819 Department of Research and Policy	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
821 Instructional Leadership	✓						✓	✓		✓	
822 Department of Student Operations	✓	✓		✓							✓
823 Department of Counseling	✓						✓	✓		✓	
824 Department of 504/RTI/Dyslexia	✓						✓	✓		✓	
825 Department of Bilingual	✓						✓	✓		✓	
826 Department of Advanced Academics	✓						✓	✓		✓	
827 Department of Career and Technology	✓						✓	✓		✓	
828 Department of Migrant Programs	✓						✓	✓		✓	
830 Professional Development and Literacy	✓						✓	✓		✓	

842

Long Term Financial Planning and Major Initiatives

The financial goal of the McAllen Independent School District is to have a sufficient fund balance in the general operating fund to be able to maintain fiscal independence in case of a financial need or crisis. The District shall strive to maintain an optimum fund balance of at least two and a half months of general fund operating expenditures.

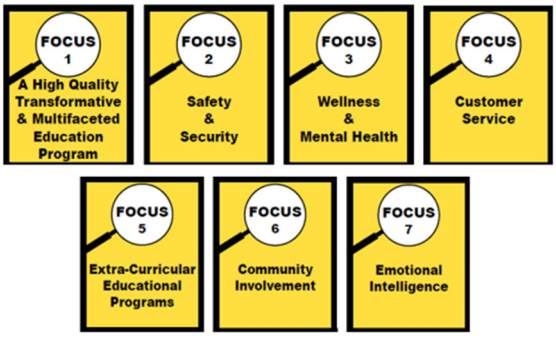
The School District reached out to the community during the late spring and summer of 2016 for input as we worked to create our Strategic Plan. This comprehensive living document is designed to keep us on the path of continuous improvement.

The District's strategic plan was created through focus group sessions, surveys, town hall meetings, and a series of full-day workshop meetings. Students, parents, and other members of our community joined teachers and other employees in identifying our call to action, establishing our mission, identifying goals, and beginning the process of pinpointing key actions. We established this framework to work, to refine, and redirect our aim. To create alignment, we merged into this report, the four goals that guide the superintendent's evaluation. In the interest of transparency and accountability, this framework is available to the public.

This framework of goals ensures all members of our school community are working to improve. It shines light on every facet of the school district, including student-centered and inquiry-based learning in prekindergarten through the 12th grade, support programs, extracurricular activities, finance, maintenance, transportation, marketing, child nutrition, wellness, human resources, safety and security and more. Through this process, the District also lays out the metrics by which we gauge our progress - further spotlighting our determination to be accountable and transparent to our community.

This responsibility requires extensive planning and foresight. It is intensified when it works in sync with a supportive and involved community. For this reason, we will make the greater community aware of this plan through a series of presentations, including town hall meetings, community group sessions and an annual review. In addition, the plan will be posted on our website for full disclosure, and it will be updated yearly. This is the framework that guides our decisions.

In support of our current strategic plan, our District launched a Champion Project in fiscal year 2020-2021. Through conversation with students, parents, teachers, and other staff, McAllen ISD identified Seven Focus Areas. McAllen ISD then targeted those Focus Areas to develop an interactive collection of material - in digital formats - to spotlight the many programs and services that we provide to our community. Through this virtual Parent Symposium, our community can access information on any of the outstanding programs that make McAllen ISD an A+ District.



Facilities Education Master Plan

McAllen ISD has held far-reaching discussions with staff and the community as it developed the District's Strategic Plan. An astounding more than 2,000 people gave input. The District conducted an intense study into its facility needs, working to develop a Facilities Education Master Plan that would be aligned with the Strategic Plan.

This long-range planning document evaluates current facilities, analyzes the school systems' future facility needs, and recommends solutions to address these needs. It is grounded in the context of the educational needs of our students and the McAllen Independent School District's Strategic Plan. In addition, it supports our two Frameworks for Student Learning – STEAM Plus and International Baccalaureate. This document is designed to inform the parents, community leaders, and other members of our community about the long-range improvement plans for our educational facilities. One of the decisions included in this Facilities Education Master Plan approved by the Board of Trustees on April 23, 2018 was to repurpose two of our campuses. In the 2018-2019 school year, Jose Antonio Navarro Elementary became our Early Childhood Center and Abraham Lincoln Middle School now houses our Achieve Early College High School students and our Professional Development Building.

This Facilities Education Master Plan serves as the guide to supporting the aims and objectives of our District's Strategic Plan as we make decisions regarding our facilities. The District identifies the priorities that set our Facility Needs Standards and ensures viable and dynamic planning that ultimately supports quality teaching and learning.

The McAllen Independent School District's Goals and Strategies are vital to understanding the facility needs of our organization. This Plan was produced through a team effort including the personnel who are tasked with maintaining our existing schools and other facilities, school administration and other staff, and professional consultants with disciplines in education, planning, programming, architecture, engineering, construction, facility management, facility operations, and technology.

Most Importantly, six Facility Needs Standards were established to drive our priorities as we developed our short and long range plan.

In fiscal year 2019-2020, a Maintenance Tax Note Series 2020 was issued to address some identified needs in the Facilities Education Master Plan.

Facility Needs Standards

Standard 1: Safety and Security

Facilities that support the safety and security of our students and staff.

Standard 2: Educational Suitability

Facilities that support our educational and instructional programs, ensuring that each space meets the needs of a learning environment, including size, location, and fixed equipment as defined for the instuctional program.

Standard 3: Technology Readiness

Facilities with the infrastructure capable of supporting information technology and associated equipment to enhance quality 21st-Century teaching and learning.

Standard 4: Capacity and Utilization

Facilities with specific capacity and utilization standards that target the number of students that can be housed, given the specific educational programs, the class schedules, the student-teacher ratios, and the size of rooms.

Standard 5: Quality Care and Maintenance of Current Facilities

Facilities that are supported by systems aimed at maintaining quality teaching/learning environment by a continued focus on cleanliness, air quality, safety, lighting and exterior of all schools by campus and district staff.

Standard 6: Long Range Facilities Planning

Facilities driven by a system that focuses on replacement schedules, facility priorities, funding sources, and enrollment trends.

Capital Projects Budget Process

The Capital Projects budget is prepared according to the Facilities Education Master Plan and funding availability. For 2022-2023, Capital Outlay is budgeted in the Capital Projects Funds due to the issuance of the Maintenance Tax Notes Series 2020. For a listing of projects please refer to pages 132-133.

Prekindergarten Programs

McAllen ISD elementary schools provides a focused, full day, Pre-K program where children have hands-on purposeful opportunities for learning. Student-centered environments in our Pre-K classrooms follow the developmentally appropriate practices taught by The Children's Learning Institute, which is the Texas State Center for Early Childhood. Our Curriculum adheres to the Texas Prekindergarten Curriculum Guidelines and provides an instructional program that is vertically aligned with the Kindergarten Texas Essential Knowledge and Skills.

Universal Full Day Pre-K
Beginning fiscal year 2020-2021, the District phased in a limited seating Pre-K program. This allowed children, who may not have been originally eligible, to enroll for an available seat at designated campuses.

Tuition-Based
Beginning 2018-2019, McAllen ISD has provided an opportunity for children who do not qualify for the state-mandated Pre-K program provided and were not able to enroll in the limited Universal Pre-K program are eligible to enroll in this tuition supported Pre-K program.

These Pre-K programs are for children who turn four years old on or before September 1st of the current school year.

Benefits of these programs include:

- Certified teachers in every classroom specifically trained to work with young children
- Six-hour full-day programming
- Child-centered, hands-on learning
- Focused on developing children academically, physically, and socially
- Healthy breakfast and lunch provided
- Use of a District-issued iPad Air

Registration documents required:

- Official birth certificate
- Photo identification of parent/guardian of the enrolling student
- Child's social security number (optional)
- Current immunization record signed by physician
- Proof of residency

If you have any questions, please contact the Student Support Services at (956) 618-6031.

District Policies

The following policies are posted on the link below:

http://pol.tasb.org/Home/Index/637

The highlighted items within the following policies make reference to the budget process.

847

Selection of Officers

At the first meeting after each election and qualification of Board members, the members of the Board shall organize by selecting:

1. A president, who shall be a member of the Board.
2. A secretary, who may or may not be a member of the Board.
3. Such other officers and committees as the Board may deem necessary.

Education Code 11.061(c)

Reorganization

In addition to the required post-election organization, the Board may also organize at other times. *Atty. Gen. Op. MW-531 (1982)*

Duties / Powers of Board President

The duties and powers of the President of the Board include, but are not limited to, the following:

Public Meeting on Budget and Proposed Tax Rate

1. Call a meeting of the Board, giving public notice not earlier than the 30th day or later than the tenth day before the meeting, to discuss and adopt the budget and the proposed tax rate. *Education Code 44.004* [See CE and CCG]

Financial Statements

2. Ensure that the annual financial statements are published as required by law. *Local Gov't Code 140.006* [See CFA]

Mineral Rights

3. Execute an oil and/or gas lease or sell, exchange, and convey the minerals in land belonging to the District, approved by resolution of the Board. *Education Code 11.153*

Deeds

4. Execute the deed for the sale of property, other than minerals, held in trust for free school purposes. *Education Code 11.154(b)*

Qualifications

A person may not be employed as a superintendent unless the person holds an appropriate certificate or permit.

The commissioner may waive the requirement for certification of a superintendent if requested by a district as provided by Education Code 7.056 [see BF]. The commissioner may limit the waiver of certification in any manner the commissioner determines is appropriate.

A person who is not certified as a superintendent may not be employed by a district as the superintendent before the person has received a waiver of certification from the commissioner. A person may be designated to act as a temporary or interim superintendent for a district, but the district may not employ the person under a contract as superintendent unless the person has been certified or a waiver has been granted.

Education Code 21.003

Duties

A superintendent is the educational leader and chief executive officer of a district. *Education Code 11.201(a)*

The duties of a superintendent include:

1. Assuming administrative responsibility and leadership for the planning, organization, operation, supervision, and evaluation of the education programs, services, and facilities of a district and for the annual performance appraisal of the district's staff.
2. Except as provided by Education Code 11.202 (duties of principal) [see DK and DP], assuming administrative authority and responsibility for the assignment, supervision, and evaluation of all personnel of a district other than the superintendent.
3. Overseeing compliance with the standards for school facilities. [See CS]
4. Initiating the termination or suspension of an employee or the nonrenewal of an employee's term contract. [See DF series]
5. Managing the day-to-day operations of a district as its administrative manager, including implementing and monitoring plans, procedures, programs, and systems to achieve clearly defined and desired results in major areas of district operations.
6. Preparing and submitting to a board a proposed budget and administering the budget.

7. Preparing recommendations for policies to be adopted by a board and overseeing the implementation of adopted policies.

8. Developing or causing to be developed appropriate administrative regulations to implement policies established by a board.

9. Providing leadership for the attainment and, if necessary, improvement of student performance in a district based on the state's student achievement and quality of learning indicators and other indicators as may be adopted by the commissioner or the board. [See AIA]

10. Organizing a district's central administration.

11. Consulting with the district-level committee. [See BQA]

12. Ensuring:

    a. Adoption of a Student Code of Conduct [see FO] and enforcement of that Code of Conduct; and

    b. Adoption and enforcement of other student disciplinary rules and procedures as necessary.

13. Submitting reports as required by state or federal law, rule, or regulation, and ensuring that a copy of any report required by federal law, rule, or regulation is also delivered to TEA.

14. Providing joint leadership with a board to ensure that the responsibilities of the board and superintendent team are carried out; and

15. Performing any other duties assigned by action of a board.

Education Code 11.201(d)

In addition, a superintendent shall, on a day-to-day basis, ensure the implementation of the policies created by the board. *Education Code 11.1512(a)*

Collaboration with the Board

A board and a superintendent shall work together to:

1. Advocate for the high achievement of all district students;

2. Create and support connections with community organizations to provide community-wide support for the high achievement of all district students;

3. Provide educational leadership for a district, including leadership in developing the district vision statement and long-range educational plan [see AE];

4. Establish district-wide policies and annual goals that are tied directly to the district's vision statement and long-range educational plan;

5. Support the professional development of principals, teachers, and other staff; and

6. Periodically evaluate board and superintendent leadership, governance, and teamwork.

Education Code 11.1512(b)

Prohibited Interference

A superintendent may not interfere with an appearance or testimony of specified district personnel required by the board. *Education Code 11.1511(d)* [See BAA]

Duties

In addition to responsibilities specifically provided by law or in the Superintendent's contract, the Superintendent shall provide educational leadership, demonstrate district management, and maintain positive Board and community relations.

Educational Leadership

To provide leadership and direction for the development of an educational system that is based on the needs of students, on standards of excellence and equity, and on community goals, the Superintendent shall:

1. Establish effective mechanisms for communication to and from staff in instructional evaluation, planning, and decision making.
2. Oversee annual planning for instructional improvement and monitor for effectiveness.
3. Ensure that goals and objectives form the basis of curricular decision making and instruction and communicate expectations for high achievement.
4. Ensure that appropriate data are used in developing recommendations and making decisions regarding the instructional program and resources.
5. Oversee a system for regular evaluation of instructional programs, including identifying areas for improvement, to attain desired student achievement.
6. Oversee student services, including health and safety services, counseling services, and extracurricular programs, and monitor for effectiveness.
7. Oversee a discipline management program and monitor for equity and effectiveness.
8. Encourage, oversee, and participate in activities for recognition of student efforts and accomplishments.
9. Oversee a program of staff development and monitor staff development for effectiveness in improving district performance.
10. Stay abreast of developments in educational leadership and administration.

District Management

To demonstrate effective planning and management of District administration, finances, operations, and personnel, the Superintendent shall:

1. Implement and oversee a planning process that results in goals, targets, or priorities for all major areas of District operations, including facilities maintenance and operations, transportation, and food services.
2. Monitor effectiveness of District operations against appropriate benchmarks.
3. Oversee procedures to ensure effective and timely compliance with all legal obligations, reporting requirements, and policies.
4. Ensure that key planning activities within the District are coordinated and are consistent with Board policy and applicable law and that goals and results are communicated to staff, students, and the public as appropriate.
5. Oversee a budget development process that results in recommendations based on District priorities, available resources, and anticipated changes to district finances.
6. Oversee budget implementation to ensure appropriate expenditure of budgeted funds, to provide for clear and timely budget reports, and to monitor for effectiveness of the process.
7. Ensure that District investment strategies, risk management activities, and purchasing practices are sound, cost-effective, and consistent with District policy and law.
8. Maintain a system of internal controls to deter and monitor for fraud or financial impropriety in the District.
9. Ensure that the system for recruiting and selection results in personnel recommendations based on defined needs, goals, and priorities.
10. Organize District staff in a manner consistent with District priorities and resources and monitor administrative organization at all levels for effectiveness and efficiency.
11. Oversee a performance appraisal process for all staff that reinforces a standard of excellence and assesses deficiencies; ensure that results are used in planning for improvement.
12. Administer a compensation and benefits plan for employees based on clearly defined goals and priorities.
13. Encourage, oversee, and participate in staff recognition and support activities.

14. Oversee a program for staff retention and monitor for effectiveness.

Board and Community Relations

To maintain positive and professional working relationships with the Board and the community, the Superintendent shall:

1. Keep the Board informed of significant issues as they arise, using agreed upon criteria and procedures for information dissemination.
2. Respond in a timely and complete manner to Board requests for information that are consistent with Board policy and established procedures.
3. Provide recommendations and appropriate supporting materials to the Board on matters for Board decision.
4. Articulate and support Board policy and decisions to staff and community.
5. Direct a proactive program of internal and external communication at all levels designed to improve staff and community understanding and support of the District.
6. Establish mechanisms for community and business involvement in the schools and encourage participation.
7. Work with other governmental entities and community organizations to meet the needs of students and the community in a coordinated way.

Delegation

To the extent permitted by law, the Superintendent may delegate responsibilities to other employees of the District but shall remain accountable to the Board for the performance of all duties, delegated or otherwise.

Table of Contents

Tax Rate Adoption 2
Maintenance Taxes 2
Assessor and Collector 4
Certified Estimate of Values 5
Appraisal Roll 5
Designated Employee/Officer to Calculate Rates 6
Truth-in-Taxation Requirements 6
Tax Rate Adoption Requirements 8
Adoption of Tax Roll 10
Failure to Adopt Tax Rate 10
Taxpayer Injunction 10
Tax Information to County 11
Appraisal District Property Tax Database 11
Internet Posting of Tax Rate and Budget Information 11
Election to Approve Tax Rate 11
Voter-Approval Tax Rate 11
Efficiency Audit 12
Disaster Exception 13
Time for Election 13
Proposition 14
Election Outcome 14

Tax Rate Adoption

Maintenance Taxes

The board may levy, assess, and collect annual ad valorem taxes for the maintenance of the district's schools. Taxes may not be levied unless authorized by a majority of the qualified voters of the district, voting at an election called for that purpose. *Education Code 45.002, .003(a)*

Restriction on Maintenance Tax Levy

A district may not levy the district's maintenance taxes at a rate intended to create a surplus in maintenance tax revenue for the purpose of paying the district's debt service. *Education Code 45.0021(a)* [See Taxpayer Injunction, below]

Note: For information on the consequences of violating this restriction, see Education Code 45.0021(c)-(e). See also Taxpayer Injunction below.

Exceptions

Education Code 45.0021 does not prohibit a district from:

1. Using a surplus in maintenance tax revenue to pay the district's debt service if the district's interest and sinking fund tax revenue is insufficient to pay the district's debt service due to circumstances beyond the district's control and the use of the surplus maintenance tax revenue to pay the district's debt service is necessary to prevent a default on the district's debt;
2. Paying a portion of the district's maintenance tax revenue into the tax increment fund for a reinvestment zone under Tax Code Chapter 311; or
3. Using money disbursed from the tax increment fund for a reinvestment zone under Tax Code Chapter 311 in accordance with the agreement entered into by the district with the governing body of the municipality or county that designated the zone under Tax Code 311.013(f).

Education Code 45.0021(f)

Maintenance Tax Rate Components

A district's tier one maintenance and operations tax rate is the number of cents levied by the district for maintenance and operations that does not exceed the maximum compressed rate, as determined under Education Code 48.2551.

Tier One

Maximum Compressed Rate

"MCR" is the district's maximum compressed rate, which is the tax rate for the current tax year per $100 of valuation of taxable property at which the district must levy a maintenance and operations tax to receive the full amount of the tier one allotment to which the district is entitled under Education Code Chapter 48. The Texas Education Agency (TEA) shall calculate and make available school districts' maximum compressed rates.

Local appraisal districts, school districts, and the comptroller shall provide any information necessary to TEA to implement Education Code 48.2551.

Education Code 48.2551(a-3), (d), (d-1)

School districts' maximum compressed maintenance and operations tax rates shall be calculated using locally certified property values and adjusted to estimate for exclusions under Government Code 403.302(d).

TEA will open a data collection from 12:01 a.m. on July 18 through 11:59 p.m. on August 1 for districts. Districts must submit the data specified in 19 Administrative Code 61.1000(c). TEA will use any available data to calculate MCR absent data collection submissions from a school district.

19 TAC 61.1000(b), (c), (h)

TEA will calculate and make available preliminary maximum compressed tier one tax rates to each district on or before August 5. If TEA receives an appeal of a preliminary MCR, TEA will issue a final determination to the district no later than August 31. If TEA does not receive an appeal of a preliminary MCR, the preliminary MCR automatically becomes a final MCR ten calendar days following TEA's approval of the district's preliminary MCR. *19 TAC 61.1000(d)–(f)*

A district may appeal its preliminary MCR through the following process:

1. The TEA division responsible for MCRs must receive a written appeal no later than ten calendar days after TEA's approval of the district's preliminary MCR. The appeal must include adequate evidence and additional information that supports the position of the district. Appeals received 11 calendar days or more after TEA approves a district's preliminary MCR will not be considered.
2. TEA will only consider appeals that would result in a change of the preliminary MCR.

19 TAC 61.1000(g); Education Code 48.2551(d-2)

Tier Two

A district's enrichment tax rate consists of:

1. Any cents of additional maintenance and operations tax effort, not to exceed eight cents over the maximum tier one tax rate; and

2. Any cents of additional maintenance and operations tax effort that exceeds the sum of the maximum tier one tax rate and the maximum number of cents permitted under item 1 above.

Education Code 45.0032(a), (b)

Districts Subject to Disaster Exception

For a district to which Tax Code 26.042(e) [see Disaster Exception to Election Requirement, below] applies, the amount by which the district's maintenance tax rate exceeds the district's voter-approval tax rate, excluding the district's current debt rate under Tax Code 26.08(n)(3) for the preceding year is not considered in determining a district's tier one maintenance and operations tax rate or the district's enrichment tax rate for the current tax year. *Education Code 45.0032(d)*

Maximum Tax Rate

For any year, the maintenance tax rate per $100 of taxable value adopted by the district may not exceed the rate equal to the sum of $0.17 and the district's maximum compressed rate, as determined under Education Code 48.2551.

A rate that exceeds the maximum rate for the year in which the tax is to be imposed is void. A district with a tax rate that is void under this provision may, subject to requirements imposed by other law, adopt a rate for that year that does not exceed the specified maximum rate for that year.

Education Code 45.003(d), (e)

Districts with 2005 Tax Rate over $1.50

Notwithstanding any other law, a district that levied a maintenance tax for the 2005 tax year at a rate greater than $1.50 per $100 of taxable value in the district as permitted by special law [Art. 2784g Tex. Rev. Civ. Stat.] may not levy a maintenance tax at a rate that exceeds the rate per $100 of taxable value that is equal to the sum of $0.17 and the product of 66.67 percent multiplied by the rate of the maintenance tax levied by the district for the 2005 tax year, minus any amount by which $1.00 exceeds the product of the state compression percentage, as determined under Education Code 48.255, multiplied by $1.00. *Education Code 45.003(f)*

For a district described above, any cents of maintenance and operations tax effort that exceeds the maximum rate described at Maximum Tax Rate are not included in the district's tier one maintenance and operations tax rate or the district's enrichment tax rate and the district is not entitled to the guaranteed yield amount of state funds under Education Code 48.202 for those cents of tax effort. *Education Code 45.0032(c)*

Assessor and Collector

The board may employ a person to assess or collect the district's taxes and may compensate the person as the board considers appropriate. This provision does not prohibit a district from providing

for the assessment or collection of the district's taxes under a method authorized by Tax Code Chapter 6, Subchapter B. *Education Code 45.231*

A district that used a method of selection for the 1994 tax year that was authorized by former Education Code Chapter 23, Subchapter F, may continue to use that method until the district uses another method authorized above. *Education Code 45.232*

The assessor and collector shall assess, collect, or assess and collect taxes, as applicable. *Tax Code 6.23(b)*

Collector's Bond

A district that has its own collector shall require the collector to give bond conditioned on the faithful performance of duties. The bond must be made payable to and be approved by the board in an amount determined by the board. The board may require a new bond at any time, and failure to give new bond within a reasonable time after demand is a ground for removal from office. The board may prescribe additional requirements for the bond.

A district whose taxes are collected by a person other than the district's own collector may require that person to give bond conditioned on the faithful performance of duties. The bond must be payable to, approved by, and paid for by the board in an amount determined by the board. The board may prescribe additional requirements for the bond.

A district shall pay the premium for a required bond from its general fund or as provided by intergovernmental contract.

Tax Code 6.29

Certified Estimate of Values

By April 30, the chief appraiser shall prepare and certify to the district's assessor an estimate of the taxable value of district property. *Tax Code 26.01(e)*

Appraisal Roll

By July 25, the chief appraiser shall prepare and certify to the assessor for the district that part of the appraisal roll that lists the property taxable by the district. The part certified to the assessor is the appraisal roll for the district.

If by July 20 the appraisal review board has not approved the appraisal records as required under Tax Code 41.12, the chief appraiser shall not later than July 25 prepare and certify to the assessor for a school district an estimate of the taxable value of property in the school district.

Tax Code 26.01(a)–(a-1)

By August 1 or as soon thereafter as practicable, the district's assessor shall submit to the board the district's appraisal roll, showing the total appraised, assessed, and taxable values of all property and the total taxable value of new property.

By August 1 or as soon thereafter as practicable, a district's collector shall certify to the board the anticipated collection rate for the current year. If the collector certified an anticipated collection rate in the preceding year and the actual collection rate in that year exceeded the anticipated rate, the collector shall also certify the amount of debt taxes collected in excess of the anticipated amount in the preceding year.

Tax Code 26.04(b)

Designated Employee/Officer to Calculate Rates

After the district's assessor submits the appraisal roll to the board, an officer or employee designated by the board shall calculate the no-new-revenue tax rate and the voter-approval tax rate for the district.

Required Calculation Forms

The designated officer or employee shall use the tax rate calculation forms prescribed by the comptroller under Tax Code 5.07 in calculating the no-new-revenue tax rate and the voter-approval tax rate.

Calculation Forms to County Tax Assessor-Collector

As soon as practicable after the designated officer or employee calculates the no-new-revenue tax rate and the voter-approval tax rate of the district, the designated officer or employee shall submit the tax rate calculation forms used in calculating the rates to the county assessor-collector for each county in which all or part of the territory of the district is located.

Tax Code 26.04(c), (d-1), (d-3)

[See CE regarding the requirement to attach tax rate calculation forms as an appendix to a district's budget.]

Truth-in-Taxation Requirements

Note: The *Truth in Taxation* website maintained by the Texas comptroller of public accounts offers detailed guidance on setting local property tax rates for school districts.[1]

Meeting to Adopt Budget

When the budget has been prepared under Education Code 44.002, the board president shall call a meeting of the board for the purpose of adopting a budget for the succeeding tax year. The budget must be adopted before the adoption of the tax rate for the tax year in which the fiscal year covered by the budget begins. *Education Code 44.004(a), (g)* [See CE]

Published Notice

The board president shall provide for publication of notice of the budget and proposed tax rate meeting in a daily, weekly, or bi-weekly newspaper published in the district. If no daily, weekly, or biweekly newspaper is published in the district, the president shall provide for publication of notice in at least one newspaper of general circulation in the county in which the district's central administrative office is located. The notice shall be published not earlier than the 30th day or later than the tenth day before the date of the hearing.

Form and Contents

The notice of public meeting to discuss and adopt the budget and the proposed tax rate may not be smaller than one-quarter page of a standard-size or a tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type and contain the information set out in Education Code 44.004(c) and (c-1).

The notice must include a statement that a district may not increase its maintenance and operations tax rate to create a surplus in maintenance and operations tax revenue for the purpose of paying the district's debt service.

A notice is not valid if it does not substantially conform to the language and format prescribed by the comptroller.

Education Code 44.004(b)–(d)

Debt Service Rate Decrease

If the published interest and sinking fund (debt service) rate decreases after the publication of the required notice, the president is not required to publish another notice or call another meeting to discuss and adopt the budget and the proposed lower tax rate. *Education Code 44.004(g-1)*

Districts with July 1 Fiscal Year

Notwithstanding the provisions above, a district with a fiscal year beginning July 1 may use the certified estimate of the taxable value of district property in preparing the required notice if the district does not receive the certified appraisal roll on or before June 7. A district that uses a certified estimate may adopt a budget at the public meeting designated in the published notice prepared using the estimate, but the district may not adopt a tax rate before the district receives the certified appraisal roll for the district.

After receipt of the certified appraisal roll, a district must publish a revised notice and hold another public meeting before the district may adopt a tax rate that exceeds:

1. The rate proposed in the notice prepared using the estimate; or

2. The district's voter-approval rate determined under Tax Code 26.08 using the certified appraisal roll.

Education Code 44.004(h), (i)

Tax Rate Adoption Requirements

Deadline

The board shall adopt a tax rate for the current tax year and shall notify the assessor of the tax rate adopted. [See Adoption of Tax Roll, below] The board must adopt a tax rate before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the district, except that the board must adopt a tax rate that exceeds the voter-approval tax rate not later than the 71st day before the next uniform election date that occurs in November of that year. [Note that Election Code 3.005(c) requires that an election to be held on a uniform date be ordered not later than the 78th day before election day; see Time for Election, below.]

The tax rate consists of two components, each of which must be approved separately. The components are:

1. The interest and sinking fund (debt service) rate calculated under Education Code 44.004(c)(5)(A)(ii)(b); and

2. The rate that, if applied to the total taxable value, will impose the amount of taxes needed to fund maintenance and operation expenditures of the district for the next year.

Tax Code 26.05(a)

Tax Date for Certain Districts

A district that before January 1, 1989, has for at least ten years followed a practice of adopting its tax rate at a different date than as provided by Tax Code Chapter 26 and of billing for and collecting its taxes at different dates than as provided by Chapters 31 and 33 may continue to follow that practice. This does not affect the dates provided by the Property Tax Code (Tax Code Title 1) for other purposes, including those relating to the appraisal and taxability of property, the attachment of tax liens and personal liability for taxes, and administrative and judicial review under Chapters 41 and 42. *Tax Code 26.135*

Vote

A board may not impose property taxes in any year until it has adopted a tax rate for that year, and the annual tax rate must be set by ordinance, resolution, or order. The vote on the ordinance, resolution, or order setting the tax rate must be separate from the vote adopting the budget. The vote on the ordinance, resolution, or order setting a tax rate that exceeds the sum of the district's no-new-revenue maintenance and operations tax rate and the district's current debt rate must be a record vote, and at least 60 percent of the members of the board must vote in favor of the ordinance, resolution, or order.

Motion

A motion to adopt an ordinance, resolution, or order setting a tax rate that exceeds the no-new-revenue tax rate must be made in the following form: “I move that the property tax rate be increased by the adoption of a tax rate of (specify tax rate), which is effectively a (insert percentage by which the proposed tax rate exceeds the no-new-revenue tax rate) percent increase in the tax rate.”

Language and Internet Posting

If the ordinance, resolution, or order sets a tax rate that, if applied to the total taxable value, will impose an amount of taxes to fund maintenance and operation expenditures of the district that exceeds the amount of taxes imposed for that purpose in the preceding year the district must:

1. Include in the ordinance, resolution, or order in type larger than the type used in any other portion of the document:

    a. The following statement: “THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR’S TAX RATE”; and

    b. If the tax rate exceeds the no-new-revenue maintenance and operations rate, the following statement: “THE TAX RATE WILL EFFECTIVELY BE RAISED BY (INSERT PERCENTAGE BY WHICH THE TAX RATE EXCEEDS THE NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE) PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A $100,000 HOME BY APPROXIMATELY $(Insert amount).”; and

2. Include on the home page of any internet website operated by the district:

    a. The following statement: “(Insert name of unit) ADOPTED A TAX RATE THAT WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR’S TAX RATE”; and

    b. If the tax rate exceeds the no-new-revenue maintenance and operations rate, the following statement: “THE TAX RATE WILL EFFECTIVELY BE RAISED BY (INSERT PERCENTAGE BY WHICH THE TAX RATE EXCEEDS THE NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE) PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A $100,000 HOME BY APPROXIMATELY $(Insert amount).”

Tax Code 26.05(b)

Adoption of Tax Roll	On receipt of notice of the tax rate for the current tax year, the assessor for a district shall calculate the tax imposed on each property included on the appraisal roll for the district. The assessor shall enter the amount of tax in the appraisal roll and submit it to the board for approval. The appraisal roll with amounts of tax entered as approved by the board constitutes the district's tax roll. *Tax Code 26.09(a), (e)*
Failure to Adopt Tax Rate	If the board does not adopt a tax rate before the date required at Deadline above, the tax rate for the district for that tax year is the lower of the no-new-revenue tax rate calculated for that tax year or the tax rate adopted by the district for the preceding tax year. A tax rate established by this provision is treated as an adopted tax rate. Before the fifth day after the establishment of a tax rate by this provision, the board must ratify the applicable tax rate in the manner set out at Tax Rate Adoption Requirements above. *Tax Code 26.05(c)*
Taxpayer Injunction	A person who owns taxable property in a district is entitled to an injunction restraining the collection of taxes by the district if the district has not complied with the requirements of Education Code 44.004(b), (c), (c-1), (c-2), and (d), and, if applicable, (i) [see above at Published Notice, including Form and Contents, and Districts with July 1 Fiscal Year, if applicable] and the failure to comply was not in good faith. An action to enjoin the collection of taxes must be filed before the date a district delivers substantially all of its tax bills. *Education Code 44.004(e)* A person who owns taxable property is entitled to an injunction prohibiting the district in which the property is taxable from adopting a tax rate if the assessor or designated officer or employee of the district, the chief appraiser of the applicable appraisal district, or the district, as applicable, has not complied with the computation, publication, or posting requirements of Tax Code 26.04 or 26.16, 26.17, or 26.18 [see below at Tax Information to County, Appraisal District Property Tax Database, and Internet Posting of Tax Rate and Budget Information]. It is a defense in an action for an injunction under this provision that the failure to comply was in good faith. *Tax Code 26.04(g)* A person who owns taxable property is entitled to an injunction restraining the collection of taxes by a district in which the property is taxable if the district has not complied with the requirements of Tax Code 26.04 and 26.05 [see above at Designated Employee/Officer to Calculate Rates and Tax Rate Adoption Requirements]. It is a defense in an action for an injunction under this provision that the failure to comply was in good faith. An action to enjoin the collection of taxes must be filed not later than the 15th day after the date

the district adopts a tax rate. A property owner is not required to pay the taxes imposed by a district on the owner's property while an action filed by the property owner to enjoin the collection of taxes imposed by the district on the owner's property is pending. If the property owner pays the taxes and subsequently prevails in the action, the property owner is entitled to a refund of the taxes paid, together with reasonable attorney's fees and court costs. The property owner is not required to apply to the collector for the district to receive the refund. *Tax Code 26.05(e)*

A person who owns taxable property in a district is entitled to an injunction restraining the collection of taxes by the district if the district adopts a maintenance tax in violation of Education Code 45.0021(a) [see above at Restriction on Maintenance Tax Levy]. An action to enjoin the collection of taxes must be filed before the date a district delivers substantially all of its tax bills. *Education Code 45.0021(b)*

Tax Information to County

A district shall provide to the county assessor-collector for each county in which all or part of district territory is located the district's adopted tax rate, maintenance and operations rate, debt rate, no-new-revenue tax rate, no-new-revenue maintenance and operations rate, and voter-approval tax rate for posting on the county's internet website. The district shall provide the information annually following the adoption of a tax rate by the district for the current tax year. *Tax Code 26.16(a)–(b)*

Appraisal District Property Tax Database

The officer or employee designated by the board to calculate the no-new-revenue tax rate and the voter-approval tax rate for the district must electronically incorporate into the database created and maintained by the chief appraiser under Tax Code 26.17 the information required by Tax Code 26.17(e). *Tax Code 26.17(e)*

Internet Posting of Tax Rate and Budget Information

Each district shall maintain an internet website or have access to a generally accessible internet website that may be used for the purposes of this provision. Each district shall post or cause to be posted on the internet website the information required by Tax Code 26.18 in a format prescribed by the comptroller. *Tax Code 26.18* [See CE for required information]

Election to Approve Tax Rate

If the board adopts a tax rate that exceeds the district's voter-approval tax rate, the registered voters of the district at an election held for that purpose must determine whether to approve the adopted tax rate. *Tax Code 26.08(a), (n)*

[For information on conducting elections, see the BBB series.]

Voter-Approval Tax Rate

For purposes of Tax Code 26.08, the voter-approval tax rate of a district is the sum of the following:

1. The rate per $100 of taxable value that is equal to the district's maximum compressed tax rate for the current year;

2. The greater of:

   a. The district's enrichment tax rate for the preceding tax year, less any amount by which the district is required to reduce the district's enrichment tax rate under Education Code 48.202(f) in the current tax year; or

   b. The rate of $0.05 per $100 of taxable value; and

3. The district's current debt rate.

Tax Code 26.08(n)

Efficiency Audit

"Efficiency audit" means an investigation of the operations of a district to examine fiscal management, efficiency, and utilization of resources.

The board shall conduct an efficiency audit before seeking voter approval to adopt a tax rate for the maintenance and operations of the district at an election held for that purpose and may not hold an election without complying with this requirement.

The board may select the auditor that conducts the district's annual audit under Education Code 44.008 and may include the efficiency audit as part of the district's annual audit. [See CFC] A district must pay for the costs associated with an efficiency audit required under this provision. A district shall provide all documents, records, and personnel requested by the auditor as needed to conduct the audit in an efficient manner.

The board must select an auditor to conduct an efficiency audit not later than four months before the date on which the district proposes to hold an election to adopt a maintenance and operations tax rate. An auditor selected by the board must maintain independence from the district and complete the efficiency audit not later than three months after the date the auditor was selected.

Before an election at which a district seeks voter approval to adopt a tax rate, the board must hold an open meeting to discuss the results of the efficiency audit. Not later than 30 days before the date of the election, the results of an efficiency audit must be posted on the district's internet website.

Education Code 11.184

Legislative Budget Board Guidelines

The Legislative Budget Board (LBB) shall establish guidelines identifying the scope and areas of investigation of an efficiency audit, including identification of resources being used effectively and

efficiently and identification of cost savings or reallocations. The auditor selected by the board of a district must follow the guidelines established by the LBB under this provision. *Education Code 11.184(f)*

Efficiency Audit Guidelines[2] are found on the LBB website.

Disaster Exception

To Efficiency Audit Requirement

The board of a district all or part of which is located in an area declared a disaster area by the governor may hold an election to seek voter approval to adopt a maintenance and operations tax rate during the two-year period following the date of the declaration without conducting an efficiency audit otherwise required above. *Education Code 11.184(b-1)*

To Election Requirement

When increased expenditure of money by a district is necessary to respond to a disaster, including a tornado, hurricane, flood, wildfire, or other calamity, but not including a drought, epidemic, or pandemic, that has impacted a district and the governor has requested federal disaster assistance for the area in which the district is located, an election is not required under Tax Code 26.08 to approve the tax rate adopted by the board for the year following the year in which the disaster occurs. A tax rate adopted under this provision applies only in the year for which the rate is adopted. *Tax Code 26.042(e)*

If a district adopts a tax rate under Tax Code 26.042(e) above, the amount by which that rate exceeds the district's voter-approval tax rate for that tax year may not be considered when calculating the district's voter-approval tax rate for the tax year following the year in which the district adopts the rate.

A district that in a tax year elects to adopt a tax rate that exceeds the district’s voter-approval tax rate for that tax year without holding an election under Tax Code 26.042(e) above must specify the disaster declaration that provides the basis for authorizing the district to calculate or adopt a tax rate under that provision. A district that in a tax year specifies a disaster declaration as providing the basis for authorizing the district to adopt a tax rate under Tax Code 26.042(e) above may not in a subsequent tax year specify the same disaster declaration as providing the basis for authorizing the district to adopt a tax rate under that provision if in an intervening tax year the taxing unit specifies a different disaster declaration as the basis for authorizing the taxing unit to adopt a tax rate under that provision.

Tax Code 26.042(f)–(g)

Time for Election

The board shall order that the election be held in the district on the next uniform election date prescribed by Election Code 41.001 that

occurs after the date of the election order and that allows sufficient time to comply with the requirements of other law. *Tax Code 26.08(b)*

Uniform Election Date

For an election to be held on a uniform election date, the election shall be ordered not later than the 78th day before election day. *Election Code 3.005(c)* [See BBBA for other election procedures and requirements.]

Proposition

At the election, the ballots shall be prepared to permit voting for or against the proposition: "Ratifying the ad valorem tax rate of _____ (insert adopted tax rate) in (name of school district) for the current year, a rate that will result in an increase of _____ (insert percentage increase in maintenance and operations tax revenue under the adopted tax rate as compared to maintenance and operations tax revenue in the preceding tax year) percent in maintenance and operations tax revenue for the district for the current year as compared to the preceding year, which is an additional $_____ (insert dollar amount of increase in maintenance and operations tax revenue under the adopted tax rate as compared to maintenance and operations tax revenue in the preceding tax year).". *Tax Code 26.08(b)*

In addition to any other requirement imposed by law for a proposition, including a provision prescribing the proposition language, a proposition submitted to the voters for approval of the imposition or increase of a tax shall specifically state the amount of or maximum tax rate of the tax or tax increase for which approval is sought. *Election Code 52.072(e)(1)*

Each proposition on the ballot must identify the name of the authority ordering the election on the measure. *Election Code 52.095(c)*

Election Outcome

If a majority of the votes cast in an election favor the proposition, the tax rate for the current year is the rate that was adopted by the board. If the proposition is not approved, a board may not adopt a tax rate for the current year that exceeds the district's voter-approval tax rate. *Tax Code 26.08(c)–(d)*

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[1] Truth-in-Taxation: Tax Rate Adoption: https://comptroller.texas.gov/taxes/property-tax/truth-in-taxation/index.php
[2] LBB Efficiency Audit Guidelines: https://www.lbb.state.tx.us/Documents/Publications/Policy_Report/6365_HB3_Efficiency_Audit_Guidelines.pdf

Authorized Expenditures

A district shall not lend its credit or gratuitously grant public money or things of value in aid of any individual, association, or corporation. *Tex. Const. Art. III, Sec. 52; Brazoria County v. Perry, 537 S.W.2d 89 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ)*

A district shall not grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor after service has been rendered or a contract entered into and performed in whole or in part. Nor shall a district pay or authorize the payment of any claim against the district under any agreement or contract made without authority of law. *Tex. Const. Art. III, Sec. 53; Harlingen Indep. Sch. Dist. v. C.H. Page and Bro., 48 S.W.2d 983 (Comm. App. 1932)*

The public school funds may not be spent except as provided by Education Code 45.105. The state and county available funds may be used only for the payment of teachers' and superintendents' salaries and interest on money borrowed on short time to pay those salaries that become due before school funds for the current year become available. Loans for the purpose of payment of teachers may not be paid out of funds other than those for the current year.

Local funds from district taxes, tuition fees, other local sources, and state funds not designated for a specific purpose may be used for the purposes listed above for state and county available funds and for purchasing appliances and supplies; paying insurance premiums; paying janitors and other employees; buying school sites; buying, building, repairing, and renting school buildings, including acquiring school buildings and sites by leasing through annual payments with an ultimate option to purchase [see CHG]; and, except as provided below, for other purposes necessary in the conduct of the public schools as determined by the board.

Exception

Funds described above may not be used to initiate or maintain any action or proceeding against the state or an agency or officer of the state arising out of a decision, order, or determination that is final and unappealable under a provision of the Education Code, except that funds may be used for an action or proceeding that is specifically authorized by a provision of the Education Code or a rule adopted under the Education Code and that results in a final and unappealable decision, order, or determination.

Education Code 45.105(a)–(c), (c-1)

Fiscal Year

The fiscal year of a district begins on July 1 or September 1 of each year, as determined by the board. *Education Code 44.0011*

Budget Preparation

On or before the date set by the State Board of Education (SBOE), a superintendent shall prepare, or cause to be prepared, a proposed budget covering all estimated revenue and proposed expenditures of a district for the following fiscal year. The budget must be prepared according to generally accepted accounting principles, rules adopted by the SBOE, and adopted policies of the board of trustees. *Education Code 44.002; 19 TAC 109.1(a), .41, .5001*

Funds for Accelerated Instruction

A district that is required to provide accelerated instruction under Education Code 29.081(b-1) [see EHBC] shall separately budget sufficient funds, including funds under Education Code 48.104, for that purpose. *Education Code 29.081(b-2)*

Itemization of Certain Expenditures

The proposed budget of a district must include, in a manner allowing for as clear a comparison as practicable between those expenditures in the proposed budget and actual expenditures for the same purpose in the preceding year, a line item indicating expenditures for:

1. Notices required by law to be published in a newspaper by the district or a representative of the district; and
2. Directly or indirectly influencing or attempting to influence the outcome of legislation or administrative action, as those terms are defined in Government Code 305.002.

Local Gov't Code 140.0045

Public Meeting on Budget and Proposed Tax Rate

When the budget has been prepared, the board president shall call a board meeting for the purpose of adopting a budget for the succeeding fiscal year. Any taxpayer of a district may be present and participate in the meeting. *Education Code 44.004(a), (f)* [See CCG for provisions governing tax rate adoption.]

The meeting must comply with the notice requirements of the Open Meetings Act. *Gov't Code 551.041, .043* [See BE]

Published Notice

The board president shall provide for publication of notice of the budget and proposed tax rate meeting in accordance with Education Code 44.004. [For specific requirements regarding the form, contents, and publication of the notice, see CCG(LEGAL).]

Publication of Proposed Budget Summary

Concurrently with the publication of notice of the budget under Education Code 44.004, a district shall post a summary of the proposed budget on the school district's internet website or, if the district has no internet website, in the district's central administrative office.

The budget summary must include a comparison to the previous year's actual spending and information relating to per student and aggregate spending on:

1. Instruction;
2. Instructional support;
3. Central administration;
4. District operations;
5. Debt service; and
6. Any other category designated by the commissioner.

Education Code 44.0041

Budget Adoption

The board, at the meeting called for that purpose, shall adopt a budget to cover all expenditures for the succeeding fiscal year. The budget must be adopted before the adoption of the tax rate for the tax year in which the fiscal year covered by the budget begins. *Education Code 44.004(f)–(g)*

Appendix for Tax Rate Calculation Forms

The board shall include as an appendix to the district's budget for a fiscal year the tax rate calculation forms used by the designated officer or employee of the district to calculate the no-new-revenue tax rate and the voter-approval tax rate of the district for the tax year in which the fiscal year begins. *Tax Code 26.04(e-5)* [See CCG]

Districts with July 1 Fiscal Year

A district with a fiscal year beginning July 1 may use the certified estimate of the taxable value of district property [see CCG] in preparing the required notice if the district does not receive the certified appraisal roll on or before June 7. A district that uses a certified estimate may adopt a budget at the public meeting designated in the published notice prepared using the estimate, but the district may not adopt a tax rate before the district receives the certified appraisal roll for the district. *Education Code 44.004(h)–(i)*

Budget Adoption After Tax Rate Adoption

Notwithstanding Education Code 44.004(g), (h), and (i), above, a district may adopt a budget after the district adopts a tax rate for the tax year in which the fiscal year covered by the budget begins if the district elects to adopt a tax rate before receiving the certified appraisal roll for the district. If a district elects to adopt a tax rate before adopting a budget, the district must publish notice and hold a meeting for the purpose of discussing the proposed tax rate. Following adoption of the tax rate [see CCG], the district must publish notice and hold another public meeting before the district may adopt a budget. The comptroller shall prescribe the language and format to be used in the notices. The district may use the certified

estimate of taxable value in preparing a notice under this provision. *Education Code 44.004(j)*

Publication of Adopted Budget

On final approval of the budget by the board, the district shall post on the district's internet website a copy of the budget adopted by the board. The district's website must prominently display the electronic link to the adopted budget. A district shall maintain the adopted budget on the district's website until the third anniversary of the date the budget was adopted. *Education Code 44.0051*

On or before a date set by the SBOE, the budget must be filed with the Texas Education Agency according to rules established by the SBOE. *Education Code 44.005*

Internet Posting of Tax Rate and Budget Information

Each district shall maintain an internet website or have access to a generally accessible internet website that may be used for the purposes of these provisions. Each district shall post or cause to be posted on the internet website the following information in a format prescribed by the comptroller:

1. The name of each member of the board;
2. The mailing address, email address, and telephone number of the district;
3. The official contact information for each member of the board, if that information is different from the information described by item 2;
4. The district's budget for the preceding two years;
5. The district's proposed or adopted budget for the current year;
6. The change in the amount of the district's budget from the preceding year to the current year, by dollar amount and percentage;
7. The tax rate for maintenance and operations adopted by the district for the preceding two years;
8. The interest and sinking fund tax rate adopted by the district for the preceding two years;
9. The tax rate for maintenance and operations proposed by the district for the current year;
10. The interest and sinking fund tax rate proposed by the district for the current year; and
11. The most recent financial audit of the district.

Tax Code 26.18

Effect of Adopted Budget and Amendment

Public funds of the district may not be spent in any manner other than as provided for in the budget adopted by the board, but the board may amend a budget or adopt a supplementary emergency budget to cover necessary unforeseen expenses. Any amendment or supplementary budget must be prepared and filed in accordance with SBOE rules. *Education Code 44.006*

Spending Violation/Offense

A trustee who votes to approve any expenditure of school funds in violation of a provision of the Education Code, for a purpose for which those funds may not be spent, or in excess of the item or items appropriated in the adopted budget or a supplementary or amended budget commits an offense. *Education Code 44.052(c)*

Certain Donations

A district may donate funds or other property or service to the adjutant general's department, the Texas National Guard, or the Texas State Guard. *Gov't Code 437.111(b), .252, .304(a)*

Commitment of Current Revenue

A contract for the acquisition, including lease, of real or personal property is a commitment of a district's current revenue only, provided the contract contains either or both of the following provisions:

1. Retains to a board the continuing right to terminate the contract at the expiration of each budget period during the term of the contract.
2. Is conditioned on a best-efforts attempt by the board to obtain and appropriate funds for payment of the contract.

Local Gov't Code 271.903

Prohibited Uses of Resources

Improvements to Real Property

Except as provided below or by Education Code 45.109(a-1), (a-2), or (a-3) [see CX], the board may not enter into an agreement authorizing the use of school district employees, property, or resources for the provision of materials or labor for the design, construction, or renovation of improvements to real property not owned or leased by the district.

This provision does not prohibit the board from entering into an agreement for the design, construction, or renovation of improvements to real property not owned or leased by the district if the improvements benefit real property owned or leased by the district. Benefits to real property owned or leased by the district include the design, construction, or renovation of highways, roads, streets, sidewalks, crosswalks, utilities, and drainage improvements that serve or benefit the real property owned or leased by the district.

Education Code 11.168

Hotels	The board may not impose taxes; issue bonds; use or authorize the use of district employees; use or authorize the use of district property, money, or other resources; or acquire property for the design, construction, renovation, or operation of a hotel. The board may not enter into a lease, contract, or other agreement that obligates the board to engage in an activity prohibited by this provision or obligates the use of district employees or resources in a manner prohibited by this provision. "Hotel" means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a motel. *Education Code 11.178*
Electioneering	For restrictions on using district funds for electioneering, see BBBD.

Fiscal Year

The District shall operate on a fiscal year beginning July 1 and ending June 30.

Budget Planning

Budget planning shall be an integral part of overall program planning so that the budget effectively reflects the District's programs and activities and provides the resources to implement them. In the budget planning process, general educational goals, specific program goals, and alternatives for achieving program goals shall be considered, as well as input from the District- and campus-level planning and decision-making committees. Budget planning and evaluation are continuous processes and shall be a part of each month's activities.

Budget Meeting

The annual public meeting to discuss the proposed budget and tax rate shall be conducted as follows:

1. The Board President shall request at the beginning of the meeting that all persons who desire to speak on the proposed budget and/or tax rate sign up on the sheet provided.
2. Prior to the beginning of the meeting, the Board may establish time limits for speakers.
3. Speakers shall confine their remarks to the appropriation of funds as contained in the proposed budget and/or the tax rate.
4. No officer or employee of the District shall be required to respond to questions from speakers at the meeting.

Authorized Expenditures

The adopted budget provides authority to expend funds for the purposes indicated and in accordance with state law, Board policy, and the District's approved purchasing procedures. The expenditure of funds shall be under the direction of the Superintendent or designee who shall ensure that funds are expended in accordance with the adopted budget.

Budget Amendments

The Board shall amend the budget when a change is made increasing any one of the functional spending categories or increasing revenue object accounts and other resources.

Fund Balance

The District shall strive to maintain a balance in the general fund that closely approximates the optimum fund balance amount prescribed by TEA, as reported in the annual financial and compliance report.

Fund balances shall be comprised of several components, as prescribed by GASB Statement 54:

- Nonspendable fund balance;

- Restricted fund balance;
- Committed fund balance;
- Assigned fund balance; and
- Unassigned fund balance.

By resolution, the Board may commit a portion of the fund balance for a specific purpose. The committed portion of the fund balance should be spent for the purposes specified; however, the commitment may be amended by the Board at any time.

The Superintendent or designee shall be authorized to assign a portion of the fund balance as may be required to meet the financial needs of the District.

Capitalization Threshold

The capitalization threshold for purposes of classifying capital assets shall be $5,000.

The Superintendent shall recommend an annual compensation plan for all District employees. The compensation plan may include wage and salary structures, stipends, benefits, and incentives. [See also DEAA] The recommended plan shall support District goals for hiring and retaining highly qualified employees. The Board shall review and approve the compensation plan to be used by the District. The Board shall also determine the total compensation package for the Superintendent. [See BJ series]

Pay Administration

The Superintendent shall implement the compensation plan and establish procedures for plan administration consistent with the budget. The Superintendent or designee shall classify each job title within the compensation plan based on the qualifications, duties, and market value of the position.

Annualized Salary

The District shall pay all salaried employees over 12 months in equal monthly or bimonthly installments, regardless of the number of months employed during the school year. Salaried employees hired during the school year shall be paid in accordance with administrative regulations.

Pay Increases

The Superintendent shall recommend to the Board an amount for employee pay increases as part of the annual budget. The Superintendent or designee shall determine pay adjustments for individual employees, within the approved budget following established procedures.

Mid-Year Pay Increases

Contract Employees

A contract employee's pay may be increased after performance on the contract has begun only if authorized by the compensation plan of the District or there is a change in the employee's job assignment or duties during the term of the contract that warrants additional compensation. Any such changes in pay that do not conform with the compensation plan shall require Board approval. [See DEA(LEGAL) for provisions on pay increases and public hearing requirements]

Noncontract Employees

The Superintendent may grant a pay increase to a noncontract employee after duties have begun because of a change in the employee's job assignment or to address pay equity. The Superintendent shall report any such pay increases to the Board at the next regular meeting.

Pay During Closing

During an emergency closure, all full-time employees shall continue to be paid for their regular duty schedule unless otherwise provided by Board action. Following an emergency closure, the Board shall adopt a resolution or take other Board action establishing the purpose and parameters for such payments. [See EB for the authority to close schools]

Premium Pay During Disasters	All employees who are required to work during an emergency closing for a disaster, as declared by a federal, state, or local official or the Board, shall be paid at the rate of one and one-half times their regular rate of pay for all hours worked up to 40 hours per week. Overtime for time worked over 40 hours in a week shall be calculated and paid according to law. [See DEAB] The Superintendent or designee shall approve payments and ensure that accurate time records are kept of actual hours worked during emergency closings.

Budget Planning

The policy-making functions of the District lie with a seven-member Board of Trustees (the Board), each of which is elected from an at-large member district for four-year staggered terms. The Board is not included in any other reporting entity as defined by GASB 14. Serving without compensation, Board members establish the policies by which schools operate. In carrying out the task of setting policy, the Board identifies needs and establishes priorities for the school system, allocates financial and human resources, and determines the priority areas.

On an annual basis, the District presents the Board of Trustees with the proposed budgets for the General Operating Fund, which includes the Food Service Fund, and the Debt Service Fund for approval as required by the Texas Education Code and as described in the Texas Education Agency's Financial Accountability Systems Resource Guide. The District has administratively opted to officially adopt the Capital Projects Fund. The proposed budget is presented to the Board summarized at the function level for each of the funds above. The Board is required to hold a public hearing on the proposed budget and to adopt a final budget no later than June 30. The District's purpose in the presentation of the budget data is to improve the quality of information provided to the Board of Trustees and the community.

Governmental Funds are reported using the current financial resources measurement focus and the modified accrual basis of accounting. This basis of accounting recognizes revenues in the accounting period in which they become available and measurable. Expenditures are recognized when the related fund liability is incurred. For budgetary purposes, the cash basis of accounting is used. This basis of accounting recognizes revenue when it is received and expenses when they are paid.

House Bill 5, 83rd Legislative Session, added new TEC §28.0217 to require each school district to provide accelerated instruction in the applicable subject area each time a student fails to perform satisfactory on an end-of-course (EOC) assessment instruction. Accelerated instruction may require participation of the student before or after normal school hours and may include participation at times of the year outside normal school operations.

House Bill 5 amended TEC §29.081 requiring the District to separately budget and prioritize state compensatory education funding and any other funding necessary to sufficiently support the cost of additional accelerated instruction for students who fail to perform satisfactory on an EOC assessment instrument. State compensatory education funds cannot be used for any other purpose until the District has sufficiently funded additional accelerated instruction. Physical adoption of the Accelerated Instruction budget for EOC failed students must precede the budget adoption for state compensatory education funds.

After adoption of the budget, the appropriation amounts are entered into the District's accounting and encumbrance system and monitoring of the expenditures and encumbrances in relation to the approved budget begins.

Budget managers have the authority to approve budget amendments anytime during the year. A budget transfer is the movement of appropriations between budget line items. A budget revision is the addition to revenue and expense budgets or a transfer to/from fund balance. Any budget amendments requested by budget managers require Board approval.

The entire budget is planned and prepared to meet all four goals and seven strategies. Each goal supports the Strategic Plan; therefore budget is not defined or measured by each goal but as a whole unit. In order to achieve these goals, the District must plan, prepare and evaluate the budget process in order to ensure that the appropriate dollar amount is allocated.

Budget Process

Goal 4, Strategy 7: Financial Priorities

The Superintendent manages a budget development, implementation, and monitoring process that reflects sound business and fiscal practices that support District goals.

Budget Development

- Budget Plan aligns with Board Fund Balance and Cash Flow priorities
- Provide for a reasonable staff compensation plan
- Maintain a reasonable tax collection rate
- Provide for stable expenditures per pupil
- Contingency Planning

Budget Implementation

- Recommended budget is in line with established assumptions and District priorities

Budget Monitoring

- Provide monthly financial reports showing implementation compared to adopted budget
- Provide information that includes evidence that District practices are sound, cost effective, and consistent with District policy and law

Sound Business and Fiscal Practices

- End of year results that are generally consistent with adopted budget
- Administrative procedures instituted to increase operational efficiency, customer service, and reduce the risk of fraud
- Provides additional transparency to public education finance and meaningful financial oversight and improvement for school districts

Supports District Goals

- Maintain financial stability in the District to achieve the most effective and efficient use of taxpayer dollars, while maintaining excellent academic, extracurricular programs, technology and facility improvements

MCALLEN INDEPENDENT SCHOOL DISTRICT
2022-2023 FISCAL YEAR
BUDGET DEVELOPMENT CALENDAR

<table>
<tr><th>√</th><th>Due Dates</th><th>Activity/Process</th><th>Responsibility</th></tr>
<tr><td></td><td>January 14, 2022</td><td>Refer to Budget Development Manual – Section I
Campus Allocated Budget
• Establish Campus Base allotment: Check One ___ADA
√ Enrollment ___Membership
• PEIMS Snapshot and Most Current Enrollment Counts from Department of Technology
• Determine the per student allocation for High Schools, Middle Schools and Elementary Schools
2021-2022 Allotment
HS - 001/002 = $ 90
006/007 = $ 90
005/011 = $ 145
MS - = $ 75
ES - = $ 60
2022-2023 Allotment
HS - 001/002 = $ 90
006/007 = $ 90
005/011 = $ 140
MS - = $ 75
ES - = $ 60</td><td>Business Office</td></tr>
<tr><td></td><td>January 17, 2022</td><td>Refer to Budget Development Manual – Introduction
Email - Determine the following:
• Identify items Campuses will budget through allocated funds (A-00)
• Identify items Departments will budget through department budgets
(Deadline to submit to Business Office 2/7/22)</td><td>Business Office</td></tr>
<tr><td></td><td>January 17, 2022</td><td>Upload accounts for Grants 2xx, 3xx, 4xx
• Mass create from existing accounts to check for duplicates</td><td>Business Office</td></tr>
<tr><td></td><td>January 18, 2022</td><td>Review proposed budget calendar</td><td>Executive Leadership Team</td></tr>
<tr><td></td><td>January 20, 2022</td><td>Refer to Budget Development Manual – Sections IV (Required) and V (Optional) Budget Inclusions
Memos to Assistant Superintendents to request Budget Inclusions Forms from directors, department heads and coordinators (attach prior year budget inclusion forms)
(Due to Asst. Superintendents on 2/7/22)</td><td>Business Office</td></tr>
</table>

MCALLEN INDEPENDENT SCHOOL DISTRICT
2022-2023 FISCAL YEAR
BUDGET DEVELOPMENT CALENDAR

√	Due Dates	Activity/Process	Responsibility
	January 20, 2022	***Refer to Budget Development Manual – Section I*** Memo – Special Populations Campus Allocations and Purchase Order Processing Instructions (Zero Based Budgeting Referenced) • 162 – Career & Technology (CTE) • 163 – Advanced Academics • 173 – Special Education • 193 – State Compensatory • 211 – Title I • 289 – Title IV ***(Due to Business Office 02/7/22)***	Business Office Respective Directors
	January 24, 2022	***Refer to Budget Development Manual – Section I*** Enrollment based on the PEIMS Fall Re-Submission 01/13/xx (extended to 1/20 for FY21-22) • Fall Campus Counts • PDM1-120-009 TSDS PEIMS Disaggregation of PEIMS Student Data • Snapshot Counts and Program Enrollments	Business Office PEIMS
	January 24, 2022	District Staffing Data to TASB to prepare the following: • Market Value Comparison • Pay Structure Shift • Salary Cost Estimate ***Business Office to prepare worksheet for staff projections- for budget year 22-23 only, complete 2/18/22*** ***(Due from TASB 4/4/22)***	Human Resources Business Office
	January 25, 2022	***Refer to Budget Development Manual – Section III*** E-mail Accounting to begin District Account Coding updates ***(Due to Business Office 2/28/22)***	Business Office Accounting
	January 25, 2022	Replacement Schedule e-mail: ***Quotes must be submitted*** • Dept of Athletics (183) • Dept of Fine Arts (184) • Dept of FMO (199-P) • Technology • Police Department ***(Due to Business Office 2/14/22)***	Departments
	January 26, 2022	E-mail Department of Technology to create New Year Prior to staff planning	Business Office Department of Technology

MCALLEN INDEPENDENT SCHOOL DISTRICT
2022-2023 FISCAL YEAR
BUDGET DEVELOPMENT CALENDAR

√	Due Dates	Activity/Process	Responsibility
	January 31, 2022	Preliminary State Property Values (1-31-xx)	State Comptroller's Office
	February 7, 2022	***Refer to Budget Development Manual – Section IV (Required)*** ***Refer to Budget Development Manual – Section V (Optional)*** ***(Due to Assistant Superintendents)*** ***(Due to Business Office 2/14/22)***	Asst. Superintendents: Business Operations Human Resources Instructional Services Interim Asst. Superintendent: District Operations
	February 7, 2022	***Budget Development Manual – Section I*** Special Populations Campus Allocations and Purchase Order Processing Instructions: • 162 – Career & Technology (CTE) • 163 – Advanced Academics • 173 – Special Education • 193 – State Compensatory • 211 – Title I • 289 – Title IV ***(Due to Business Office)***	Respective Directors
	February 7, 2022	• Identify items Campuses will budget through allocated funds (A00) • Identify items Departments will budget through department budgets ***(Due to Business Office)***	Department Directors
	February 7, 2022	1st Budget Workshop – 2021-2022 Budget update, discussion of accelerating remaining two (2) $1,000 payments for retention stipends and discussion of five (5) additional local COVID leave days	Asst. Superintendents: Business Operations Human Resources
	February 8, 2022	Send out Calendar invite for 2/21/22 at 10:00 am. (TEAMS) Discussion of Self-Funded Rates: • 753 Health • 771 TEC • 772 Worker's Comp	Director of Employee Benefits Interim Chief Financial Officer Asst. Superintendent for Business Operations
	February 8, 2022	Send out Calendar invite for 3/7/22 at 10:30 a.m. (TEAMS) • Discuss ID Cost for Food Service-Fund 101 • Plan for capital projects -Accounting Dept	Interim Chief Financial Officer Director of Food Service

MCALLEN INDEPENDENT SCHOOL DISTRICT
2022-2023 FISCAL YEAR
BUDGET DEVELOPMENT CALENDAR

√	Due Dates	Activity/Process	Responsibility
	February 8, 2022	Memo - Utility Projections with a due date/meeting (TEAMS) on 4/4/22 at 2:00 p.m. for: • Electricity • Water • Natural Gas Memo - Utility Projections with a due date/meeting (TEAMS) on 4/4/22 at 3:00 p.m. for: • Telephone • E-rate	Interim Chief Financial Officer Facilities, Maintenance & Operations Interim Chief Financial Officer Department of Technology
	February 8, 2022	***Refer to Budget Development Manual – Section II*** E-mail Payroll Department to begin Salary Information updates ***(Due to Business Office 2/28/2022)***	Business Office Payroll Department
	February 8, 2022	Discussion of Early Exit Incentive Program	Human Resources Executive Leadership Team
	February 14, 2022	Replacement Schedules with Quotes: • Dept of Athletics (183) • Dept of Fine Arts (184) • Dept FMO (199-P) • DOT • Police Department ***(Due to Business Office)***	Departments
	February 14, 2022	***Budget Development Manual – Section IV (Required)*** ***Section V (Optional)*** ***(6429)*** ***(Due to Business Office)***	Asst. Superintendents: Business Operations Human Resources Instructional Services Interim Asst. Superintendent: District Operations
	February 15, 2022	Evaluate Grant Funded Positions	Grant Managers Executive Leadership Team

MCALLEN INDEPENDENT SCHOOL DISTRICT
2022-2023 FISCAL YEAR
BUDGET DEVELOPMENT CALENDAR

√	Due Dates	Activity/Process	Responsibility
	February 15, 2022	Extracurricular Funding Guidelines e-mail: • Advanced Academics • Athletics • Bilingual • CTE • Instructional Services • Fine Arts • Secondary Science • Social Studies • UIL Academics ***(Due to Business Office 2/28/22)***	Respective Directors & Coordinators
	February 16, 2022	Route Calendar to Accounting, Department of Technology, Employee Benefits, Human Resources, Payroll Department, State Comp and ELT	Business Office
	February 16, 2022	Final calendar for 2022-2023 budget	Executive Leadership Team
	February 22, 2022	Discuss staffing and salary projections for 2022-2023	Human Resources Executive Leadership Team
	February 23, 2022	Discussion of Self-Funded Rates meeting (TEAMS) at 10:00 a.m. • 753 Health • 771 TEC • 772 Worker's Comp	Director of Payroll Department Director of Employee Benefits Interim Chief Financial Officer
	February 25, 2022	Recalculate Campus Enrollment Counts based on February data from Student Operations	Business Office
	February 28, 2022	***Budget Development Manual – Section II*** Salary Information completed Copy of PR Fringe Benefit Required Inclusion Sheet to Department of Technology, Human Resources and Employee Benefits ***(Due to Business Office)***	Payroll Department
	February 28, 2022	***Budget Development Manual – Section III*** District Account Coding completed ***(Due to Business Office)***	Accounting Department

MCALLEN INDEPENDENT SCHOOL DISTRICT
2022-2023 FISCAL YEAR
BUDGET DEVELOPMENT CALENDAR

√	Due Dates	Activity/Process	Responsibility
	February 28, 2022	Extracurricular Funding Guidelines • Advanced Academics • Athletics • Bilingual • CTE • Instructional Services • Fine Arts • Secondary Science • Social Studies • UIL Academics ***(Due to Business Office)***	Respective Directors & Coordinators
	March 1, 2022	Discuss staffing and salary projections for 2022-2023	Human Resources Executive Leadership Team
	March 7, 2022	Discuss ID Cost for Food Service 8.270% – Fund 101 at 10:30 a.m. on TEAMS	Interim Chief Financial Officer Director of Food Service
	March 7, 2022	Discuss Fund 173-Special Education Instructional Benchmark at 3:30 p.m. on TEAMS Begin review of Special Education Fund 1xx, PIC 23,33 – MOE Budget Compliance	Interim Chief Financial Officer Director of Special Ed
	March 7, 2022	2nd Budget Workshop – Benefits Self-Funded Health Scenarios, Moak Casey Update and Enrollment Landscape	Asst. Superintendents: Business Operations Human Resources Director of Strategic Partnership/ Student Outreach
	March 9, 2022	Budget training for Principals at Professional Learning Community Meeting PowerPoint Presentation (15 minutes)	Interim Chief Financial Officer PLC Meeting Asst. Superintendent for Business Operations
	March 11, 2022	Staff Study Review by Program Directors – Finalize	Human Resources
	March 22, 2022	"Save-the-Date" (04/1/22 – Budget Development Training) calendar Invite to staff: TEAMS • Training Memo • Budget Development Manual • PowerPoint Presentation	Business Office
	March 22, 2022	Finalize Staffing	Human Resources Executive Leadership Team
	March 28, 2022	Post Budget Development Manual, PowerPoint and Fringe Benefits Template to Business Services website	Business Office

MCALLEN INDEPENDENT SCHOOL DISTRICT
2022-2023 FISCAL YEAR
BUDGET DEVELOPMENT CALENDAR

√	Due Dates	Activity/Process	Responsibility
	March 28, 2022	Email Memo – Department Benchmarks ***(Due to Business Office 04/18/22)***	Business Office
	March 28, 2022	Email Memo – State and Local Program Benchmarks for the following funds: • 1xx – Special Populations with a 2% P/R Increase • 713 – RD/GS • 752 – RD/GS • 101 – ID Cost Notation ***(Due to Business Office 04/18/22)***	Business Office
	March 29, 2022	Review of I&S Tax Rate	Interim Chief Financial Officer Asst. Superintendent for Business Operations
	March 31, 2022	Position Budgeting: • 0 % roll • With current table rates (Funds 753,771,772)	Human Resources Department of Technology Employee Benefits Payroll Department
	March 31, 2022	Review Organization 701 Review Position Budget 611* Salaries Review Position Budget 614* Fringe Benefits	Employee Benefits Human Resources Payroll Department
	April 1, 2022	Budget Training – **Virtual** One General Session Secondary = HS & MS 8:30 a.m. to 11:00 a.m. Elementary/Safe & Secure 2xx to 4xx Grants 101-195 & Print Shop 7xx/8xx Departments	Business Office
	April 1, 2022	Start inputting 2022-2023 budget ***(Due to Business Office 04/18/22)***	District-Wide
	April 4, 2022	Staff Study Report from TASB • Market Value Comparison • Pay Structure Shift • Salary Cost Estimate	Human Resources

MCALLEN INDEPENDENT SCHOOL DISTRICT
2022-2023 FISCAL YEAR
BUDGET DEVELOPMENT CALENDAR

√	Due Dates	Activity/Process	Responsibility
	April 4, 2022	Position Budgeting: • With revised tables rates (Funds 753,771,772) • Addition/deletion of staff positions • Pay raise scenarios	Human Resources Department of Technology Payroll Department
	April 4, 2022	3th Budget Workshop – HR update, Benefits and Salary scenarios	Asst. Superintendents: Business Operations Human Resources
	April 5, 2022	Meeting with Facilities Maintenance and Operations at 2:00 p.m. to 3:00 p.m. on TEAMS regarding: • Electricity • Water • Natural Gas	Interim Chief Financial Officer Facilities, Maintenance & Operations
	April 6, 2022	Meeting with Department of Technology at 3:00 p.m. to 4:00 p.m. on TEAMS regarding: • Telephone • E-Rate	Interim Chief Financial Officer Department of Technology
	April 6, 2022	Review Proposed Budget Reports and Pie Charts	Business Office Department of Technology
	April 6, 2022	Setup conference call for 4/25/22 with the Hidalgo County Appraisal District to review preliminary property values, if necessary	Interim Chief Financial Officer
	April 6, 2022	**Board Agenda Titles for May:** "Approval of Setting Public Meeting Date for Budget and Vote on Proposed Tax Rate" Vote on Public Meeting Date for Budget Vote on Proposed Tax Rate that will be published in the newspaper as "Notice of Public Meeting to Discuss Budget and Proposed Tax Rate" ***(Notice must be published no later than 10 days or earlier than 30 days before the public meeting)***	Interim Chief Financial Officer
	April 8, 2022	Submission of new revenue and expense keys and access requests	Budget Managers
	April 12, 2022	Executive Leadership Team discuss and approve the Budget Benchmark increases and the One Time Projects (1P)	Executive Leadership Team
	April 13, 2022	Update One Time Projects (1P) and Budget Benchmark worksheets	Business Office

MCALLEN INDEPENDENT SCHOOL DISTRICT
2022-2023 FISCAL YEAR
BUDGET DEVELOPMENT CALENDAR

√	Due Dates	Activity/Process	Responsibility
	April 14, 2022	Updated Budget Benchmark memos for those with benchmark increases and One Time Projects (1P) ***(Due to Business Office 04/25/2022)***	Business Office
	April 18, 2022	Input of all budgets completed (Funds 1xx/7xx): • Campus Budgets • Department Budgets • State and Local Program Budgets ***(Due to Business Office)***	District-Wide
	April 18, 2022	Input of budgets completed Federal Program Budgets (Funds 2xx, 3xx, 4xx) with a 2.0% P/R Increase ***(Due to Business Office)***	Business Office
	April 18, 2022 Through April 29, 2022	Budget Submission and Account Number reviews: • Funds 101-197 = GS • Fund 199 – Revenues = RD/JB/GS • Fund 199-Axx, 7xx = RD • Fund 199 Dept, 5xx, 7xx = JB • Funds 2xx, 3xx, 4xx = JB Review Fringe Benefits: 614x	Business Office
	April 22, 2022	State Compensatory Education: • Definition of SCE • Accelerated Instruction Budget – Sub-Object (A*) • Explanation of how funds will be expended	Director of Federal Programs
	April 25, 2022	Conference call with the Hidalgo County Appraisal District to review preliminary property values	Hidalgo County Appraisal District Interim Chief Financial Officer Asst. Superintendent for Business Operations
	April 25, 2022	Deadline to enter budgets for those with updated Budget Benchmark Memos ***(Due to Business Office)***	Business Office
	April 26, 2022	Final input of all budgets Roll End User Entry into Preliminary Budget Begin Executive Summary	District-Wide Department of Technology Business Office

MCALLEN INDEPENDENT SCHOOL DISTRICT
2022-2023 FISCAL YEAR
BUDGET DEVELOPMENT CALENDAR

√	Due Dates	Activity/Process	Responsibility
	April 26, 2022	Organizational Section of Annual Budget Book reviewed and finalized	Business Office
	April 26, 2022	Roll Position Budgeting into Preliminary Budget	Human Resources Department of Technology Business Office
	April 30, 2022	Preliminary Certified Property Tax Values Report (CCG Legal) Date Set by Law • Board Presentation May 9, 2022	Hidalgo County Appraisal District
	May 2, 2022	4th Budget Workshop – Budget and HR update	Asst. Superintendents: Business Operations Human Resources
	May 2, 2022	Special Education Fund 1xx, PIC 23,33 – MOE Budget Compliance Analyze CY to NY MOE after HR Roll	Interim Chief Financial Officer Special Ed Department
	May 2, 2022	Tax estimate for revenue projections	Interim Chief Financial Officer
	May 2, 2022	Remove budget access – Except Business Office Staff	Business Office
	May 2, 2022	Planning Calendar to the Hidalgo County Tax Office	Interim Chief Financial Officer
	May 9, 2022	All funds balanced	Business Office
	May 9, 2022	Schedules to Hidalgo County Tax Office based on Preliminary Certified Property Values and internal analysis. • Debt Schedule • Effective Tax Rate (need to maintain) • Public Notice	Interim Chief Financial Officer
	May 9, 2022	**Board Agenda Items for May:** Approval of Setting Public Meeting Date on Budget and Vote on Proposed Tax Rate • Vote on public meeting date for budget • Vote on proposed tax rate that will be published in the newspaper as "Notice of Public Meeting to Discuss Budget and Proposed Tax Rate"	Board of Trustees Interim Chief Financial Officer
	May 16, 2022	Human Resources Documents for insertion in Budget Book ***(Due to Business Office)***	Human Resources

MCALLEN INDEPENDENT SCHOOL DISTRICT
2022-2023 FISCAL YEAR
BUDGET DEVELOPMENT CALENDAR

√	Due Dates	Activity/Process	Responsibility
	May 24, 2022	5th Budget Workshop – HR Update, Property lag including lag and Department Budgets	Assistant Superintendents: Business Operations Human Resources Interim Assistant Superintendent for District Operations
	May 25, 2022	**Board Agenda Titles for June:** "Approval of the McAllen Independent School District Budget for Fiscal Year Beginning July 1, 2022 and Ending June 30, 2023" A. Approval of Accelerated Instruction Funds Budget Approval of the District Budgets	Interim Chief Financial Officer
	May 31, 2022	Last Day of Regular Legislative Session – Date Set By Law	State Legislature-In odd years
	June 1, 2022	Get copy of "Notice of Public Meeting to Discuss Budget and Proposed Tax Rate" from local newspaper	Business Office
	June 1, 2022	Business Office/County Tax Office submits notice to The Monitor for: "Notice of Public Meeting to Discuss Budget and Proposed Tax Rate" ***Notice to be published by Wednesday June 1, 2022 (no later than 6/3/20xx)*** ***(Notice must be published no later than 10 days or earlier than 30 days before the public meeting) – 6/13/2022 (no later than 6/3/22)*** *MISD Web Posting on Home Page:* • Proposed Budget Summary Report for McAllen ISD • Do not include Special Tax Verbiage	Hidalgo County Tax Office Interim Chief Financial Officer
	June 6, 2022	**Board Agenda Items for June:** **A. Public Meeting to Discuss 2022-2023 Budget and Proposed Tax Rate** • Prepare PowerPoint Presentation • No Board Agenda Cover Sheet is prepared **B. Approval and Adoption of the 2022-2023 Proposed Budget:** • CE Legal/SB622 compare notices required by law (6491) Board Meeting Items must appear in the order indicated as follows: 1. Approval of Accelerated Instruction Budget 2022-2023 2. Approval of the District Budget 2022-2023 Must be by Record Vote (Verbal Individual Vote @ 60% or 5 "Ayes") (Budget must be approved by Law No Later than 6/30/xx)	Board of Trustees Interim Chief Financial Officer

MCALLEN INDEPENDENT SCHOOL DISTRICT
2022-2023 FISCAL YEAR
BUDGET DEVELOPMENT CALENDAR

√	Due Dates	Activity/Process	Responsibility
	June 6, 2022	Prepare Region 12 Template of Proposed Budget	Business Office
	June 6, 2022	Begin PowerPoints for Public Meeting – 12 Copies • 2022-2023 Budget • 2022 Proposed Tax Rate	Business Office
	June 6, 2022	6th Budget Workshop - Annual Budget Book and Federal Grant Summary	Asst. Superintendent for Business Operations
	June 7, 2022	Final budget must be prepared by June 13, 20xx	Interim Chief Financial Officer
	June 8, 2022	Change PDF file: Title page and footnotes to "Annual Budget" and change charts from "Proposed Budget" to "Adopted Budget"	Business Office
	June 10, 2022	Prepare Region 12 Template of Adopted Budget	Business Office
	June 13, 2022	Board Meeting- Approval of 2022-2023 Budget	Business Office
	June 14, 2022	Post Region 12 Template of Adopted Budget	Business Office
	June 14, 2022	Annual Budget Book posted on Financial Transparency Link and Business Services	Business Office
	June 20, 2022	User defaults to new fiscal year on July 1 by Department of Technology Submit work order to Department of Technology	Department of Technology
	June 20, 2022	• Preliminary Budget rolled to Original Budget/GL • Confirm General Ledger Budget	Department of Technology Business Office
	June 22, 2022	Submit Annual Budget Book to Association of School Business Officials International (ASBO)	Business Office
		CONTINUED INTO NEW YEAR	
	July 18, 2022	Affidavit & Invoice from The Monitor for Public Meeting Notice for 2022-2023 Budget (requisition)	Business Office
	July 18, 2022	Forward project listing of 1P's and 66xx to Purchasing for next year planning purposes	Business Office

MCALLEN INDEPENDENT SCHOOL DISTRICT
2022-2023 FISCAL YEAR
BUDGET DEVELOPMENT CALENDAR

√	Due Dates	Activity/Process	Responsibility
	July 26, 2022	Planning Calendar to the Hidalgo County Tax Office • Approval of 2022 School Tax rate on August 23, 2022	Interim Chief Financial Officer
	July 26, 2022	Certified Local Property Tax Values - Date Set by Law	Hidalgo County Appraisal District
	July 26, 2022	Certified State Property Values – Date Set by Law	State Comptroller's Office
	July 27, 2022	**Board Agenda Title for August:** "Approval and Adoption of the Resolution for the 2022 School Tax Rate"	Hidalgo County Appraisal District Board of Trustees Interim Chief Financial Officer
		Possible: Public Meeting: "Approval of Setting Public Meeting Date and Vote on Proposed 2022 School Tax Rate" (10-30 days)	
	August 5, 2022	Schedules to Hidalgo County Tax Office based on Certified Property Values • Debt Schedule • Effective Tax Rate (need to maintain) • Public Notice	Interim Chief Financial Officer
	August 8, 2022	**Possible:** County Tax Office submits 2nd notice based on Certified Property Values to The Monitor for: "Notice of Public Meeting to discuss Proposed 2022 School Tax Rate" (10-30 days)	Hidalgo County Appraisal District
	August 22, 2022	Approval and Adoption of the Resolution for the 2022 School Tax Rate: • Include special tax verbiage in Larger Typeset and Sample Home Value, if applicable, on Resolution • Tax Rate must be adopted by September 29 or 60 days after Certified Roll, whichever date is later • Approve separately not as part of Consent Agenda Must be by Record Vote (Verbal Individual Vote @ 60% or 5 "Ayes")	Interim Chief Financial Officer
		Possible: Public Hearing for Proposed 2022 School Tax Rate	

MCALLEN INDEPENDENT SCHOOL DISTRICT
2022-2023 FISCAL YEAR
BUDGET DEVELOPMENT CALENDAR

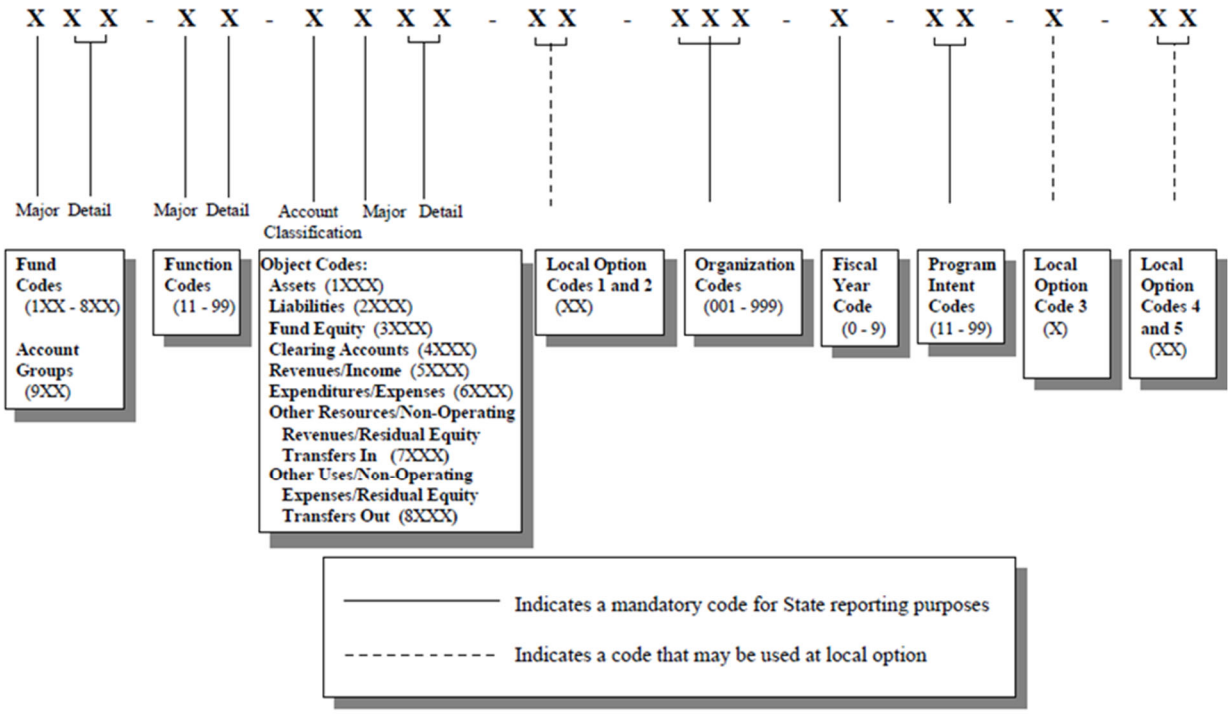
√	Due Dates	Activity/Process	Responsibility
	August 24, 2022	• McAllen ISD Web Posting of Adopted Budget - Updated for Tax Rate Verbiage (Post for three (3) years)	Business Office Community Information
		• Tax Rate Resolution - Send Resolution to Hidalgo County Tax Office, Hidalgo County Appraisal District, and Delinquent Tax Attorney/PVS	Business Office
		• Tax Rate History (Post on Web Site)	Business Office

Account Code Structure

Section 44.007 of the Texas Education Code requires that a standard district fiscal accounting system be adopted by each school district. The system must meet at least the minimum requirements prescribed by the State Board of Education and also be subject to review and comment by the state auditor. Additionally, the accounting system must conform to Generally Accepted Accounting Principles (GAAP). This section further requires that a report be provided at the time that the school district budget is filed, showing financial information sufficient to enable the state board of education to monitor the funding process and to determine educational system costs by school district, campus and program.

A major purpose of the following accounting code structure is to establish the standard school district fiscal accounting system required by law. Although certain codes within the overview may be used at local option, the sequence of the codes within the structure, and the funds and chart of accounts, are to be uniformly used by all school districts in accordance with generally accepted accounting principles.

The Code Structure



Fund

A mandatory 3 digit code is to be used for all financial transactions to identify the fund group and specific fund. The first digit refers to the fund group, and the second and third digit specifies the fund. School district accounting systems are organized and operated on a fund basis. A fund is an accounting entity with a self-balancing set of accounts recording financial resources and liabilities. A school district designates the fund's financial resources for a distinct purpose. The fund's purpose can be established by the state or federal government as well as the school district. The applicable fund types and titles can be found on page 127.

Function

A mandatory 2 digit code applied to expenditures/expenses that identify the purpose of the transaction. The first digit identifies the major class and the second digit refers to the specific function within the area. A function represents a general operational area in a school district and groups together related activities. Most school districts use all of the functions in the process of educating students or organizing the resources to educate students. For example, in order to provide the appropriate atmosphere for learning, school districts transport students to school, teach students, feed students and provide health services. Each of these activities is a function.

Object Code

A mandatory 4 digit code that identifies the nature and object of an account, a transaction or a source. The first of the four digits identifies the type of account or transaction, the second digit identifies the major area, and the third and fourth digits provide further sub-classifications.

Revenue object codes are four digit object codes, and are the sixth through ninth digits in the code structure. These codes are distinguished from other types of object codes as they always begin with the digit "5." There are three major sources: local sources, state sources and federal sources. School districts must account for a variety of revenues, including property taxes, foundation fund entitlements, user charges and grants. Governmental Accounting Standards Board (GASB) Codification 1600.106 states that revenues and other governmental fund financial resource increments are recognized when they are susceptible to accrual, which means they must be both measurable and available. Revenues are measurable when the amount of the revenues is subject to reasonable estimation. To be available, revenues must be subject to collection within the current period, or after the end of the period but in time to pay liabilities outstanding at the end of the current period.

Expenditures/expenses should be classified by the major object classes according to the types of items purchased or services obtained. These codes are distinguished from other types of object codes as they always begin with the digit "6." An expenditure/expense account identifies the nature and object of an account, or a transaction. The major object codes used in this document are: Payroll Costs, Professional and Contracted Services, Supplies and Materials, Other Operating Costs, Debt Service and Capital Outlay. The school district's accounting records are to reflect expenditures/expenses at the most detail level, as depicted in the chart of accounts (4 digits) for accounting and Public Education Information Management System (PEIMS) reporting (actual data) purposes. For PEIMS budget reporting purposes, expenditures/expenses are reported to the second digit of detail (6100, 6200, etc.) If a school district needs to use codes in addition to the mandatory codes for managerial purposes, the optional codes provided for local use in the code structure should be used.

FUND CODES

1ST, 2ND AND 3RD DIGIT OF 20 DIGIT ACCOUNT CODE STRUCTURE

	CODE	FUND DESCRIPTION	CODE	FUND DESCRIPTION	
	GENERAL FUND		**SPECIAL REVENUE FUNDS**		
	101	FOOD SERVICE	**(FEDERAL PROGRAMS) 200-289 CONT'D**		
	103	FOOD SERVICE FFV	289	FEDERALLY FUNDED SPECIAL REVENUE FUNDS	
	123	PAYROLL CLEARING		289(0)-TITLE IV, PART A, SUB PART 1	
	124	ACCOUNTS PAYABLE CLEARING		289(Z)- DEPARTMENT OF THE TREASURY EQUITABLE SHARING FUNDS	
	125	CREDIT CARD CLEARING	**SPECIAL REVENUE FUNDS**		
	126	CASH MANAGEMENT CLEARING	**(FEDERALLY FUNDED SSA) 290-379**		
	153	HIGH SCHOOL ALLOTMENT (FOUNDATION SCHOOL FUND)	315	SSA-IDEA-PART B, DISCRETIONARY (DEAF)	
	155	COLLEGE CAREER MILITARY READINESS	340	SSA-IDEA, PART C, EARLY INTERVENTION (DEAF)	
	156	EARLY EDUCATION ALLOTMENT	**SPECIAL REVENUE FUNDS**		
	157	DYSLEXIA	**(STATE PROGRAMS) 380-429**		
	158	SCHOOL SAFETY ALLOTMENT	397	ADVANCED PLACEMENT/INTERNATIONAL BACCALAUREATE INCENTIVE PROGRAM	
	162	CAREER AND TECHNICAL EDUCATION (FOUNDATION SCHOOL FUND)	410	INSTRUCTIONAL MATERIALS FUND	
	163	ADVANCED LEARNERS / G&T (FOUNDATION SCHOOL FUND)	427	STATE FUNDED SPECIAL REVENUE FUNDS	
	164	BILINGUAL / ESL (FOUNDATION SCHOOL FUND)		427(M)- TAMU-WBL PROJECT	*R*
	173	SPECIAL EDUCATION (FOUNDATION SCHOOL FUND)	428	STATE FUNDED SPECIAL REVENUE FUNDS	
	183	ATHLETICS		428(0)-ACHIEVEMENT ACADEMY TEACHER STIPENDS	
	184	FINE ARTS		428(F)- SPECIAL EDUCATION FISCAL SUPPORT ROUND 2	
	193	STATE COMPENSATORY (FOUNDATION SCHOOL FUND)	429	STATE FUNDED SPECIAL REVENUE FUNDS	
	194	CORONAVIRUS RELIEF FUND- CARES ACT		429(Z)-COMMUNITY YOUTH DEVELOPMENT	
	195	ADVERTISING		429(1XX-0)-READY TO READ	
R	196	EMERGENCY CONNECTIVITY FUND		429(801-0)-LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION	
	197	MAINTENANCE TAX NOTES		429(M)-TEACHER TRAINING REIMBURSEMENT	
	199	GENERAL FUND		429(F)-SCHOOL SAFETY AND SECURITY GRANT	
			SHARED SERVICE ARRANGEMENTS		
	SPECIAL REVENUE FUNDS		435	REGIONAL DAY SCHOOL FOR THE DEAF	
	(FEDERAL PROGRAMS) 200-289		**SPECIAL REVENUE FUNDS**		
	211	ESEA TITLE I, PART A-IMPROVING BASIC PROGRAMS	**(LOCAL PROGRAMS) 461-499**		
	212	ESEA TITLE I, PART C-EDUCATION OF MIGRATORY CHILDREN	498	LOCALLY FUNDED SPECIAL REVENUE	
	224	IDEA-PART B, FORMULA		498(M)-UNITED WAY GRANT	*R*
	225	IDEA-PART B, PRESCHOOL		498(Z)- NO KID HUNGRY GRANT	*R*
	244	CAREER AND TECHNICAL - BASIC GRANT	499	LOCALLY FUNDED SPECIAL REVENUE	
	255	ESEA TITLE II, PART A-TEACHER AND PRINCIPAL TRAINING AND RECRUITING		499(Z)- CHEMISTRY GRANT	*R*
	266	CARES ESSER	**DEBT SERVICE FUND**		
	263	TITLE III, PART A-ENGLISH LANGUAGE ACQUISITION & LANGUAGE ENHANCEMENT	599	DEBT SERVICE FUND	
	272	MEDICAID ADM CLAIMING PROGRAM	**CAPITAL PROJECT FUNDS**		
	274	GEAR UP	619	MISD-MTN 2020	
	276	INSTRUCTIONAL CONTINUITY	620	MTN 2020	
	277	CORONAVIRUS RELIEF FUND- CARES ACT	697	UTRGV COLLEGIATE ACADEMY	*R*
	281	ESSER II	698	CAPITAL PROJECTS FUND	
	282	ESSER III	**ENTERPRISE FUNDS (PROPRIETARY)**		
	287	FEDERALLY FUNDED SPECIAL REVENUE FUNDS	713	PROJECT SAFE AND SECURE	
		287(0)-PROJECT RISE	716	PRE-K	
		287(Z)-DEPARTMENT OF JUSTICE EQUITABLE SHARING FUNDS	**INTERNAL SERVICE FUNDS**		
		287(F)-OPERATION CONNECTIVITY	752	PRINT SHOP	
	288	FEDERALLY FUNDED SPECIAL REVENUE FUNDS	753	HEALTH INSURANCE	
		288(0)-LEP SUMMER SCHOOL	771	TEXAS EMPLOYMENT COMMISSION	
		288(F)-STOP SCHOOL VIOLENCE-PD	772	WORKER'S COMPENSATION	
		288(Z)-STOP SCHOOL VIOLENCE-FAMILY TREATMENT PROGRAM	**PENSION AND OTHER EMPLOYEE BENEFIT TRUST FUNDS**		
			859	457 ACCOUNTS PENSION / OTHER EMPLOYEE BENEFIT TRUST	

R=Revised

Financial Section

900

Introduction

The Financial Section provides specific fiscal information regarding the various funds of the District. By law, the Board of Trustees must approve annual budgets for the *General Fund* (which includes Food Service Fund) and *Debt Service Fund.* The General Fund and Debt Service Fund are included in this section. The District has administratively opted to officially adopt the *Capital Projects Fund. Special Revenue Funds* and *Proprietary Funds* are also included for informational purposes only.

The Financial Section begins with the Two-Year Revenue Comparison by Object Code - General, Debt Service and Capital Projects Funds financial schedule. A summary of major funds are provided in the form of charts and graphs comparing the 2022-2023 Adopted Budget to the 2021-2022 Original Budget. An 8-year data summary is included for the Summary All Funds Forecast, which include the General Fund, Debt Service Fund and Capital Projects Fund. The General Fund, Debt Service Fund and Capital Projects Fund also have individual 8-year data summaries. The remaining Financial Section provides the reader with specific information for all District funds.

Special Revenue Funds are governmental funds used to account for the proceeds of specific revenue sources that are legally restricted to expenditures for specified purposes. These funds utilize the modified accrual basis of accounting.

Governmental Funds are reported using the current financial resources measurement focus and the modified accrual basis of accounting. This basis of accounting recognizes revenues in the accounting period in which they become available and measurable. Expenditures are recognized when the related fund liability is incurred. For budgetary purposes, the cash basis of accounting is used. This basis of accounting recognizes revenue when it is received and expenses when they are paid.

Revenue and Expenditure Assumptions and Trends

The budget data provided in the McAllen ISD Annual Budget Book for 2022-2023 reflects the allocation of revenues, fund balance and appropriations to support the educational programs and services defined by the District's mission, vision, goals and strategic intent. The following presentation of budget data represents key priorities and decisions used to improve the quality of information provided about the District's financial plan.

The 2022-2023 adopted budget revenue and fund balance contribution increased by $37,205,432 compared to the 2021-2022 original budget.

- 5700 - Local Program Revenues are higher compared to last year due to an interlocal agreement with the City of McAllen for the Press Box at the McAllen Veterans Memorial Stadium. The Hidalgo County Appraisal District reviews and assesses property values based on the local real estate market within the District's geographical taxing jurisdiction. Preliminary property values increased 5.05%, this increase was offset by a decrease in the total tax rate from $1.1370 to $1.0964. The M&O tax rate will decrease from $1.0486 to $1.0197 as a result of House Bill 3 (HB3) tax compression and the I&S tax rate will decrease from $.0884 to $.0767 for a total tax rate decrease of $0.0406. The tax collections are based on 96% of the estimated tax levy calculated on historical trend analysis. Interest revenues are lower due to current market conditions. Athletic activities revenues increased due to current trends in ticket sales at District sporting events.

- 5800 - State Program Revenues for the General Fund are lower compared to last year due to a decrease in ADA based on trend analysis. The Basic Allotment weight will remain the same at $6,160 and the Guaranteed Yield will remain the same at $98.56. The Per Capita rate will increase from 402.428 to 450.00.

- 5900 – Federal Program Revenues are higher compared to last year due to increases in the Child Nutrition Program and School Health and Related Services (SHARS) revenues. The Child Nutrition Program includes an increase in breakfast and lunch participation due to projecting 100% of students on face-to-face instruction for the 2022-2023 school year. SHARS revenues are budgeted to increase due to an increase in face-to-face instruction, therefore, increasing allowable claims for reimbursement as well as including a budget for the SHARS prior year settle-up.

- 7900 - Other Resources are budgeted in the Capital Projects Fund as a one-time operating transfer in from the General Fund for the UTRGV Collegiate Academy.

- Fund Balance - The Child Nutrition Program will budget a positive fund balance to ensure the financial stability of the program, while funding kitchen renovations to decentralize food production, and execute equipment replacement schedules. Fund 194 ESSER II – Local and Capital Projects Fund will budget through fund balance as one-time projects are being carry-forward from 2021-2022.

The 2022-2023 proposed budget appropriations increased by $36,075,010 compared to the 2021-2022 original budget.

- 6100 – Payroll Cost decreased due to the one-time payroll expense reclasses from Fund 199 General Fund to Fund 282 ESSER III as allowed by the grant for the Operating Transfer Out to the Capital Projects Fund for the UTRGV Collegiate Academy in the amount of $12.5m and an additional transfer in the amount of $5.5m to maintain the General Fund.

  Payroll indicates a salary increase for teachers, librarians, non-teaching professionals, paraprofessionals and auxiliary staff. The minimum general salary increase for the teachers and librarians is $1,140. The compensation plan indicates the entry level salary for beginning "zero" year teachers at a minimum of $52,150 and new to McAllen ISD with "20+" years' experience at a maximum of $62,070 salary. The compensation plan indicates a 2% of pay range midpoint increase for non-teaching professionals, paraprofessionals, and auxiliary staff.

  In addition, as per TASB recommendations, additional pay adjustments are made across all pay groups to ascertain all salaries fall within the 10% pay range of market value, teachers schedule adjustments made to improve competitiveness for specific years, and that all salaries are at least at pay range minimum.

  Administration is recommending the approval of a one-time Holiday pay stipend in the amount of $500 for all employees who are employed by the district on a full-time basis as of September 15, 2022, and remain employed as of December 1, 2022. Eligible full-time employees are defined as persons employed by the district for at least 27.5 hours per week to include bus drivers and bus aides. This one-time stipend will be paid during December 2022, and is contingent upon the availability of funds and in consideration of the District's revenues and fund balances at the time plans for such payments are presented.

  The Health Fund, Workers Compensation Fund and Unemployment Fund are self-funded funds. The employer health contribution rate increased to $5,828.40 for 2022-2023 compared to $5,510.40 for 2021-2022. The employer contribution of Workers Compensation for 2022-2023 was reduced from a rate of 0.003082 to a rate of 0.001541 with the exception for Food Service, Maintenance, Police and Transportation which was reduced from a rate of 0.2705 to a rate of 0.13525. For the second year, the District has elected to fund the employer contribution of unemployment compensation for 2022-2023 at a rate of $2.60 per employee per month.

  Post employment benefits, including retiree health insurance, dental, vision, etc., are available to employees on a voluntary basis but are paid entirely by the employee for the durations allowed by law or policy. The District has no accrued obligation for post-employment benefits.

- 6200 - Professional and Contracted Services decreased due to a decrease in electricity cost as a result of the District entering into a contract with a new provider, a decrease in telephone E-Rate which results in higher telephone utility expenditure and the recoding of copier leases from object code 6269 Operating Leases to 6512 Capital Leases as a result of the implementation of GASB 87.

- 6300 - Supplies and Materials expenses are lower due to the District taking a conservative spending approach resulting from decreases in enrollment and state funding. This also includes

an increase due to nationwide food supply disruptions and inflation which results in increased food cost. In addition, increases in meal participation results in increased food purchases.

- 6400 - Other Operating Costs increased due to an increase in District insurance rates for 2022-2023 and an increase in student meals for student travel.

- 6500 - Debt Services increased due to the recoding of copier leases from object code 6269 Operating Leases to 6512 Capital Leases as a result of the implementation of GASB 87.

- 6600 – Capital Outlay is based on funding availability. For 2022-2023, capital outlay is budgeted for in Fund 194 ESSER II Local as one-time carry-forward projects and in the Capital Projects Funds primarily due to the issuance of the Maintenance Tax Notes Series 2020 to address our Facilities Education Master Plan (FEMP). Capital outlay projects include outstanding projects from 2021-2022 and are expected to be completed in 2022-2023. Outstanding projects for Fund 194 ESSER II - Local for Athletics includes baseball/softball turf fields, practice field at McAllen High School, natatorium improvements at Rowe High School, and strength and conditioning fitness equipment; Instructional Services projects include student learning at Quinta Mazatlan and IMAS; Fine Arts projects include black boxes for High Schools; HVAC replacements and kitchen upgrades District-wide for Facilities Maintenance and Operations. Outstanding projects for the Capital Projects Fund include HVAC systems for Rowe High School, Lamar Academy, Travis Middle School, Morris Middle School, De Leon Middle School, Milam Elementary, Seguin Elementary, Garza Elementary, McAuliffe Elementary, Gonzalez Elementary, Facilities Maintenance & Operations, and Administration Annex; roof replacements at Travis Middle School and Administration Annex; paving at Fossum Middle School, Transportation Department and Administration Annex; drainage projects at Memorial High School, Travis Middle School, Milam Elementary, Seguin Elementary, Rayburn Elementary and Garza Elementary; and intercom replacement at Travis Middle School. Other projects include pressbox renovations at the Memorial Veterans Stadium, exterior door access for all elementary, middle and high school campuses, gates for play areas at elementary and middle school campuses, AG farm improvements and UTRGV Collegiate Academy. For listing of projects please refer to page 133.

- 8900 – Other Uses increased due to the one-time operating transfer out from Fund 199 General Fund to the Capital Projects Fund for the UTRGV Collegiate Academy.

904

2022-2023
CAPITAL OUTLAY PROJECTS

Projects for 2022-2023	Original Budget	Fund Code	Fund Source	Life Span	Replacement Schedule/ FEMP	Additional Cost on an Annual Basis	Cost Savings on an Annual Basis
Athletics Department							
BaseBall/Softball Turf Fields	$ 3,275,882	194	General	N/A	N/A	N/A	N/A
McHi Practice Field	2,500,000	194	General	N/A	N/A	N/A	N/A
Natatorium Rowe HS	977,815	194	General	N/A	N/A	N/A	N/A
Strength/Conditioning Fitness Equipment	170,000	194	General	N/A	N/A	N/A	N/A
Instructional Services							
Quinta Mazatlan	3,087,460	194	General	N/A	N/A	N/A	N/A
IMAS	2,000,000	194	General	N/A	N/A	N/A	N/A
UTRGV Collegiate Academy	12,500,000	697	UTRGV Collegiate Academy				
Fine Arts Department							
Fine Arts Black Boxes District Wide	11,415,000	194	General	N/A	N/A	N/A	N/A
Facilities Maintenance & Operations							
HVAC Replacment of Aging Systems Y3	4,496,416	194	General	N/A	N/A	N/A	N/A
HVAC Replacment of Aging Systems Y2	3,550,000	194	General	N/A	N/A	N/A	N/A
School Kitchens Upgrades	1,556,517	194	General	N/A	N/A	N/A	N/A
District Wide Projects (00)	151,676	619	MISD MTN-2020	N/A	N/A	N/A	N/A
1 High School - Drainage (D2)	8,992	620	MTN-2020	N/A	FEMP	N/A	N/A
1 Middle School - Drainage (D2)	17,984	620	MTN-2020	N/A	FEMP	N/A	N/A
4 Elementary Schools - Drainage (D2)	166,988	620	MTN-2020	N/A	FEMP	N/A	N/A
1 Middle Schools - Paving (P6)	150,314	620	MTN-2020	20	FEMP	N/A	N/A
Transportation Department - Paving (P6)	388,250	620	MTN-2020	20	FEMP	N/A	N/A
1 Administration Annex - Paving (P6)	192,882	620	MTN-2020	20	FEMP	N/A	N/A
1 High Schools - HVAC Systems (P8)	682,981	620	MTN-2020	15	FEMP	N/A	N/A
3 Middle Schools - HVAC Systems (P8)	1,588,291	620	MTN-2020	15	FEMP	N/A	N/A
5 Elementary Schools - HVAC Systems (P8)	1,332,890	620	MTN-2020	15	FEMP	N/A	N/A
Facilities Maintenance & Operations - HVAC System (P8)	180,000	620	MTN-2020	15	FEMP	N/A	N/A
Administration Annex - HVAC System (P8)	98,191	620	MTN-2020	15	FEMP	N/A	N/A
Elementary & Middle Schools - Gates for Play Area (PD)	160,000	620	MTN-2020	N/A	N/A	N/A	N/A
Exterior Door Access for ES, MS, & HS (PD)	800,000	620	MTN-2020	N/A	N/A	N/A	N/A
1 Middle School - Intercom Replacement (P4)	170,000	620	MTN-2020	15	FEMP	N/A	N/A
1 Middle School - Roof Replacement (PM)	1,296,890	620	MTN-2020	20	FEMP	N/A	N/A
2 Administration Annex - Roof Replacements (PM)	884,549	620	MTN-2020	20	FEMP	N/A	N/A
AG Farm - Improvements (AG)	179,303	698	MISD CAPITAL PROJECTS	40	N/A	N/A	N/A
Memorial Veterans Stadium - Press Box (PB)	1,500,000	698	MISD CAPITAL PROJECTS	N/A	FEMP	N/A	N/A
Grand Total	**$ 55,479,271**						

FEMP - Facilities Education Master Plan
MTN - Maintenance Tax Notes

MCALLEN INDEPENDENT SCHOOL DISTRICT
Summary All Funds Forecast
General, Debt Service and Capital Projects Funds
2018-2019 to 2025-2026

	Audited FY 2019	Audited FY 2020	Audited FY 2021	Estimated Actuals FY 2022	Adopted FY 2023	Projected FY 2024	Projected FY 2025	Projected FY 2026
Beginning Fund Balance	**$ 94,334,478**	**$ 99,811,139**	**$ 129,933,681**	**$ 133,489,026**	**$ 159,237,489**	**$ 114,440,580**	**$ 114,440,580**	**$ 114,440,580**
Revenues								
5700 Local	88,761,603	90,922,451	91,043,877	104,882,065	95,667,790	97,897,822	101,065,923	104,650,588
5800 State	125,971,944	136,594,271	139,160,283	122,643,103	122,747,887	115,439,278	109,826,145	104,059,923
5900 Federal	21,271,071	19,052,998	22,818,861	28,368,268	24,168,809	24,168,809	24,168,809	24,168,809
7900 Other Sources	8,163,921	39,535,967	53,571,420	240,920	12,500,000	-	-	-
Total Revenues	**$ 244,168,539**	**$ 286,105,687**	**$ 306,594,441**	**$ 256,134,356**	**$ 255,084,486**	**$ 237,505,909**	**$ 235,060,877**	**$ 232,879,320**
Expenditures								
6100 Payroll Cost	176,372,630	183,627,545	191,441,043	151,461,938	180,423,905	190,146,350	187,974,818	185,787,861
6200 Prof & Contracted Services	13,315,546	13,913,755	12,537,499	16,057,378	12,220,930	12,185,610	12,185,610	12,185,610
6300 Supplies & Materials	19,352,910	24,700,038	25,899,436	23,813,705	20,210,736	17,146,338	17,146,338	17,146,338
6400 Other Operating Costs	4,555,250	4,129,113	3,507,857	5,060,800	5,968,259	5,028,517	5,028,517	5,028,517
6500 Debt Service	11,595,266	10,037,232	12,355,511	12,685,129	13,078,294	12,999,094	12,725,594	12,730,994
6600 Capital Outlay	5,634,861	14,417,113	10,357,594	21,258,243	55,479,271	-	-	-
8900 Other Uses	7,865,415	5,158,348	46,940,157	48,700	12,500,000	-	-	-
Total Expenditures	**$ 238,691,878**	**$ 255,983,144**	**$ 303,039,097**	**$ 230,385,893**	**$ 299,881,395**	**$ 237,505,909**	**$ 235,060,877**	**$ 232,879,320**
Net Income / (Loss)	5,476,660	30,122,544	3,555,344	25,748,463	(44,796,909)	-	-	-
Ending Fund Balance	**$ 99,811,139**	**$ 129,933,681**	**$ 133,489,026**	**$ 159,237,489**	**$ 114,440,580**	**$ 114,440,580**	**$ 114,440,580**	**$ 114,440,580**

MCALLEN INDEPENDENT SCHOOL DISTRICT
Two Year Budget Comparison of General, Debt Service, and Capital Projects Funds

REVENUES

		Adopted Budget 2022-2023 07/01/2022	Original Budget 2021-2022 07/01/2021	Difference
LOCAL PROGRAM REVENUES				
5711	TAXES-CURRENT YEAR LEVY	89,430,804	89,086,290	344,514
5712	TAXES-PRIOR YEARS	2,146,623	2,283,436	(136,813)
5700	OTHER	4,090,363	3,372,586	717,777
		$ 95,667,790	$ 94,742,312	$ 925,478
STATE PROGRAM REVENUES				
5800	STATE PROGRAM REVENUES	122,747,887	133,544,627	(10,796,740)
FEDERAL PROGRAM REVENUES				
5900	FEDERAL PROGRAM REVENUES	24,168,809	20,132,664	4,036,145
OTHER RESOURCES				
7900	OTHER RESOURCES	12,500,000	-	12,500,000
	Sub-Total Revenue and Other Sources	$ 255,084,486	$ 248,419,603	$ 6,664,883
FUND BALANCE CONTRIBUTIONS				
194	ESSER II - LOCAL	36,882,064	-	36,882,064
599	DEBT SERVICE FUND	-	-	-
619	MISD MTN-2020	151,676	1,408,466	(1,256,790)
620	MTN-2020	8,305,202	12,322,428	(4,017,226)
697	UTRGV COLLEGIATE ACADEMY	-	-	-
698	MISD CAPITAL PROJECTS	679,303	1,746,802	(1,067,499)
	Sub-Total Contributions	46,018,245	15,477,696	30,540,549
	Grand Total	$ 301,102,731	$ 263,897,299	$ 37,205,432

APPROPRIATIONS

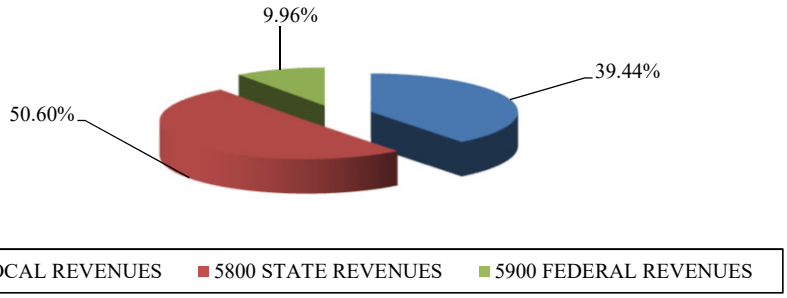
		Adopted Budget 2022-2023 07/01/2022	Original Budget 2021-2022 07/01/2021	Difference
6100	PAYROLL COSTS	180,423,905	195,639,733	(15,215,828)
6200	PROFESSIONAL & CONTRACTED	12,220,930	14,064,943	(1,844,013)
6300	SUPPLIES & MATERIALS	20,210,736	20,398,420	(187,684)
6400	OTHER OPERATIING COSTS	5,968,259	5,615,542	352,717
6500	DEBT SERVICE	13,078,294	12,711,051	367,243
6600	CAPITAL OUTLAY	55,479,271	15,291,696	40,187,575
	Total Expenditures	$ 287,381,395	$ 263,721,385	$ 23,660,010
8900	OTHER USES	12,500,000	85,000	12,415,000
	Grand Total	$ 299,881,395	$ 263,806,385	$ 36,075,010
Excess/(Deficiency)		*$1,221,336	* $90,914	*$1,130,422

* For Food Service Fund 101

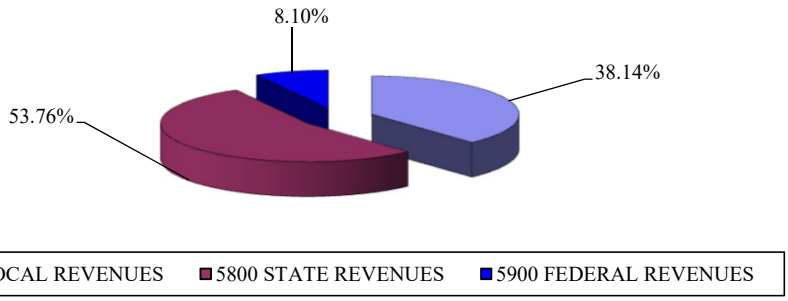
MCALLEN INDEPENDENT SCHOOL DISTRICT
Two Year Budget Comparison of Revenues by Object Code
General, Debt Service and Capital Projects Funds
2022-2023 ADA - 19,030.00 2021-2022 ADA 19,787.00

Revenue Code	Description	Percent of Total	Adopted Budget 2022-2023 07/01/2022	Revenues Per ADA	Percent of Total	Original Budget 2021-2022 07/01/2021	Revenues Per ADA
5700	LOCAL REVENUES	39.44%	$ 95,667,790	$ 5,027	38.14%	$ 94,742,312	$ 4,788
5800	STATE REVENUES	50.60%	122,747,887	6,450	53.76%	133,544,627	6,749
5900	FEDERAL REVENUES	9.96%	24,168,809	1,270	8.10%	20,132,664	1,017
	Total	100.00%	$ 242,584,486	$ 12,747	100.00%	$ 248,419,603	$ 12,554
7900	OTHER RESOURCES		12,500,000	657		-	-
	FUND BALANCE CONTRIBUTIONS						
	194 ESSER II - LOCAL		36,882,064	1938		-	-
	599 DEBT SERVICE FUND		-	-		-	-
	619 MISD MTN-2020		151,676	8		1,408,466	71
	620 MTN-2020		8,305,202	436		12,322,428	623
	697 UTRGV COLLEGIATE ACADEMY		-	-		-	-
	698 MISD CAPITAL PROJECTS		679,303	36		1,746,802	88
	Grand Total		$ 301,102,731	$ 15,822		$ 263,897,299	$ 13,336

2022-2023
ESTIMATED REVENUES COMPARISON BY SOURCE



2021-2022
ESTIMATED REVENUES COMPARISON BY SOURCE



MCALLEN INDEPENDENT SCHOOL DISTRICT

Appropriations

Budget Summary-General, Debt Service, and Capital Projects Funds

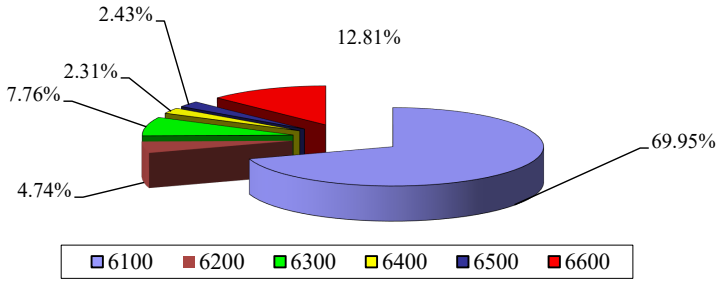
		Adopted Budget 2022-2023 07/01/2022	Original Budget 2021-2022 07/01/2021	Difference
GENERAL FUND				
101	FOOD SERVICE	$ 19,375,000	$ 17,265,197	$ 2,109,803
155	COLLEGE CAREER MILITARY READIN	935,906	1,072,555	(136,649)
156	EARLY EDUCATION ALLOTMENT	3,399,985	3,870,262	(470,277)
157	DYSLEXIA	1,025,517	893,904	131,613
158	SCHOOL SAFETY ALLOTMENT	188,753	202,284	(13,531)
162	CAREER TECHNICAL ED	7,902,349	8,306,181	(403,832)
163	ADV LEARNERS/G&T	414,119	721,333	(307,214)
164	BILINGUAL/ESL	2,420,039	2,526,296	(106,257)
173	SPECIAL EDUCATION	17,636,396	16,827,754	808,642
183	ATHLETICS	6,382,369	6,371,286	11,083
184	FINE ARTS	2,313,392	2,284,508	28,884
193	STATE COMPENSATORY	14,038,047	14,311,130	(273,083)
194	ESSER II - LOCAL	36,882,550	0	36,882,550
195	ADVERTISING	47,300	206,250	(158,950)
197	MAINTENANCE TAX NOTES	3,921,396	3,926,152	(4,756)
199	GENERAL FUND	141,048,896	162,652,697	(21,603,801)
		$ 257,932,014	$ 241,437,789	$ 16,494,225
DEBT SERVICE FUND				
599	DEBT SERVICE FUND	$ 6,813,200	$ 6,805,900	$ 7,300
		$ 6,813,200	$ 6,805,900	$ 7,300
CAPITAL PROJECTS FUND				
619	MISD MTN-2020	$ 151,676	$ 1,408,466	$ (1,256,790)
620	MTN-2020	8,305,202	12,322,428	(4,017,226)
697	UTRGV COLLEGIATE ACADEMY	12,500,000	0	12,500,000
698	MISD CAPITAL PROJECTS	1,679,303	1,746,802	(67,499)
		$ 22,636,181	$ 15,477,696	$ 7,158,485
	Sub-Total All Funds	$ 287,381,395	$ 263,721,385	$ 23,660,010
	Other Uses 8xxx	$ 12,500,000	85,000	12,415,000
	Total All Funds	$ 299,881,395	$ 263,806,385	$ 36,075,010

MCALLEN INDEPENDENT SCHOOL DISTRICT
Two Year Budget Comparison of Appropriations by Object Code
General, Debt Service and Capital Projects Funds

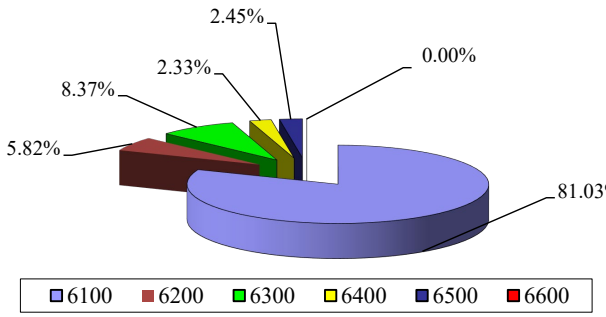
Object Code	Description	Percent of Total	Adopted Budget 2022-2023 07/01/2022	Percent of Total	Original Budget 2021-2022 07/01/2021
GENERAL FUND					
6100	PAYROLL COSTS	69.95%	$ 180,423,905	81.03%	$ 195,639,733
6200	PROF & CONTRACTED SERVICES	4.74%	12,220,930	5.82%	14,064,943
6300	SUPPLIES & MATERIALS	7.76%	20,024,736	8.37%	20,212,420
6400	OTHER OPERATING COSTS	2.31%	5,968,259	2.33%	5,615,542
6500	DEBT SERVICE	2.43%	6,265,094	2.45%	5,905,151
6600	CAPITAL OUTLAY	12.81%	33,029,090	0.00%	-
	Total	100.00%	$ 257,932,014	100.00%	$ 241,437,789
DEBT SERVICE FUND					
599	DEBT SERVICE FUND		6,813,200		6,805,900
CAPITAL PROJECTS FUNDS					
619	MISD MTN-2020		151,676		1,408,466
620	MTN-2020		8,305,202		12,322,428
697	UTRGV COLLEGIATE ACADEMY		12,500,000		-
698	MISD CAPITAL PROJECTS		1,679,303		1,746,802
OTHER USES 8xxx			12,500,000		85,000
	Grand Total		$ 299,881,395		$ 263,806,385

Payroll Costs - Percent of Total less
*Non-Monetary On-Behalf *80.49% *80.13%
*Fund 194 ESSER II-LOCAL Fund Balance

2022-2023
APPROPRIATIONS COMPARISON BY OBJECT



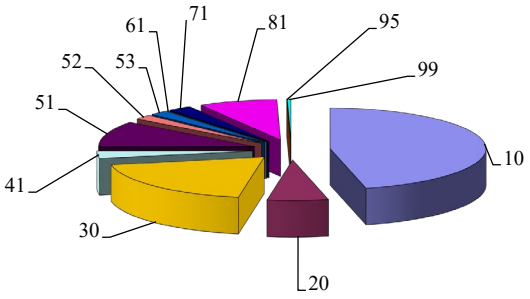
2021-2022
APPROPRIATIONS COMPARISON BY OBJECT



MCALLEN INDEPENDENT SCHOOL DISTRICT
Two Year Budget Comparison of Appropriations by Function
General, Debt Service and Capital Projects Funds

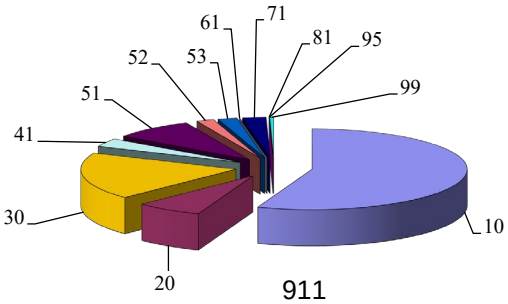
Function Code	Description	Percent of Total	Adopted Budget 2022-2023 07/01/2022	Percent of Total	Original Budget 2021-2022 7/1/2021
GENERAL FUND					
10	INSTRUCTIONAL & INSTRUCTIONAL RELATED SERVICES	46.31%	$ 119,454,835	55.79%	$ 134,712,587
20	INSTRUCTIONAL & SCHOOL LEADERSHIP	6.32%	16,311,077	6.98%	16,843,944
30	SUPPORT SERVICES-STUDENT (PUPIL)	19.27%	49,718,333	18.93%	45,716,226
41	ADMINISTRATIVE SUPPORT SERVICES	3.01%	7,751,869	3.33%	8,043,476
51	PLANT MAINTENANCE & OPERATIONS	10.33%	26,638,858	8.43%	20,349,685
52	SECURITY & MONITORING SERVICES	1.86%	4,787,045	1.83%	4,415,229
53	DATA PROCESSING SERVICES	1.89%	4,866,183	1.83%	4,429,511
61	COMMUNITY SERVICES	0.04%	110,373	0.02%	36,710
71	DEBT SERVICE	2.43%	6,265,094	2.45%	5,905,151
81	FAC ACQ AND CONSTRUCTION	8.15%	21,022,428	0.00%	6,000
95	PAYMENT TO JUVENILE JUSTICE	0.02%	40,000	0.02%	40,000
99	OTHER INTERGOV. CHARGES	0.37%	965,919	0.39%	939,270
	Total	100.00%	$ 257,932,014	100.00%	$ 241,437,789
DEBT SERVICES					
	599 DEBT SERVICE FUND		6,813,200		6,805,900
CAPITAL PROJECTS					
	619 MISD MTN-2020		151,676		1,408,466
	620 MTN-2020		8,305,202		12,322,428
	697 UTRGV COLLEGIATE ACADEMY		12,500,000		-
	698 MISD CAPITAL PROJECTS		1,679,303		1,746,802
OTHER USES 8xxx			12,500,000		85,000
	Grand Total		$ 299,881,395		$ 263,806,385

2022-2023
APPROPRIATIONS BY FUNCTION



10	46.31%
20	6.32%
30	19.27%
41	3.01%
51	10.33%
52	1.86%
53	1.89%
61	0.04%
71	2.43%
81	8.15%
95	0.02%
99	0.37%
Total:	100.00%

2021-2022
APPROPRIATIONS BY FUNCTION



10	55.79%
20	6.98%
30	18.93%
41	3.33%
51	8.43%
52	1.83%
53	1.83%
61	0.02%
71	2.45%
81	0.00%
95	0.02%
99	0.39%
Total:	100.00%

911

MCALLEN INDEPENDENT SCHOOL DISTRICT

Appropriations by Function
Two Year Budget Comparison of General, Debt Service and Capital Projects Funds

		Adopted Budget 2022-2023 07/01/2022	Original Budget 2021-2022 07/01/2021	Difference	2022-2023 % of Total Appropriations
11	INSTRUCTION	$ 111,529,775	$ 126,586,945	$ (15,057,170)	37.19%
12	INSTRUCTIONAL RES & MEDIA SERV	3,439,107	3,568,402	(129,295)	1.15%
13	CURR DEV & INSTRUCTIONAL DEV	4,485,953	4,557,240	(71,287)	1.50%
21	INSTRUCTIONAL LEADERSHIP	3,232,831	3,450,687	(217,856)	1.08%
23	SCHOOL LEADERSHIP	13,078,246	13,393,257	(315,011)	4.36%
31	COUNSEL AND EVALUATION	9,892,119	9,820,599	71,520	3.30%
32	SOCIAL WORK SERVICES	1,938,730	1,957,232	(18,502)	0.65%
33	HEALTH SERVICES	3,011,681	2,885,127	126,554	1.00%
34	STUDENT TRANSPORTATION	4,394,173	4,049,716	344,457	1.47%
35	FOOD SERVICES	19,375,000	17,265,197	2,109,803	6.46%
36	EXTRACURRICULAR ACTIVITIES	11,106,630	9,738,355	1,368,275	3.70%
41	GENERAL ADMINISTRATION	7,751,869	8,043,476	(291,607)	2.58%
51	FACILITIES MAINT & OPERATIONS	26,994,858	20,535,685	6,459,173	9.00%
52	SECURITY AND MONITORING SERV	4,787,045	4,415,229	371,816	1.60%
53	DATA PROCESSING SERVICES	4,866,183	4,429,511	436,672	1.62%
61	COMMUNITY SERVICES	110,373	36,710	73,663	0.04%
71	DEBT SERVICE	13,078,294	12,711,051	367,243	4.36%
81	FACILITIES ACQ & CONSTRUCTION	43,302,609	15,297,696	28,004,913	14.44%
95	PYMTS TO JUVENILE JUSTICE	40,000	40,000	0	0.01%
99	OTHER INTERGOVT CHARGES	965,919	939,270	26,649	0.32%
	Sub-Total	$ 287,381,395	$ 263,721,385	$ 23,660,010	95.83%
	Other Uses 8xxx	12,500,000	85,000	12,415,000	4.17%
	Total Appropriations	$ 299,881,395	$ 263,806,385	$ 36,075,010	100.00%

MCALLEN INDEPENDENT SCHOOL DISTRICT

Appropriations by Function
General Fund, Debt Service and Capital Projects Funds
2022-2023

			General Fund	Debt Service Fund	Capital Projects Funds	Total All Funds
INSTRUCTION		*11*				
6100	PAYROLL COSTS		$ 99,495,222	$ -	$ -	$ 99,495,222
6200	PROFESSIONAL & CONTRACTED		1,456,787	-	-	1,456,787
6300	SUPPLIES & MATERIALS		5,189,522	-	-	5,189,522
6400	OTHER OPERATIING COSTS		300,784	-	-	300,784
6600	CAPITAL OUTLAY		5,087,460	-	-	5,087,460
			111,529,775	-	-	111,529,775
INSTRUCTIONAL RES & MEDIA SERV		*12*				
6100	PAYROLL COSTS		3,017,025	-	-	3,017,025
6200	PROFESSIONAL & CONTRACTED		91,741	-	-	91,741
6300	SUPPLIES & MATERIALS		318,354	-	-	318,354
6400	OTHER OPERATIING COSTS		11,987	-	-	11,987
			3,439,107	-	-	3,439,107
CURR DEV & INSTRUCTIONAL DEV		*13*				
6100	PAYROLL COSTS		3,374,516	-	-	3,374,516
6200	PROFESSIONAL & CONTRACTED		610,974	-	-	610,974
6300	SUPPLIES & MATERIALS		178,241	-	-	178,241
6400	OTHER OPERATIING COSTS		322,222	-	-	322,222
6600	CAPITAL OUTLAY		-	-	-	-
			4,485,953	-	-	4,485,953
INSTRUCTIONAL LEADERSHIP		*21*				
6100	PAYROLL COSTS		2,598,422	-	-	2,598,422
6200	PROFESSIONAL & CONTRACTED		183,565	-	-	183,565
6300	SUPPLIES & MATERIALS		359,877	-	-	359,877
6400	OTHER OPERATIING COSTS		90,967	-	-	90,967
6600	CAPITAL OUTLAY		-	-	-	-
			3,232,831	-	-	3,232,831
SCHOOL LEADERSHIP		*23*				
6100	PAYROLL COSTS		12,556,091	-	-	12,556,091
6200	PROFESSIONAL & CONTRACTED		124,919	-	-	124,919
6300	SUPPLIES & MATERIALS		232,959	-	-	232,959
6400	OTHER OPERATIING COSTS		164,277	-	-	164,277
6600	CAPITAL OUTLAY		-	-	-	-
			13,078,246	-	-	13,078,246
COUNSEL AND EVALUATION		*31*				
6100	PAYROLL COSTS		8,943,419	-	-	8,943,419
6200	PROFESSIONAL & CONTRACTED		258,130	-	-	258,130
6300	SUPPLIES & MATERIALS		594,307	-	-	594,307
6400	OTHER OPERATIING COSTS		96,263	-	-	96,263
6600	CAPITAL OUTLAY		-	-	-	-
			9,892,119	-	-	9,892,119
SOCIAL WORK SERVICES		*32*				
6100	PAYROLL COSTS		1,810,240	-	-	1,810,240
6200	PROFESSIONAL & CONTRACTED		31,250	-	-	31,250
6300	SUPPLIES & MATERIALS		77,340	-	-	77,340

MCALLEN INDEPENDENT SCHOOL DISTRICT

Appropriations by Function
General Fund, Debt Service and Capital Projects Funds
2022-2023

			General Fund	Debt Service Fund	Capital Projects Funds	Total All Funds
SOCIAL WORK SERVICES		*32*				
6400	OTHER OPERATIING COSTS		19,900	-	-	19,900
			1,938,730	-	-	1,938,730
HEALTH SERVICES		*33*				
6100	PAYROLL COSTS		2,957,122	-	-	2,957,122
6200	PROFESSIONAL & CONTRACTED		5,275	-	-	5,275
6300	SUPPLIES & MATERIALS		47,025	-	-	47,025
6400	OTHER OPERATIING COSTS		2,259	-	-	2,259
			3,011,681	-	-	3,011,681
STUDENT TRANSPORTATION		*34*				
6100	PAYROLL COSTS		4,097,657	-	-	4,097,657
6200	PROFESSIONAL & CONTRACTED		144,221	-	-	144,221
6300	SUPPLIES & MATERIALS		640,130	-	-	640,130
6400	OTHER OPERATIING COSTS		(487,835)	-	-	(487,835)
6600	CAPITAL OUTLAY		-	-	-	-
			4,394,173	-	-	4,394,173
FOOD SERVICES		*35*				
6100	PAYROLL COSTS		10,799,173	-	-	10,799,173
6200	PROFESSIONAL & CONTRACTED		279,261	-	-	279,261
6300	SUPPLIES & MATERIALS		8,152,569	-	-	8,152,569
6400	OTHER OPERATIING COSTS		143,997	-	-	143,997
6600	CAPITAL OUTLAY		-	-	-	-
			19,375,000	-	-	19,375,000
EXTRACURRICULAR ACTIVITIES		*36*				
6100	PAYROLL COSTS		5,770,400	-	-	5,770,400
6200	PROFESSIONAL & CONTRACTED		477,470	-	-	477,470
6300	SUPPLIES & MATERIALS		1,974,759	-	-	1,974,759
6400	OTHER OPERATIING COSTS		2,884,001	-	-	2,884,001
6600	CAPITAL OUTLAY		-	-	-	-
			11,106,630	-	-	11,106,630
GENERAL ADMINISTRATION		*41*				
6100	PAYROLL COSTS		6,009,317	-	-	6,009,317
6200	PROFESSIONAL & CONTRACTED		749,256	-	-	749,256
6300	SUPPLIES & MATERIALS		275,725	-	-	275,725
6400	OTHER OPERATIING COSTS		717,571	-	-	717,571
6600	CAPITAL OUTLAY		-	-	-	-
			7,751,869	-	-	7,751,869
FACILITIES MAINT & OPERATIONS		*51*				
6100	PAYROLL COSTS		11,364,721	-	-	11,364,721
6200	PROFESSIONAL & CONTRACTED		5,613,942	-	-	5,613,942
6300	SUPPLIES & MATERIALS		1,236,572	-	186,000	1,422,572
6400	OTHER OPERATIING COSTS		1,499,926	-	-	1,499,926
6600	CAPITAL OUTLAY		6,923,697	-	170,000	7,093,697
			26,638,858	-	356,000	26,994,858

MCALLEN INDEPENDENT SCHOOL DISTRICT

Appropriations by Function
General Fund, Debt Service and Capital Projects Funds
2022-2023

		General Fund	Debt Service Fund	Capital Projects Funds	Total All Funds
SECURITY AND MONITORING SERV	*52*				
6100	PAYROLL COSTS	4,229,482	-	-	4,229,482
6200	PROFESSIONAL & CONTRACTED	196,670	-	-	196,670
6300	SUPPLIES & MATERIALS	319,150	-	-	319,150
6400	OTHER OPERATIING COSTS	41,238	-	-	41,238
6600	CAPITAL OUTLAY	505	-	-	505
		4,787,045	-	-	4,787,045
DATA PROCESSING SERVICES	*53*				
6100	PAYROLL COSTS	3,330,395	-	-	3,330,395
6200	PROFESSIONAL & CONTRACTED	955,480	-	-	955,480
6300	SUPPLIES & MATERIALS	423,206	-	-	423,206
6400	OTHER OPERATIING COSTS	157,102	-	-	157,102
6600	CAPITAL OUTLAY	-	-	-	-
		4,866,183	-	-	4,866,183
COMMUNITY SERVICES	*61*				
6100	PAYROLL COSTS	70,703	-	-	70,703
6200	PROFESSIONAL & CONTRACTED	36,070	-	-	36,070
6300	SUPPLIES & MATERIALS	-	-	-	-
6400	OTHER OPERATIING COSTS	3,600	-	-	3,600
		110,373	-	-	110,373
DEBT SERVICE	*71*				
6500	DEBT SERVICE	6,265,094	6,813,200	-	13,078,294
		6,265,094	6,813,200	-	13,078,294
FACILITIES ACQ & CONSTRUCTION	*81*				
6200	PROFESSIONAL & CONTRACTED	-	-	-	-
6300	SUPPLIES & MATERIALS	5,000	-	-	5,000
6600	CAPITAL OUTLAY	21,017,428	-	22,280,181	43,297,609
		21,022,428	-	22,280,181	43,302,609
PYMTS TO JUVENILE JUSTICE	*95*				
6200	PROFESSIONAL & CONTRACTED	40,000	-	-	40,000
		40,000	-	-	40,000
OTHER INTERGOVT CHARGES	*99*				
6200	PROFESSIONAL & CONTRACTED	965,919	-	-	965,919
6400	OTHER OPERATIING COSTS	-	-	-	-
		965,919	-	-	965,919
Total Estimated Appropriations		$ 257,932,014	$ 6,813,200	$ 22,636,181	$ 287,381,395
Total Other Uses		12,500,000	-	-	12,500,000
Total Appropriations & Other Uses		$ 270,432,014	$ 6,813,200	$ 22,636,181	$ 299,881,395

MCALLEN INDEPENDENT SCHOOL DISTRICT
Budget Summary
General, Debt Service and Capital Projects Funds
2022-2023

		General Fund	Debt Service Fund	Capital Projects Funds	Total All Funds
5700	LOCAL REVENUES	$ 87,854,590	$ 6,813,200	$ 1,000,000	$ 95,667,790
5800	STATE REVENUES	122,747,887		-	122,747,887
5900	FEDERAL REVENUES	24,168,809	-	-	24,168,809
7900	OTHER RESOURCES			12,500,000	12,500,000
FUND BALANCE CONTRIBUTIONS:					
	194 ESSER II - LOCAL	36,882,064			36,882,064
	599 DEBT SERVICE FUND	-	-	-	-
	619 MISD MTN-2020	-	-	151,676	151,676
	620 MTN-2020	-	-	8,305,202	8,305,202
	697 UTRGV COLLEGIATE ACADEMY	-	-	-	-
	698 MISD CAPITAL PROJECTS	-	-	679,303	679,303
	Total Revenues and Fund Balance	$ 271,653,350	$ 6,813,200	$ 22,636,181	$ 301,102,731

		General Fund	Debt Service Fund	Capital Projects Funds	Total All Funds
11	INSTRUCTION	$ 111,529,775	$ -	$ -	$ 111,529,775
12	INSTRUCTIONAL RES & MEDIA SERV	3,439,107	-	-	3,439,107
13	CURR DEV & INSTRUCTIONAL DEV	4,485,953	-	-	4,485,953
21	INSTRUCTIONAL LEADERSHIP	3,232,831	-	-	3,232,831
23	SCHOOL LEADERSHIP	13,078,246	-	-	13,078,246
31	GUIDANCE COUNSELING AND EVAL	9,892,119	-	-	9,892,119
32	SOCIAL WORK SERVICES	1,938,730	-	-	1,938,730
33	HEALTH SERVICES	3,011,681	-	-	3,011,681
34	STUDENT TRANSPORTATION	4,394,173	-	-	4,394,173
35	FOOD SERVICES	19,375,000	-	-	19,375,000
36	EXTRACURRICULAR ACTIVITIES	11,106,630	-	-	11,106,630
41	GENERAL ADMINISTRATION	7,751,869	-	-	7,751,869
51	FACILITIES MAINT & OPERATIONS	26,638,858	-	356,000	26,994,858
52	SECURITY AND MONITORING SERV	4,787,045	-	-	4,787,045
53	DATA PROCESSING SERVICES	4,866,183	-	-	4,866,183
61	COMMUNITY SERVICES	110,373	-	-	110,373
71	DEBT SERVICE	6,265,094	6,813,200	-	13,078,294
81	FACILITIES ACQ & CONSTRUCTION	21,022,428	-	22,280,181	43,302,609
95	PYMTS TO JUVENILE JUSTICE	40,000	-	-	40,000
99	OTHER INTERGOVT CHARGES	965,919	-	-	965,919
8900	OTHER USES	12,500,000	-	-	12,500,000
	Total Appropriations	$ 270,432,014	$ 6,813,200	$ 22,636,181	$ 299,881,395

State Compensatory Education Program

The goal of the State Compensatory Education Program (SCE) is to provide funding to reduce disparity in performance on assessment instruments or disparity in the rates of high school completion between at-risk and economically disadvantaged students in comparison to all other students. The purpose of the SCE program is to increase academic achievement and reduce the dropout rate for these students by providing supplemental programs and services. Under Section 29.081 of the Texas Education Code (TEC), compensatory education is defined in law as programs and/or services designed to supplement the regular education program for students identified as at risk of dropping out of school.

The following is a list of instructional programs and services that are in place and have been designed to close the achievement gap of at-risk and economically disadvantaged students and reduce the drop-out rate.

- At-Risk Assistants at Elementary, Middle, and High School level to support students in the content areas
- Sci-Tech Lab Assistants to support science curriculum (Elementary);
- Sci-Tech Teachers to support science curriculum (Middle Schools);
- Graduation Specialists (grades 6-12) to reduce the drop-out rate and increase the graduation rate for economically disadvantaged and at-risk students;
- Credit Recovery Programs in place at five high schools: McAllen HS, Memorial H.S., Rowe H.S., Lamar Academy, and Achieve Early College H.S. to provide students with the opportunity to regain credits and graduate with their cohort (in four-year span);
- Extended Day/Week Instruction provided to students (after school, Saturdays, summer programs)
- Lamar Academy Evening Study Center provides students opportunities to attend class in the evening to acquire/regain credit towards graduation around a non-traditional schedule;
- Accelerated Instruction is provided to at-risk and economically disadvantaged students during the Summer School program to close achievement gaps;
- Math and Literacy Interventionists from K-5 provide small group instruction to at-risk and economically disadvantaged students who are not performing at grade-level
- Classroom Size Reduction (CSR) teachers are also provided at the secondary level to support the at-risk and economically disadvantaged student
- Social Work Program is in place to support PK3-12 students with their educational and social-emotional needs

The District funds many other supplemental programs through the State Compensatory Program to support in closing the achievement gap and drop-out rate.

McALLEN INDEPENDENT SCHOOL DISTRICT

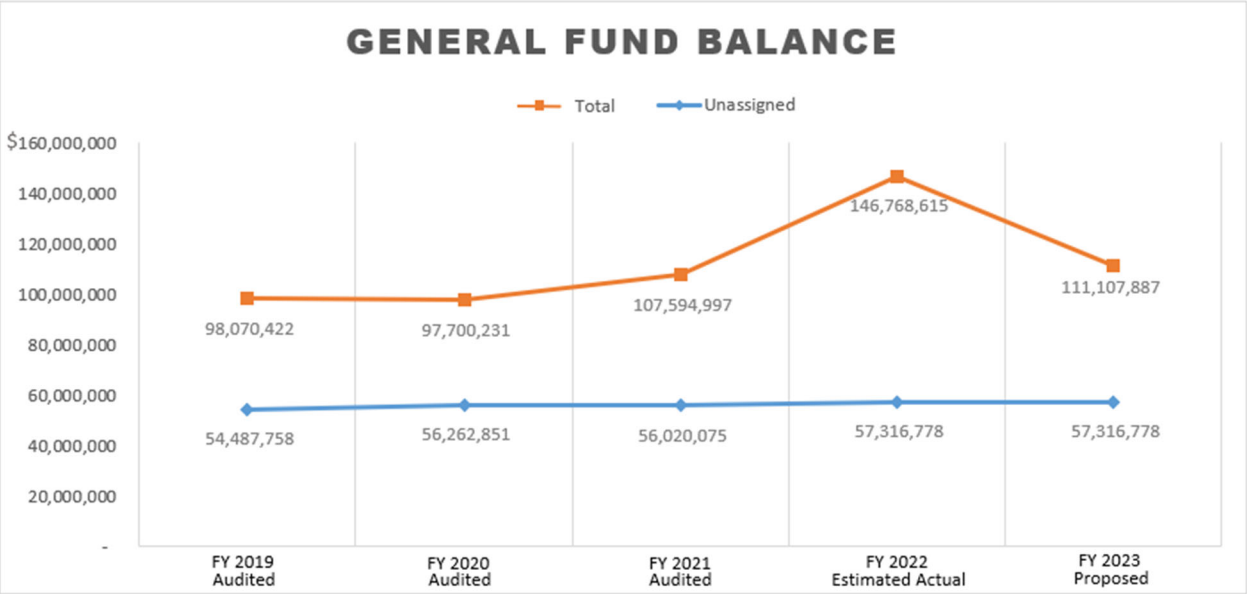
Appropriations by Function
Accelerated Instruction Funds
2022-2023

	State Compensatory Fund
11 - INSTRUCTION	89,385
12 - INSTRUCTIONAL RES & MEDIA SERV	-
13 - CURR DEV & INSTRUCTIONAL DEV	1,115
23 - SCHOOL LEADERSHIP	100
31 - COUNSEL AND EVALUATION	-
61 - COMMUNITY SERVICES	-
Total Appropriations	90,600

General Fund Balance

The financial goal of the McAllen Independent School District is to have a sufficient fund balance in the general operating fund to be able to maintain fiscal independence in case of a financial need or crisis. The District shall strive to maintain an optimum fund balance of at least two and a half months of general fund operating expenditures. Fund balance is the difference between assets and liabilities at a given point in time. The change in fund balance is the difference between revenues and expenditures. Governmental Fund financial statements breaks down the fund balance into 5 categories:

- **Non-Spendable** – the portion of the gross fund balance that is not expendable (such as inventories, pre-paid items) or is legally earmarked for a specific use (such as the self-funded reserves program).
- **Restricted** – amounts constrained to a specific purpose by the provider, such as special populations programs and grants.
- **Committed** – the portion of the fund balance that is constrained to a specific purpose by the Board.
- **Assigned** – the portion of the fund balance that is spendable or available for appropriation but has been tentatively earmarked for some specific purpose by the Superintendent or designee.
- **Unassigned-** includes amounts available for any legal purpose. This portion of the total fund balance in the general fund is available to finance operating expenditures. The unassigned fund balance shall be the difference between the total fund balance and the total of the non-spendable fund balance, restricted fund balance, committed fund balance and assigned fund balance.



MCALLEN INDEPENDENT SCHOOL DISTRICT
General Fund Forecast (Funds 1xx)
2018-2019 to 2025-2026

	Audited FY 2019	Audited FY 2020	Audited FY 2021	Estimated Actuals FY 2022	Adopted FY 2023	Projected FY 2024	Projected FY 2025	Projected FY 2026
Beginning Fund Balance	**$ 91,688,034**	**$ 98,070,422**	**$ 97,700,231**	**$ 107,594,997**	**$ 146,768,615**	**$ 111,107,887**	**$ 111,107,887**	**$ 111,107,887**
Revenues								
5700 Local	88,576,261	83,754,535	83,646,750	97,566,954	87,854,590	91,163,822	94,605,423	98,184,688
5800 State	125,937,148	136,420,168	138,989,204	122,444,354	122,747,887	115,439,278	109,826,145	104,059,923
5900 Federal	21,271,071	19,052,998	22,818,861	28,368,268	24,168,809	24,168,809	24,168,809	24,168,809
7900 Other Sources	298,506	5,794,060	6,539,516	202,697	-	-	-	-
Total Revenues	**$ 236,082,986**	**$ 245,021,761**	**$ 251,994,331**	**$ 248,582,273**	**$ 234,771,286**	**$ 230,771,909**	**$ 228,600,377**	**$ 226,413,420**
Expenditures								
6100 Payroll Cost	166,016,647	171,537,906	179,718,449	140,997,242 *	170,017,866 **	179,740,311	177,568,779	175,381,822
6100 TRS On-Behalf	10,355,983	12,089,639	11,722,594	10,464,696	10,406,039	10,406,039	10,406,039	10,406,039
6200 Prof & Contracted Services	13,315,546	13,913,755	12,537,499	16,042,028	12,220,930	12,185,610	12,185,610	12,185,610
6300 Supplies & Materials	19,352,910	24,700,038	25,899,436	23,813,705	20,024,736	17,146,338	17,146,338	17,146,338
6400 Other Operating Costs	4,555,250	4,129,113	3,507,857	5,060,800	5,968,259	5,028,517	5,028,517	5,028,517
6500 Debt Service	2,603,986	2,869,367	4,996,383	5,879,229	6,265,094	6,265,094	6,265,094	6,265,094
6600 Capital Outlay	5,634,861	10,993,798	2,527,196	7,102,254	33,029,090	-	-	-
8900 Other Uses	7,865,415	5,158,348	1,190,151	48,700	12,500,000	-	-	-
Total Expenditures	**$ 229,700,598**	**$ 245,391,965**	**$ 242,099,565**	**$ 209,408,654**	**$ 270,432,014**	**$ 230,771,909**	**$ 228,600,377**	**$ 226,413,420**
Net Income / (Loss)	6,382,387	(370,191)	9,894,766	39,173,619 ***	(35,660,728)	-	-	-
Ending Fund Balance	**$ 98,070,422**	**$ 97,700,231**	**$ 107,594,997**	**$ 146,768,615**	**$ 111,107,887**	**$ 111,107,887**	**$ 111,107,887**	**$ 111,107,887**
ADA	21,161	20,645	19,923	18,647	19,030	18,506	17,996	17,501
Decrease in ADA				(1,276)	383	(524)	(510)	(495)
ADM	22,802	22,354	21,540	20,282	20,486	19,922	19,373	18,840
Decrease in ADM				(1,258)	204	(565)	(549)	(534)

*Includes $40,196,746 one-time payroll expense reclass from Fund 199 General Fund to Fund 281 ESSER II as allowed by the Grant and establishing Fund 194 ESSER II Local projects
**Includes $18,000,000 one-time payroll expense reclasses from Fund 199 General Fund to Fund 282 ESSER III as allowed by the Grant
***Net Income includes Fund 194 ESSER II Local carry-forward projects of $36,882,064 as reflected in 2022-2023 Adopted Budget

Future Year Projections 2023-2024 to 2025-2026:

Revenues include an increase in local tax revenue as a result of an estimated 4% increase in property values. State revenue includes decreases in ADA as shown above.
Expenditures are kept constant with the exception of payroll. Decreases in payroll are shown to reflect adjustments made to align with District staffing guidelines as a result from declining enrollment.

McALLEN INDEPENDENT SCHOOL DISTRICT

Revenues - General Fund
2022-2023

Object	199 General Fund	101 Food Service	155 CCMR	156 Early Ed. Allotment	157 Dyslexia	158 Safety Allotment	162 Career Technical	163 Advanced Learners	164 Bilingual	173 Special Education	183 Athletics	184 Fine Arts	193 State Comp.	194 Esser II Local	195 Advert.	197 Maint. Tax Notes	Total 2022-2023 Budget
5711 TAXES-CURRENT YEAR LEVY	71,523,153	-	-	-	-	-	-	-	-	-	5,919,167	2,244,767	-	-	-	3,185,247	82,872,334
5712 TAXES-PRIOR YEARS	1,974,893	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,974,893
5719 PENALTIES/INT & OTHER TAXES	1,100,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,100,000
5722 SSA-LOCAL REV FM MEMBER DIST	462,139	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	462,139
5729 LOCAL REV FROM OTHER DIST	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5739 TUITION AND FEES	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5742 INTEREST	446,000	3,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	449,000
5743 RENT	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5744 GIFTS AND BEQUESTS	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5745 INSURANCE RECOVERY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5748 MARKET VALUE GAIN/LOSS	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5749 OTHER REVENUES	125,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	125,000
5751 FOOD SERVICE	-	474,224	-	-	-	-	-	-	-	-	-	-	-	-	-	-	474,224
5752 ATHLETIC ACTIVITIES	-	-	-	-	-	-	-	-	-	-	300,000	-	-	-	-	-	300,000
5754 INTERFUND SERVICES	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5755 ENTERPRISING SERVICES	-	11,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	11,000
5759 OTHER EXTRA/CO-CURRICULAR	38,700	-	-	-	-	-	-	-	-	-	-	-	-	-	47,300	-	86,000
5769 MISCELLANEOUS REVENUES	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5811 PER CAPITA APPORTIONMENT	8,391,178	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	8,391,178
5812 FOUNDATION ENTITLEMENTS	58,201,763	-	931,700	3,229,811	977,900	184,233	7,560,832	406,044	2,330,806	16,769,041	-	-	13,358,540	-	-	-	103,950,670
5819 OTHER FOUNDATION REVENUES	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5829 REV BY TEXAS EDUCATION AGENCY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5831 TEACHER RETIREMENT/TRS CARE	7,422,956	538,566	4,206	170,174	47,617	4,520	341,517	8,075	89,233	867,355	163,202	68,625	679,507	486	-	-	10,406,039
5919 REVENUE FM OTHER GOVERNMENTS	5,555	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5,555
5921 SCHOOL BREAKFAST PROGRAM	-	6,491,169	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6,491,169
5922 NATIONAL SCHOOL LUNCH PROGRAM	1,001,977	10,524,989	-	-	-	-	-	-	-	-	-	-	-	-	-	-	11,526,966
5923 USDA COMMODITIES	-	1,253,381	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,253,381
5929 FEDERAL REVENUE THROUGH TEA	685,910	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	685,910
5931 SCHOOL HEALTH & RELATED SERV	1,950,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,950,000
5939 FEDERAL REVENUE THROUGH STATE	-	1,300,007	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,300,007
5949 FED REV THROUGH FEDERAL GOVT	219,672	-	-	-	-	-	-	-	-	-	-	-	-	-	-	736,149	955,821
TOTAL REVENUES	153,548,896	20,596,336	935,906	3,399,985	1,025,517	188,753	7,902,349	414,119	2,420,039	17,636,396	6,382,369	2,313,392	14,038,047	486	47,300	3,921,396	234,771,286
Other Resources																	
7912 SALE-REAL & PERSONAL PROPERTY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7913 PROCEEDS FROM CAPITAL LEASES	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7915 OPERATING TRANSFERS IN	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL OTHER RESOURCES	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TTL REVENUES & OTH SOURCES	153,548,896	20,596,336	935,906	3,399,985	1,025,517	188,753	7,902,349	414,119	2,420,039	17,636,396	6,382,369	2,313,392	14,038,047	486	47,300	3,921,396	234,771,286

McALLEN INDEPENDENT SCHOOL DISTRICT

Appropriations - General Fund
2022-2023

Object	199 General Fund	101 Food Service	155 CCMR	156 Early Ed. Allotment	157 Dyslexia	158 Safety Allotment	162 Career Technical	163 Advanced Learners	164 Bilingual	173 Special Education	183 Athletics	184 Fine Arts	193 State Comp.	194 Esser II Local	195 Advert.	197 Maint. Tax Notes	Total 2022-2023 Budget
11 - INSTRUCTION																	
6100 - PAYROLL COSTS	62,635,823	-	22,431	2,905,905	719,486	-	5,473,568	30,796	1,670,385	14,063,897	119,779	16,252	11,057,900	779,000	-	-	99,495,222
6200 - PROFESSIONAL & CONTRACTED SERV	715,841	-	133,000	-	-	-	120,501	-	6,500	420,000	-	57,370	3,575	-	-	-	1,456,787
6300 - SUPPLIES & MATERIALS	1,173,659	-	162,527	52,000	23,317	-	997,710	18,400	102,022	209,837	431,982	344,904	667,773	1,005,391	-	-	5,189,522
6400 - OTHER OPERATIING COSTS	247,854	-	-	-	-	-	6,750	1,000	24,580	20,300	-	-	300	-	-	-	300,784
6600 - CAPITAL OUTLAY	-	-	-	-	-	-	-	-	-	-	-	-	-	5,087,460	-	-	5,087,460
TOTAL	64,773,177	-	317,958	2,957,905	742,803	-	6,598,529	50,196	1,803,487	14,714,034	551,761	418,526	11,729,548	6,871,851	-	-	111,529,775
12 - INSTRUCTIONAL RES & MEDIA SERV																	
6100 - PAYROLL COSTS	3,017,025	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3,017,025
6200 - PROFESSIONAL & CONTRACTED SERV	91,741	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	91,741
6300 - SUPPLIES & MATERIALS	318,354	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	318,354
6400 - OTHER OPERATIING COSTS	11,987	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	11,987
TOTAL	3,439,107	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3,439,107
13 - CURR DEV & INSTRUCTIONAL DEV																	
6100 - PAYROLL COSTS	2,274,958	-	-	387,144	-	-	183,211	202,661	321,472	-	-	3,000	2,070	-	-	-	3,374,516
6200 - PROFESSIONAL & CONTRACTED SERV	478,294	-	-	14,000	-	-	300	6,000	44,791	2,000	-	8,950	56,639	-	-	-	610,974
6300 - SUPPLIES & MATERIALS	138,555	-	-	29,936	-	-	1,500	100	8,150	-	-	-	-	-	-	-	178,241
6400 - OTHER OPERATIING COSTS	163,092	-	-	11,000	-	-	55,000	48,330	44,800	-	-	-	-	-	-	-	322,222
6600 - CAPITAL OUTLAY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	3,054,899	-	-	442,080	-	-	240,011	257,091	419,213	2,000	-	11,950	58,709	-	-	-	4,485,953
21 - INSTRUCTIONAL LEADERSHIP																	
6100 - PAYROLL COSTS	1,940,467	-	-	-	47,992	-	78,222	203	42,696	454,509	-	-	34,333	-	-	-	2,598,422
6200 - PROFESSIONAL & CONTRACTED SERV	162,665	-	1,800	-	-	-	8,500	2,500	8,100	-	-	-	-	-	-	-	183,565
6300 - SUPPLIES & MATERIALS	68,971	-	-	-	-	-	254,257	5,364	2,700	28,585	-	-	-	-	-	-	359,877
6400 - OTHER OPERATIING COSTS	83,025	-	-	-	-	-	4,042	-	3,900	-	-	-	-	-	-	-	90,967
6600 - CAPITAL OUTLAY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	2,255,128	-	1,800	-	47,992	-	345,021	8,067	57,396	483,094	-	-	34,333	-	-	-	3,232,831
23 - SCHOOL LEADERSHIP																	
6100 - PAYROLL COSTS	12,325,849	-	-	-	-	-	-	-	10,358	-	-	-	219,884	-	-	-	12,556,091
6200 - PROFESSIONAL & CONTRACTED SERV	122,919	-	-	-	-	-	-	-	2,000	-	-	-	-	-	-	-	124,919
6300 - SUPPLIES & MATERIALS	191,629	-	-	-	-	-	-	-	41,230	-	-	-	100	-	-	-	232,959
6400 - OTHER OPERATIING COSTS	150,777	-	-	-	-	-	-	-	13,500	-	-	-	-	-	-	-	164,277
6600 - CAPITAL OUTLAY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	12,791,174	-	-	-	-	-	-	-	67,088	-	-	-	219,984	-	-	-	13,078,246
31 - COUNSEL AND EVALUATION																	
6100 - PAYROLL COSTS	5,824,711	-	381,148	-	234,722	-	239,753	37,762	48,452	1,183,111	-	-	993,760	-	-	-	8,943,419
6200 - PROFESSIONAL & CONTRACTED SERV	81,130	-	-	-	-	-	-	-	-	50,000	-	-	127,000	-	-	-	258,130
6300 - SUPPLIES & MATERIALS	95,145	-	235,000	-	-	-	4,725	44,807	23,880	185,000	-	-	5,750	-	-	-	594,307
6400 - OTHER OPERATIING COSTS	83,827	-	-	-	-	-	4,500	6,684	-	-	-	-	1,252	-	-	-	96,263
6600 - CAPITAL OUTLAY	-	-	-	-	-	-	922	-	-	-	-	-	-	-	-	-	-
TOTAL	6,084,813	-	616,148	-	234,722	-	248,978	89,253	72,332	1,418,111	-	-	1,127,762	-	-	-	9,892,119

McALLEN INDEPENDENT SCHOOL DISTRICT

Appropriations - General Fund
2022-2023

Object	199 General Fund	101 Food Service	155 CCMR	156 Early Ed. Allotment	157 Dyslexia	158 Safety Allotment	162 Career Technical	163 Advanced Learners	164 Bilingual	173 Special Education	183 Athletics	184 Fine Arts	193 State Comp.	194 Esser II Local	195 Advert.	197 Maint. Tax Notes	Total 2022-2023 Budget
32 - SOCIAL WORK SERVICES																	
6100 - PAYROLL COSTS	1,075,612	-	-	-	-	-	-	-	-	-	-	-	734,628	-	-	-	1,810,240
6200 - PROFESSIONAL & CONTRACTED SERV	29,600	-	-	-	-	-	-	-	-	-	-	-	1,650	-	-	-	31,250
6300 - SUPPLIES & MATERIALS	21,410	-	-	-	-	-	-	-	-	-	-	-	55,930	-	-	-	77,340
6400 - OTHER OPERATIING COSTS	15,100	-	-	-	-	-	-	-	-	-	-	-	4,800	-	-	-	19,900
TOTAL	1,141,722	-	-	-	-	-	-	-	-	-	-	-	797,008	-	-	-	1,938,730
33 - HEALTH SERVICES																	
6100 - PAYROLL COSTS	2,844,073	-	-	-	-	-	-	-	-	-	-	-	-	113,049	-	-	2,957,122
6200 - PROFESSIONAL & CONTRACTED SERV	5,275	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5,275
6300 - SUPPLIES & MATERIALS	47,025	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	47,025
6400 - OTHER OPERATIING COSTS	2,259	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,259
TOTAL	2,898,632	-	-	-	-	-	-	-	-	-	-	-	-	113,049	-	-	3,011,681
34 - STUDENT TRANSPORTATION																	
6100 - PAYROLL COSTS	3,260,938	-	-	-	-	-	-	-	-	836,719	-	-	-	-	-	-	4,097,657
6200 - PROFESSIONAL & CONTRACTED SERV	104,460	-	-	-	-	-	-	-	-	39,761	-	-	-	-	-	-	144,221
6300 - SUPPLIES & MATERIALS	458,630	-	-	-	-	-	-	-	-	111,000	-	-	-	70,500	-	-	640,130
6400 - OTHER OPERATIING COSTS	(-511,074)	-	-	-	-	-	-	-	-	23,239	-	-	-	-	-	-	(-487,835)
6600 - CAPITAL OUTLAY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	3,312,954	-	-	-	-	-	-	-	-	1,010,719	-	-	-	70,500	-	-	4,394,173
35 - FOOD SERVICES																	
6100 - PAYROLL COSTS	-	10,799,173	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10,799,173
6200 - PROFESSIONAL & CONTRACTED SERV	-	279,261	-	-	-	-	-	-	-	-	-	-	-	-	-	-	279,261
6300 - SUPPLIES & MATERIALS	-	8,152,569	-	-	-	-	-	-	-	-	-	-	-	-	-	-	8,152,569
6400 - OTHER OPERATIING COSTS	-	143,997	-	-	-	-	-	-	-	-	-	-	-	-	-	-	143,997
6600 - CAPITAL OUTLAY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	-	19,375,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	19,375,000
36 - EXTRACURRICULAR ACTIVITIES																	
6100 - PAYROLL COSTS	544,515	-	-	-	-	-	26,519	3,612	-	8,438	3,940,728	1,246,588	-	-	-	-	5,770,400
6200 - PROFESSIONAL & CONTRACTED SERV	15,025	-	-	-	-	-	-	-	-	-	401,745	60,700	-	-	-	-	477,470
6300 - SUPPLIES & MATERIALS	98,820	-	-	-	-	-	5,000	-	-	-	73,415	47,524	-	1,750,000	-	-	1,974,759
6400 - OTHER OPERATIING COSTS	906,435	-	-	-	-	-	377,426	5,900	-	-	1,097,272	496,968	-	-	-	-	2,884,001
6600 - CAPITAL OUTLAY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	1,564,795	-	-	-	-	-	408,945	9,512	-	8,438	5,513,160	1,851,780	-	1,750,000	-	-	11,106,630
41 - GENERAL ADMINISTRATION																	
6100 - PAYROLL COSTS	6,009,317	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6,009,317
6200 - PROFESSIONAL & CONTRACTED SERV	749,256	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	749,256
6300 - SUPPLIES & MATERIALS	275,725	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	275,725
6400 - OTHER OPERATIING COSTS	670,271	-	-	-	-	-	-	-	-	-	-	-	-	-	47,300	-	717,571
6600 - CAPITAL OUTLAY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	7,704,569	-	-	-	-	-	923	-	-	-	-	-	-	-	47,300	-	7,751,869

McALLEN INDEPENDENT SCHOOL DISTRICT

Appropriations - General Fund
2022-2023

Object	199 General Fund	101 Food Service	155 CCMR	156 Early Ed. Allotment	157 Dyslexia	158 Safety Allotment	162 Career Technical	163 Advanced Learners	164 Bilingual	173 Special Education	183 Athletics	184 Fine Arts	193 State Comp.	194 Esser II Local	195 Advert.	197 Maint. Tax Notes	Total 2022-2023 Budget
51 - FACILITIES MAINT & OPERATIONS																	
6100 - PAYROLL COSTS	11,273,308	-	-	-	-	-	36,947	-	523	-	-	6,250	-	47,693	-	-	11,364,721
6200 - PROFESSIONAL & CONTRACTED SERV	5,414,860	-	-	-	-	16,000	2,000	-	-	-	181,082	-	-	-	-	-	5,613,942
6300 - SUPPLIES & MATERIALS	1,197,296	-	-	-	-	-	15,276	-	-	-	24,000	-	-	-	-	-	1,236,572
6400 - OTHER OPERATIING COSTS	1,498,284	-	-	-	-	-	1,642	-	-	-	-	-	-	-	-	-	1,499,926
6600 - CAPITAL OUTLAY	-	-	-	-	-	-	-	-	-	-	-	-	-	6,923,697	-	-	6,923,697
TOTAL	19,383,748	-	-	-	-	16,000	55,865	-	523	-	205,082	6,250	-	6,971,390	-	-	26,638,858
52 - SECURITY AND MONITORING SERV																	
6100 - PAYROLL COSTS	4,051,053	-	-	-	-	62,814	-	-	-	-	109,365	6,250	-	-	-	-	4,229,482
6200 - PROFESSIONAL & CONTRACTED SERV	196,670	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	196,670
6300 - SUPPLIES & MATERIALS	263,921	-	-	-	-	55,229	-	-	-	-	-	-	-	-	-	-	319,150
6400 - OTHER OPERATIING COSTS	41,238	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	41,238
6600 - CAPITAL OUTLAY	-	-	-	-	-	-	-	-	-	-	-	-	-	505	-	-	505
TOTAL	4,552,882	-	-	-	-	118,043	-	-	-	-	109,365	6,250	-	505	-	-	4,787,045
53 - DATA PROCESSING SERVICES																	
6100 - PAYROLL COSTS	3,275,685	-	-	-	-	54,710	-	-	-	-	-	-	-	-	-	-	3,330,395
6200 - PROFESSIONAL & CONTRACTED SERV	955,480	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	955,480
6300 - SUPPLIES & MATERIALS	370,699	-	-	-	-	-	-	-	-	-	-	-	-	52,507	-	-	423,206
6400 - OTHER OPERATIING COSTS	157,102	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	157,102
6600 - CAPITAL OUTLAY	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	4,758,966	-	-	-	-	54,710	-	-	-	-	-	-	-	52,507	-	-	4,866,183
61 - COMMUNITY SERVICES																	
6100 - PAYROLL COSTS	-	-	-	-	-	-	-	-	-	-	-	-	70,703	-	-	-	70,703
6200 - PROFESSIONAL & CONTRACTED SERV	750	-	-	-	-	-	-	-	-	-	-	-	-	35,320	-	-	36,070
6300 - SUPPLIES & MATERIALS	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
6400 - OTHER OPERATIING COSTS	3,600	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3,600
TOTAL	4,350	-	-	-	-	-	-	-	-	-	-	-	70,703	35,320	-	-	110,373
71 - DEBT SERVICE																	
6500 - DEBT SERVICE	2,322,061	-	-	-	-	-	-	-	-	-	3,001	18,636	-	-	-	3,921,396	6,265,094
TOTAL	2,322,061	-	-	-	-	-	-	-	-	-	3,001	18,636	-	-	-	3,921,396	6,265,094
81 - FACILITIES ACQ & CONSTRUCTION																	
6200 - PROFESSIONAL & CONTRACTED SERV	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
6300 - SUPPLIES & MATERIALS	-	-	-	-	-	-	5,000	-	-	-	-	-	-	-	-	-	5,000
6600 - CAPITAL OUTLAY	-	-	-	-	-	-	-	-	-	-	-	-	-	21,017,428	-	-	21,017,428
TOTAL	-	-	-	-	-	-	5,000	-	-	-	-	-	-	21,017,428	-	-	21,022,428
95 - PYMTS TO JUVENILE JUSTICE																	
6200 - PROFESSIONAL & CONTRACTED SERV	40,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	40,000
TOTAL	40,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	40,000
99 - OTHER INTERGOVT CHARGES																	
6200 - PROFESSIONAL & CONTRACTED SERV	965,919	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	965,919

924

McALLEN INDEPENDENT SCHOOL DISTRICT

Appropriations - General Fund
2022-2023

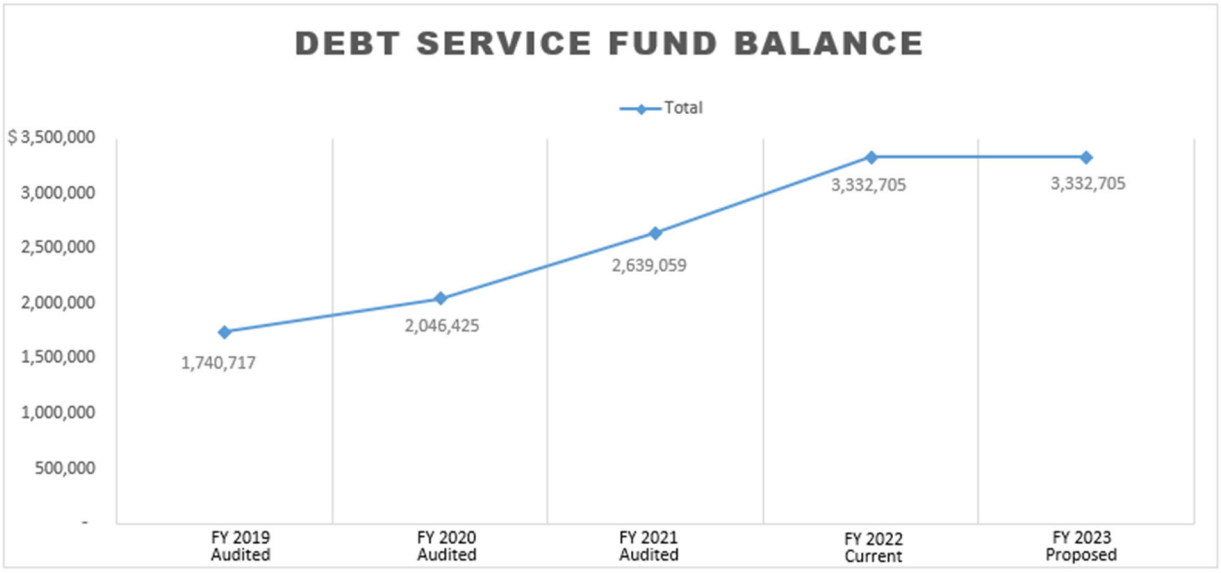
Object	199 General Fund	101 Food Service	155 CCMR	156 Early Ed. Allotment	157 Dyslexia	158 Safety Allotment	162 Career Technical	163 Advanced Learners	164 Bilingual	173 Special Education	183 Athletics	184 Fine Arts	193 State Comp.	194 Esser II Local	195 Advert.	197 Maint. Tax Notes	Total 2022-2023 Budget
99 - OTHER INTERGOVT CHARGES																	
6400 - OTHER OPERATIING COSTS	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL	965,919	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	965,919
TOTAL APPROPRIATIONS	141,048,896	19,375,000	935,906	3,399,985	1,025,517	188,753	7,902,349	414,119	2,420,039	17,636,396	6,382,369	2,313,392	14,038,047	36,882,550	47,300	3,921,396	257,932,014
8900 - Other Uses	12,500,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	12,500,000
TOTAL	12,500,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	12,500,000
TTL APPROPRIATIONS & OTH USES	153,548,896	19,375,000	935,906	3,399,985	1,025,517	188,753	7,902,349	414,119	2,420,039	17,636,396	6,382,369	2,313,392	14,038,047	36,882,550	47,300	3,921,396	270,432,014
PROJECTED FUND BALANCE	-	1,221,336	-	-	-	-	-	-	-	-	-	-	-	(36,882,064)	-	-	(35,660,728)

MCALLEN INDEPENDENT SCHOOL DISTRICT
Budget Summary- General Fund
2022-2023

		Revenues	Appropriations	Fund Balance
GENERAL FUND				
101	FOOD SERVICE	$ 20,596,336	$ 19,375,000	$ 1,221,336
155	COLLEGE CAREER MILITARY READIN	935,906	935,906	-
156	EARLY EDUCATION ALLOTMENT	3,399,985	3,399,985	-
157	DYSLEXIA	1,025,517	1,025,517	-
158	SCHOOL SAFETY ALLOTMENT	188,753	188,753	-
162	CAREER TECHNICAL ED	7,902,349	7,902,349	-
163	ADV LEARNERS/G&T	414,119	414,119	-
164	BILINGUAL/ESL	2,420,039	2,420,039	-
173	SPECIAL EDUCATION	17,636,396	17,636,396	-
183	ATHLETICS	6,382,369	6,382,369	-
184	FINE ARTS	2,313,392	2,313,392	-
193	STATE COMPENSATORY	14,038,047	14,038,047	-
194	ESSER II - LOCAL	486	36,882,550	(36,882,064)
195	ADVERTISING	47,300	47,300	-
197	MAINTENANCE TAX NOTES	3,921,396	3,921,396	-
199	GENERAL FUND	153,548,896	153,548,896	-
		$ 234,771,286	$ 270,432,014	$ (35,660,728)

Debt Service Fund Balance

Fund balance is the difference between assets and liabilities at a given point in time. The change in fund balance is the difference between revenues and expenditures. The Debt Service Fund is a governmental fund that accounts for expenditures for the retirement of bonded debt and interest on bonded debt.



The following is the Computation of Legal Debt Margin that the 2022-2023 budget and future years is based on:

Computation of Legal Debt Margin
(Per $100 of Assessed Valuation)

Debt Limit	$0.5000
Interest & Sinking Rate	0.0767
Balance	$0.4233

MCALLEN INDEPENDENT SCHOOL DISTRICT
Debt Service Fund Forecast
2018-2019 to 2025-2026

Fiscal Year	**Audited FY 2019**	**Audited FY 2020**	**Audited FY 2021**	**Estimated Actuals FY 2022**	**Adopted FY 2023**	**Projected FY 2024**	**Projected FY 2025**	**Projected FY 2026**
Debt Service Tax Rate	0.0000	0.0942	0.0936	0.0884	0.0767	0.0767	0.0767	0.0767
Beginning Fund Balance	**$ 2,646,444**	**$ 1,740,717**	**$ 2,046,425**	**$ 2,639,059**	**$ 3,332,705**	**$ 3,332,705**	**$ 3,332,705**	**$ 3,332,705**
Current Taxes	-	6,879,014	7,067,470	7,024,057	6,558,470	6,479,270	6,205,770	6,211,170
Delinquent Taxes	36,239	74,060	164,556	182,675	171,730	171,730	171,730	171,730
Sub-Total	36,239	6,953,074	7,232,026	7,206,732	6,730,200	6,651,000	6,377,500	6,382,900
EDA Funding	29,554	-	159,435	153,563	-	-	-	-
IFA Funding	5,229	-	-	-	-	-	-	-
Hold Harmless	13	174,103	-	-	-	-	-	-
Prior Year Adjustments	0	-	11,644	45,186	-	-	-	-
Operating Transfer In from General Fund	7,865,415	-	-	-	-	-	-	-
Sub-Total	7,900,211	174,103	171,079	198,749	-	-	-	-
Issuance of Bonds (Bond Refunding)	-	-	40,875,000	-	-	-	-	-
Premium/Discount on Issuance of Bonds	-	-	5,332,904	-	-	-	-	-
	-	-	46,207,904	-	-	-	-	-
Penalties & Interest	18,267	54,925	86,523	88,680	80,000	80,000	80,000	80,000
Interest	126,543	27,597	2,019	2,000	2,000	2,000	2,000	2,000
Royalties	4,293	2,614	2,217	3,385	1,000	1,000	1,000	1,000
Revenues	**$ 8,085,553**	**$ 7,212,313**	**$ 53,701,768**	**$ 7,499,546**	**$ 6,813,200**	**$ 6,734,000**	**$ 6,460,500**	**$ 6,465,900**
Principal	(6,140,000)	(4,320,000)	(4,955,000)	(4,935,000)	(5,175,000)	(5,340,000)	(5,290,000)	(5,475,000)
Interest	(2,849,900)	(2,584,500)	(1,946,583)	(1,865,900)	(1,633,200)	(1,389,000)	(1,165,500)	(985,900)
Sub-Total	(8,989,900)	(6,904,500)	(6,901,583)	(6,800,900)	(6,808,200)	(6,729,000)	(6,455,500)	(6,460,900)
Non-Operating Expenses	-	-	(45,750,006)	-	-	-	-	-
Other Fees	(1,380)	(2,105)	(457,545)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)
Expenses	**$ (8,991,280)**	**$ (6,906,605)**	**$ (53,109,134)**	**$ (6,805,900)**	**$ (6,813,200)**	**$ (6,734,000)**	**$ (6,460,500)**	**$ (6,465,900)**
Net Income / (Loss)	(905,727)	305,708	592,634	693,646	-	-	-	-
Preliminary Ending Fund Balance	**$ 1,740,717**	**$ 2,046,425**	**$ 2,639,059**	**$ 3,332,705**	**$ 3,332,705**	**$ 3,332,705**	**$ 3,332,705**	**$ 3,332,705**

For 2022-2023 and future years, the projected I&S tax rate remains constant at $0.0767 due to a steady bond payment. At the time of tax rate adoption each September, the tax worksheets prepared in conjunction with the Hidalgo County Tax Office will be considered for any reduction in tax rate.

Capital Projects Funds

Capital Projects Funds are used to account for and report financial resources that are restricted, committed, or assigned to expenditure for capital outlays, including the acquisition or construction of capital facilities and other capital assets.

In Fiscal Year 2019-2020, the District issued Maintenance Tax Notes in connection to environmental cleanup, maintenance, repair, rehabilitation, replacement of heating, air conditioning, roofing, electric, or other facility needs of existing school properties. In addition, other sources as identified by the Board of Trustees, have been assigned for special capital projects.

MCALLEN INDEPENDENT SCHOOL DISTRICT
Capital Projects Fund (Funds 6xx)
2018-2019 to 2025-2026

	Audited FY 2019	Audited FY 2020	Audited FY 2021	Estimated Actuals FY 2022	Adopted FY 2023	Projected FY 2024	Projected FY 2025	Projected FY 2026
Beginning Fund Balance	**$ -**	**$ -**	**$ 30,187,039**	**$ 23,254,983**	**$ 9,136,181**	**$ -**	**$ -**	**$ -**
Revenues								
5700 Local	-	129,706	74,342	14,314	1,000,000	-	-	-
7900 Other Sources	-	33,741,907	824,000	38,223	12,500,000	-	-	-
Total Revenues	**$ -**	**$ 33,871,613**	**$ 898,342**	**$ 52,537**	**$ 13,500,000**	**$ -**	**$ -**	**$ -**
Expenditures								
6200 Prof & Contracted Services	-	-	-	15,350	-	-	-	-
6300 Supplies & Materials	-	-	-	-	186,000	-	-	-
6400 Other Operating Costs	-	-	-	-	-	-	-	-
6500 Debt Service	-	261,259		-	-	-	-	-
6600 Capital Outlay	-	3,423,315	7,830,398	14,155,989	22,450,181	-	-	-
8900 Other Uses	-	-	-	-	-	-	-	-
Total Expenditures	**$ -**	**$ 3,684,574**	**$ 7,830,398**	**$ 14,171,339**	**$ 22,636,181**	**$ -**	**$ -**	**$ -**
Net Income / (Loss)	-	30,187,039	(6,932,056)	(14,118,802)	(9,136,181)	-	-	-
Ending Fund Balance	**$ -**	**$ 30,187,039**	**$ 23,254,983**	**$ 9,136,181**	**$ -**	**$ -**	**$ -**	$ -

MCALLEN INDEPENDENT SCHOOL DISTRICT

Revenues - Debt Service and Capital Projects Funds
2022-2023

Object	599 Debt Service	619 MISD MTN-2020	620 MTN-2020	697 UTRGV Collegiate Academy	698 MISD Capital Projects	Total 2022-2023 Budget
5711 TAXES-CURRENT YEAR LEVY	6,558,470	-	-	-	-	6,558,470
5712 TAXES-PRIOR YEARS	171,730	-	-	-	-	171,730
5719 PENALTIES/INT & OTHER TAXES	80,000	-	-	-	-	80,000
5742 INTEREST	2,000	-	-	-	-	2,000
5748 MARKET VALUE GAIN/LOSS	-	-	-	-	-	-
5749 OTHER REVENUES	1,000	-	-	-	-	1,000
5769 MISCELLANEOUS REVENUES	-	-	-	-	1,000,000	1,000,000
5812 FOUNDATION ENTITLEMENTS	-	-	-	-	-	-
5829 REV BY TEXAS EDUCATION AGENCY	-	-	-	-	-	-
TOTAL REVENUES	6,813,200	-	-	-	1,000,000	7,813,200
Other Resources						
7911 ISSUANCE OF BONDS	-	-	-	-	-	-
7912 SALE-REAL & PERSONAL PROPERTY	-	-	-	-	-	-
7914 LOAN PROCEEDS	-	-	-	-	-	-
7915 OPERATING TRANSFERS IN	-	-	-	12,500,000	-	12,500,000
7916 PREM/DISC ON ISSUANCE OF BONDS	-	-	-	-	-	-
7955 INTEREST	-	-	-	-	-	-
TOTAL OTHER RESOURCES	-	-	-	12,500,000	-	12,500,000
TTL REVENUES & OTH SOURCES	6,813,200	-	-	12,500,000	1,000,000	20,313,200

Appropriations - Debt Service and Capital Project Funds
2022-2023

Object	599 Debt Service	619 MISD MTN-2020	620 MTN-2020	697 UTRGV Collegiate Academy	698 MISD Capital Projects	Total 2022-2023 Budget
51 - FACILITIES MAINT & OPERATIONS						
6200 - PROFESSIONAL & CONTRACTED SERV	-	-	-	-	-	-
6300 - SUPPLIES & MATERIALS	-	-	186,000	-	-	186,000
6600 - CAPITAL OUTLAY	-	-	170,000	-	-	170,000
TOTAL	-	-	356,000	-	-	356,000
71 - DEBT SERVICE						
6500 - DEBT SERVICE	6,813,200	-	-	-	-	6,813,200
TOTAL	6,813,200	-	-	-	-	6,813,200
81 - FACILITIES ACQ & CONSTRUCTION						
6600 - CAPITAL OUTLAY	-	151,676	7,949,202	12,500,000	1,679,303	22,280,181
TOTAL	-	151,676	7,949,202	12,500,000	1,679,303	22,280,181
TOTAL APPROPRIATIONS	6,813,200	151,676	8,305,202	12,500,000	1,679,303	29,449,381
8900 - Other Uses	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-
TTL APPROPRIATIONS & OTH USES	6,813,200	151,676	8,305,202	12,500,000	1,679,303	29,449,381
PROJECTED FUND BALANCE	-	(151,676)	(8,305,202)	-	(679,303)	(9,136,181)

Special Revenue Funds

Special Revenue Funds are used to account for resources restricted to specific purposes by a grantor or for purposes committed by the Board of Trustees. Federal financial assistance often is accounted for in a Special Revenue Fund. In most Special Revenue funds, unused balances are recorded as unearned revenue and carried forward to the succeeding fiscal year, provided the amount carried forward is within the limits established by the grantor. In some cases, the unused balances are returned to the grantor at the close of specified project periods. The District budgets for Special Revenue Funds as grants are awarded by the various grantors. The District uses project accounting for them in order to maintain integrity for the various sources of funds. These funds utilize the modified accrual basis of accounting and budgeting. Included in the District's Special Revenue Funds are:

211 ESEA, Title I, Part A, Improving Basic Programs - This code is used to account for funds to help LEAs improve teaching and learning in high-poverty schools in particular for children failing, or most at-risk of failing, to meet challenging State academic standards. (To provide opportunities for children to acquire the knowledge and skills to meet the state's student performance standards.

212 ESEA, Title I, Part C, Education of Migratory Children - This code is used to account for funds granted for programs benefiting children of migrant agriculture or agriculture-related workers and children of migrant fishermen.

224 IDEA - Part B, Formula - This code is used to account for funds granted to operate educational programs for children with disabilities. This code includes capacity building and improvement (sliver) subgrants.

225 IDEA - Part B, Preschool – This code is to be used to account for funds granted for preschool children with disabilities.

244 Carl D. Perkins - Basic Formula Grant - This code is used to account for funds granted to provide career and technical education (CTE) and to develop new and/or improve existing CTE programs for paid and unpaid employment. Full participation in the basic grant is from members of special populations:

- at a limited number of campuses (sites)
- in a limited number of program areas.

255 ESEA, Title II, Part A, Teacher and Principal Training and Recruiting- This code is used to account for funds used:

- to improve student academic achievement by:
  - improving teacher and principal quality
  - increasing the number of highly qualified teachers, principals, and assistant principals in schools
- to hold districts accountable for improving student academic achievement.

263 Title III, Part A, English Language Acquisition and Language Enhancement LEP - This code is used to account for funds granted to improve the education of children with limited English proficiency by helping the children learn English and meet challenging academic achievement standards.

272 Medicaid Administrative Claiming Program – MAC – This code is used to account for funds allocated to districts to reimburse eligible administrative costs for activities that implement the Medicaid state plan. Expenditures attributed to the required matching amount are recorded in the general fund and accounted for using a local option account code, as needed, for local monitoring of compliance with federal matching requirements.

274 GEAR UP - This code is used to account for funds granted through Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP). The funds are used to provide services and support to school districts with a high percentage of low-income minority students to ensure that students:

- are academically prepared for higher education,
- graduate from high school, and
- have access to higher education opportunities

279 Texas COVID Learning Acceleration Supports (TCLAS) – State Elementary and Secondary School Emergency Relief Fund III (ESSER III) of the American Rescue Plan (ARP) Act of 2021 - This code is used to account for funds granted for targeted supports to assist LEAs to accelerate student learning due to learning loss caused by the COVID-19 pandemic. Examples of how the funds may be used to assist LEAs in learning acceleration and support areas are:

- strategic planning and performance management
- instructional materials that are rigorous and high-quality that make up ground and master grade level Texas Essential Knowledge and Skills (TEKS)
- teacher pipelines that support teachers to deliver excellence in the classroom
- expanded instructional time for students in most need, including expanding instructional time in the summer and with targeted tutoring
- innovative school models to incorporate all of the learning acceleration framework

282 Elementary and Secondary School Emergency Relief Fund III (ESSER III) of the American Rescue Plan Act of 2021 - This code is used to account for federal stimulus ESSER III funds granted to LEAs through the American Rescue Plan Act to address learning loss and the disproportionate impact of the coronavirus on certain student subgroups, identify and provide homeless children and youth with services in light of challenges of the coronavirus, and enable homeless children and youth to attend school and participate fully in school activities.

289 Federally Funded Special Revenue Funds – This code is used to account for federally funded special revenue funds that have not been specified above. Any locally defined codes that are used at the local option are converted to code 289 for PEIMS reporting.

- 288-0 – Summer School LEP Students in K1
- 288-Z – STOP School Violence-Family Treatment Program
- 289 – Title IV, Part A – Sub Part 1

315 Shared Services Arrangements -IDEA- Part B, Discretionary- The fiscal agent of a shared services arrangement uses this code to account for funds used to support a regional education service center basic special education component and also:

- Targeted support to LEAs
- Regional Day School Programs for the Deaf
- Private residential placements

- Priority projects
- Other emerging needs

340 Shared Services Arrangements - IDEA, Part C, Early Intervention (Deaf) - The fiscal agent of a shared services arrangement uses this code to account for funds granted for programs in local regional day schools for the deaf and the Texas School for the Deaf. The programs use certified and trained teachers to provide direct services to hearing impaired infants and toddlers, ages birth through two years.

397 Advanced Placement Incentives - This code is used to account for funds awarded to your district under the Texas Advanced Placement Incentive Program.

410 State Textbook Fund - This code is used to account for funds awarded to your district under the instructional materials allotment. Instructional materials include textbooks, software, supplemental materials, DVDs and CD-ROMs, online services, open-source materials, and other means of conveying information electronically.

429 State Funded Special Revenue Funds - This code is used to account for state-funded special revenue funds not listed above. Any locally defined codes that are used at the local option must be converted to code 429 for PEIMS reporting.

- 429-M- CTE Certification Exam Reimbursements

435 Shared Services Arrangements - Regional Day School for the Deaf - This code is used by the fiscal agent of a shared services arrangement to account for funds allocated for the staff and activities of the regional day school program for the Deaf (RDSPD). These funds must not be used to pay salaries of teachers who have a teaching assignment other than deaf students in the RDSPD or teach American Sign Language as a foreign language at the junior high or high school level, as this is a course for regular education credit.

461 Campus Activity Funds - This code is used to account for transactions related to a principal's activity fund if the moneys generated are not subject to recall into the general fund by the school district's board of trustees. Gross revenues from sales are recorded in revenue object code 5755. The cost of goods sold is recorded in function code 36, using the appropriate expenditure object code.

Enterprise Funds

Enterprise Fund classification is used, at the option of the school district, to account for enterprise funds not defined elsewhere.

713 Safe and Secure Fund - The following campuses currently operate a Safe & Secure Program:

111 - Milam Elementary School
120 - Rayburn Elementary School
122 - Garza Elementary School
124 - Gonzalez Elementary School
126 - Castaneda Elementary School
127 - Sanchez Elementary School
128 - Perez Elementary School
129 - Hendricks Elementary School

716 Tuition Based Pre-K Fund - provides a focused, full day, Pre-K program where children have hands-on purposeful opportunities for learning. Available at all elementary campuses based on seat availability.

Internal Service Funds

Internal Service Funds are used to account for the financing of goods or services provided by one organizational unit of the District to other organizational units of the District on a cost reimbursement basis. Internal service funds, also, are used to account for the operations of self-funded health insurance, unemployment claims and worker's compensation. Internal Service Funds maintained by the District are as follows:

753 Health Insurance Fund

771 Unemployment Compensation Fund

772 Worker's Compensation Fund

MCALLEN INDEPENDENT SCHOOL DISTRICT
Budget Summary - Special and Propietary Funds
2022-2023

		Revenues	Appropriation	Fund Balance
SPECIAL REVENUES				
211	TTL I PRT A IMPROV BASIC PGMS	$ 11,436,623	$ 11,436,623	$ -
212	TTL I PART C-MIGRANT	668,971	668,971	-
224	IDEA-PART B FORMULA	4,408,217	4,408,217	-
225	IDEA-PART B PRESCHOOL	86,162	86,162	-
244	VOCATIONAL ED BASIC GRANT	405,866	405,866	-
255	TTL II PART A SUPPORT EFF INST	1,697,046	1,697,046	-
263	TTL III PART A ELA	1,126,083	1,126,083	-
272	MEDICAID ADM CLAIMING PROGRAM	50,000	50,000	-
274	GEAR UP PROJECT	343,607	343,607	-
279	TCLAS-ESSER III	428,006	428,006	-
282	ESSER III-ARP	57,345,109	57,345,109	-
288	FEDERALLY FUNDED SPECIAL REVENUE	148,676	148,676	-
289	TITLE IV, PART A-SUBPART I	983,714	983,714	-
315	SSA DISCRETIONARY	177,906	177,906	-
340	SSA EARLY INTERVENTION DEAF	1,487	1,487	-
397	AP/BACCALAUREATE INCENTIVES	36,939	36,939	-
410	INST MATERIAL ALLOTMENT	51,756	51,756	-
429	ST FUNDED SPECIAL REVENUE	1,688	1,688	-
435	REG DAY SCHOOL FOR THE DEAF	4,262,379	4,262,379	-
461	CAMPUS ACTIVITY FUNDS	900,000	900,000	-
	Sub-Total Special Revenue Funds	$ 84,560,235	$ 84,560,235	$ -
PROPRIETARY FUNDS				
713	PROJECT SAFE AND SECURE	312,500	312,500	-
716	PRE-K TUITION BASED	98,958	98,958	-
	Sub-Total Proprietary Funds	$ 411,458	$ 411,458	$ -
	Grand Total	$ 84,971,693	$ 84,971,693	$ -

Informational Section

937

Assessed Values

Appraisal districts follow the provisions of the Texas Property Tax Code. The Tax Code requires that, unless otherwise provided, that all taxable property be appraised at its market value as of January 1st of that tax year. Pursuant to Section 23.06(e) of the Texas Property Code (PTC), the Hidalgo County Appraisal District (HCAD) provides the District with Preliminary Certified Assessed Values on April 30th and pursuant to Section 26.01(a) of the PTC Certified Assessed Values on July 25th of the same year. The 2022 HCAD Preliminary Certified Assessed Values were used to calculate and project 2022-2023 tax collections. For fiscal year 2023-2024 and beyond, the District estimated those values to remain conservative at 4% increase.

The Texas Comptroller releases Preliminary Values in January and Final Values in July which are used to calculate state funding. For fiscal year 2023-2024 and beyond, a 4% increase was included to be in line with the HCAD forecasted values.

	FY 2019	FY 2020	FY 2021	FY 2022	Preliminary FY 2023	Projected FY 2024	Projected FY 2025	Projected FY 2026
HCAD Certified Value	$7,382,229,025	$7,810,461,629	$8,110,766,130	$8,549,360,079	$8,981,184,680	$ 9,340,432,067.20	$9,714,049,350	$10,102,611,324
Average HCAD Change From Prior Year		5.80%	3.84%	5.41%	5.05%	4.00%	4.00%	4.00%
Texas Comptroller Value	$7,006,204,393	$7,544,931,198	$7,793,865,257	$8,250,159,288	$8,601,815,463	$ 8,945,888,082	$9,303,723,605	$ 9,675,872,549

Property Tax Rates and Collections

The Maintenance and Operation Tax Rate provides the revenues needed to cover day-to-day operations such as salaries and utilities. The Interest and Sinking Tax Rate provides the revenues that are used to pay the principal and interest of bonded debt. The Total Tax Rate is the sum of both maintenance and operations and interest and sinking tax rates.

	Audited			Current Budget	Proposed Budget
	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Levy	$ 83,161,525.49	$ 87,450,096.00	$ 88,388,374.05	$ 90,489,805.41	$ 89,430,804.00
Tax Rate:					
Maintenance & Operations	1.1550	1.0586	1.0450	1.0486	1.0197
Interest & Sinking	0.00	0.0942	0.0936	0.0884	0.0767
Total Tax Rate	1.1550	1.1528	1.1386	1.1370	1.0964
Current Collections:					
Maintenance & Operations	80,659,668.00	77,304,936.00	78,904,975.00	83,338,561.00	82,872,334.00
Interest & Sinking	0.00	6,879,014.00	7,067,470.00	7,024,057.00	6,558,470.00
Total Tax Collections	$ 80,659,668.00	$ 84,183,950.00	$ 85,972,445.00	$ 90,362,618.00	$ 89,430,804.00

Maintenance & Operations Tax Limitation

In 2019-2020, State Legislation compressed the tier I M&O tax rate to $0.93 (previously $1.00) reducing the M&O rate to $1.0586. Due to the decreased M&O rate, the District adopted an I&S rate of $0.0942 to meet bond obligations for the fiscal year for a total tax rate of $1.1528. In 2020-2021, the tier I M&O tax rate was compressed to $0.9164 reducing the M&O tax rate to $1.0450 and the I&S tax rate decreased to $0.0936. In 2021-2022, the District elected the Declared Disaster Tax Rate Option allowing the District to increase the M&O tax rate from $1.0450 to $1.0486 as the I&S tax rate decreased from $.0936 to $.0884 for a total tax rate of $1.1370. For 2022-2023, the tier I M&O tax rate was compressed to $0.8911 reducing the M&O tax rate to $1.0197 and the I&S tax rate decreased to $0.0767.

Computation of Legal M&O Margin
(Per $100 of Assessed Valuation)

M&O Limit	$1.0641
Maintenance & Operations Rate	1.0197
Balance	$0.0444

Tax Supported Debt Limitation

Sec. 45.0031. LIMITATION ON ISSUANCE OF TAX-SUPPORTED BONDS. (a) Before issuing bonds described by Section 45.001, a school district must demonstrate to the attorney general under Subsection (b) or (c) that, with respect to the proposed issuance, the district has a projected ability to pay the principal of and interest on the proposed bonds and all previously issued bonds other than bonds authorized to be issued at an election held on or before April 1, 1991, and issued before September 1, 1992, from a tax at a rate not to exceed $0.50 per $100 of valuation.

Computation of Legal Debt Margin
(Per $100 of Assessed Valuation)

Debt Limit	$0.5000
Interest & Sinking Rate	0.0767
Balance	$0.4233

Tax Rate History

The following is the Total Tax Rate History for the District:

Budget Year	Tax Year	Maintenance & Operations	Interest & Sinking	Total Tax Rate
2006-2007	2006	1.3700	0.1080	1.4780
2007-2008	2007	1.0400	0.1050	1.1450
2008-2009	2008	1.0400	0.1050	1.1450
2009-2010	2009	1.0400	0.1250	1.1650
2010-2011	2010	1.0400	0.1250	1.1650
2011-2012	2011	1.1650	0.0000	1.1650
2012-2013	2012	1.0400	0.1250	1.1650
2013-2014	2013	1.0400	0.1250	1.1650
2014-2015	2014	1.0400	0.1250	1.1650
2015-2016	2015	1.0400	0.1150	1.1550
2016-2017	2016	1.1550	0.0000	1.1550
2017-2018	2017	1.1550	0.0000	1.1550
2018-2019	2018	1.1550	0.0000	1.1550
2019-2020	2019	1.0586	0.0942	1.1528
2020-2021	2020	1.0450	0.0936	1.1386
2021-2022	2021	1.0486	0.0884	1.1370
Proposed* 2022-2023	2022	1.0197	0.0767	1.0964

**Every penny generates approximately $828,966*

Effect of Tax Levy on Single Family Residence

Tax Code Section 11.13(b) requires school districts to offer a $25,000 exemption on residence homesteads to reduce the property's appraised value. For persons age 65 or older or disabled, Tax Code Section 11.13(c) requires school districts to offer an additional $10,000 residence homestead exemption. On May 7, 2022, Texas voters passed Proposition 2 which increased the residence homestead exemption from $25,000 to $40,000 beginning with the 2022 tax year, 2022-2023 fiscal year. The example below shows the taxes rate's effect on the average taxpayer per $100,000 residence value:

	Actuals			Current Budget	Proposed Budget
	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Residence Value	$ 100,000	$ 100,000	$ 100,000	$ 100,000	$ 100,000
Less: Homestead Exemption	$ (25,000)	$ (25,000)	$ (25,000)	$ (25,000)	$ (40,000)
Adjusted Taxable Value	$ 75,000	$ 75,000	$ 75,000	$ 75,000	$ 60,000
Rate Per $100 Value	$ 1.1550	$ 1.1528	$ 1.1386	$ 1.1370	$ 1.0964
Taxes Due on $100,000 Value	$ 866.25	$ 864.60	$ 853.95	$ 852.75	$ 657.84

Principal Property Taxpayers

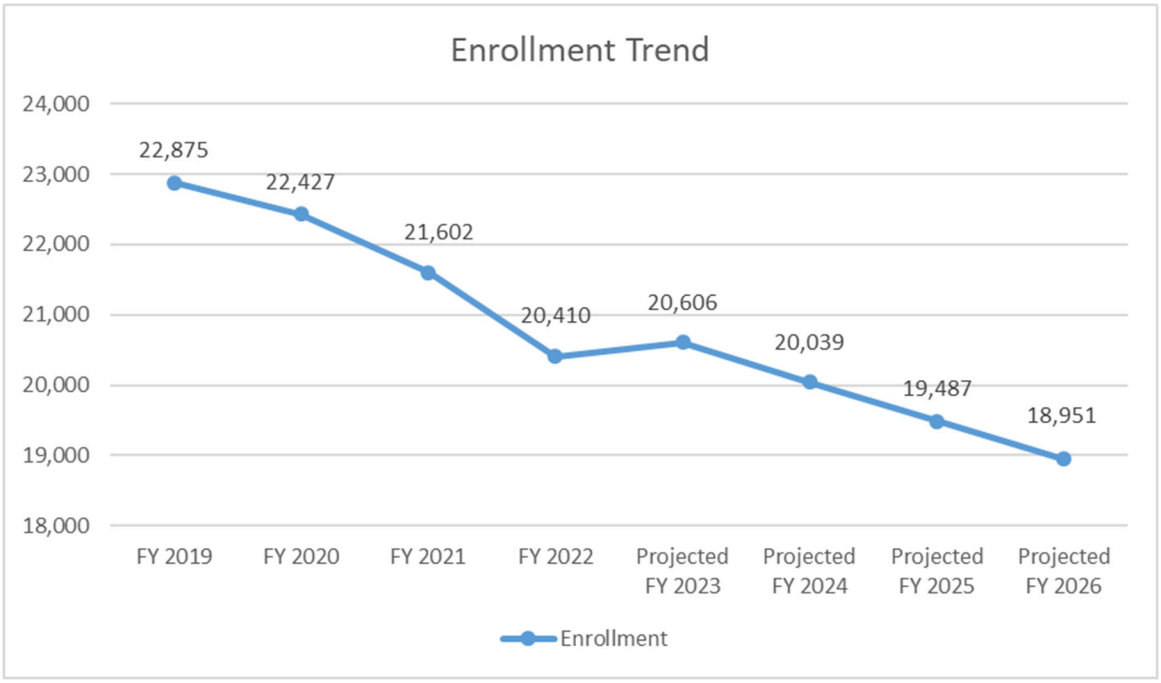
	Taxpayer	Tax Year 2020 Assessed Valuation	Percentage Total Assessed Valuation
1	Simon Property Group-McAllen NO 2	$ 170,341,039	2.14%
2	AEP Texas Inc-27th	54,128,260	0.68%
3	La Plaza Mall LLC	51,211,149	0.64%
4	Rio Grande Regional Hospital	51,172,007	0.64%
5	Universal Health Services	44,918,189	0.56%
6	Palm Crossing Town Center LLC	39,273,606	0.49%
7	Shops at 29 LTD	26,847,914	0.34%
8	Weingarten Realty Investors	24,406,068	0.31%
9	H E Butt Grocery Company	24,266,616	0.30%
10	GE Engine Services-McAllen LP	22,306,311	0.28%
11	Dillard Texas OPG Ltd Prtnrshp	20,438,190	0.26%
12	McAllen Medical Center	20,193,694	0.25%
13	Wal-Mart Real Estate Business Trust	19,656,617	0.25%
14	Jim & Mary Kay Moffitt Family LTD	17,835,903	0.22%
15	Calmac Suites LTD	17,600,000	0.22%
16	Texas State Bank	17,053,770	0.21%
17	Palms Crossing II LLC	16,956,446	0.21%
18	Coca-Cola Southwest Beverage LLC	16,069,317	0.20%
19	DHR Real Estate Management LLC	15,828,367	0.20%
20	Macy's Mall Real Estate LLC	15,653,327	0.20%
		$ 686,156,790	8.60%

Source:
Certified Totals from Hidalgo County Appraisal District
Top Taxpayer 2020 & 2011

ACFR
Table L-13
6/30/21

Student Enrollment

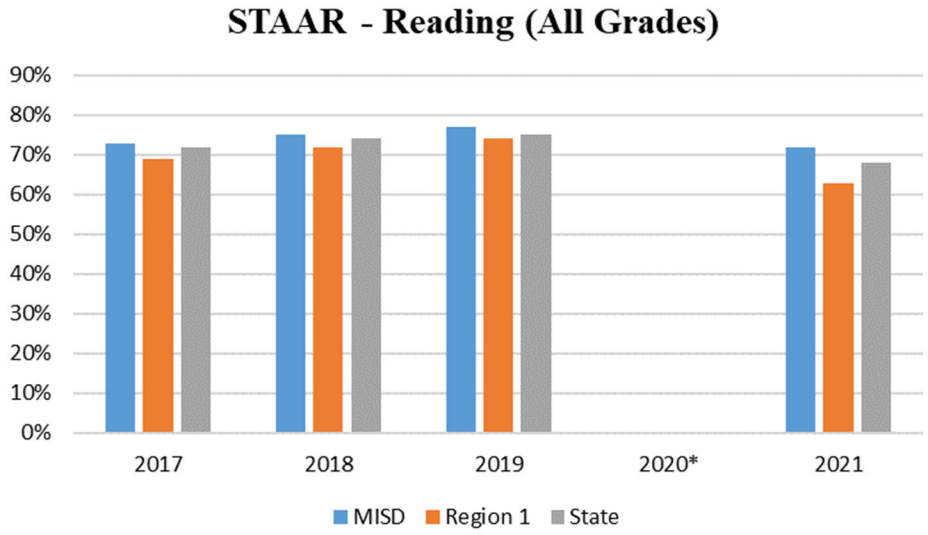
Student enrollment trends are reviewed on a six weeks basis. Enrollment projections for fiscal year 2022-2023 were based on a 5-year analysis of the average percentage decrease in enrollment; increase in second semester 2021-2022 enrollment after PEIMS Fall Snapshot; as well as the residual effect of the COVID-19 Pandemic. These factors were considered when projecting enrollment beyond fiscal year 2022-2023.



Performance Measures

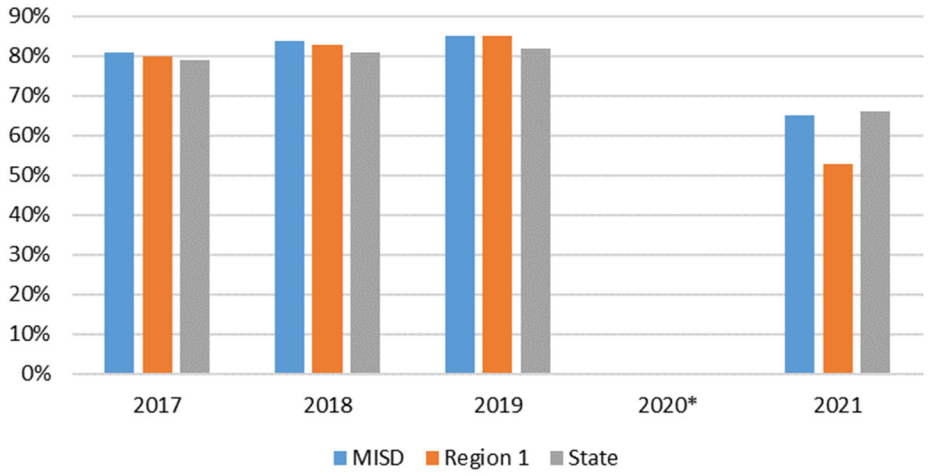
In the 2011-2012 school year, State of Texas Assessments of Academic Readiness (STAAR) replaced Texas Assessment of Knowledge and Skills (TAKS) as the new assessment program of Texas. The Texas Education Agency (TEA) publishes the Texas Academic Performance Report (TAPR) in December for prior year assessments. These reports compare District averages with those of the Region and State. Below are graphs comparing the results of the five subjects tested:

*For the 2019-2020 school year, the STAAR test was cancelled due to the COVID-19 Pandemic.



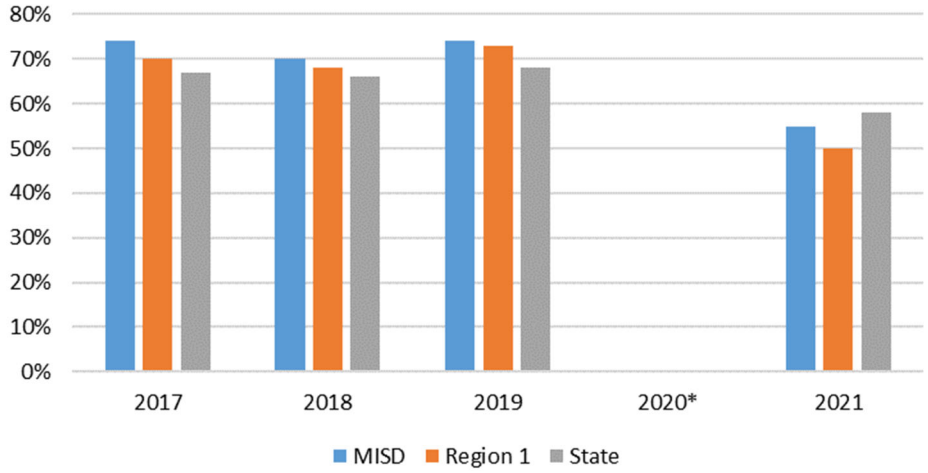
	2017	2018	2019	2020*	2021
MISD	73%	75%	77%	N/A	72%
Region 1	69%	72%	74%	N/A	63%
State	72%	74%	75%	N/A	68%

STAAR - Math (All Grades)



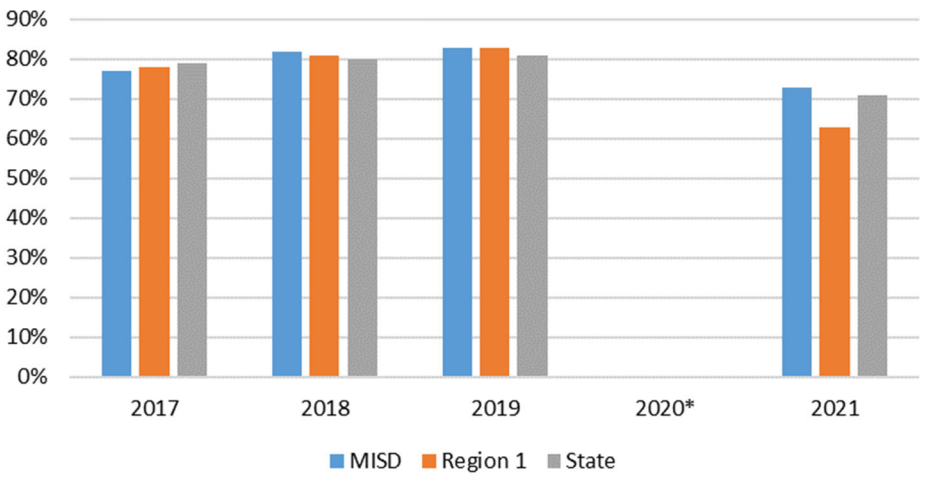
	2017	2018	2019	2020*	2021
MISD	81%	84%	85%	N/A	65%
Region 1	80%	83%	85%	N/A	53%
State	79%	81%	82%	N/A	66%

STAAR - Writing (All Grades)



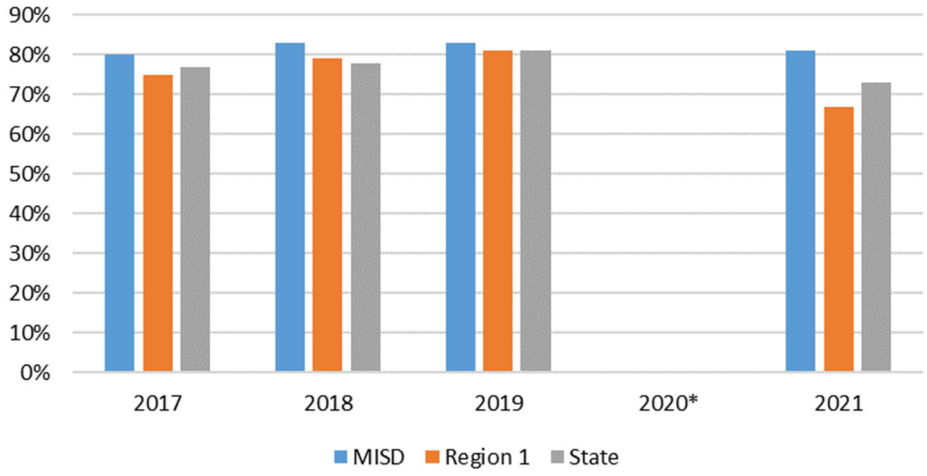
	2017	2018	2019	2020*	2021
MISD	74%	70%	74%	N/A	55%
Region 1	70%	68%	73%	N/A	50%
State	67%	66%	68%	N/A	58%

STAAR - Science (All Grades)



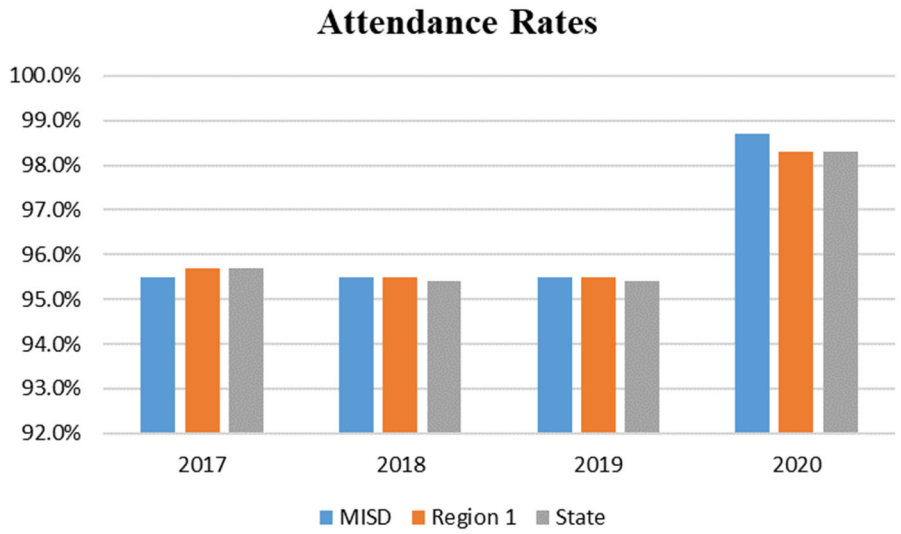
	2017	2018	2019	2020*	2021
MISD	77%	82%	83%	N/A	73%
Region 1	78%	81%	83%	N/A	63%
State	79%	80%	81%	N/A	71%

STAAR - Social Studies (All Grades)



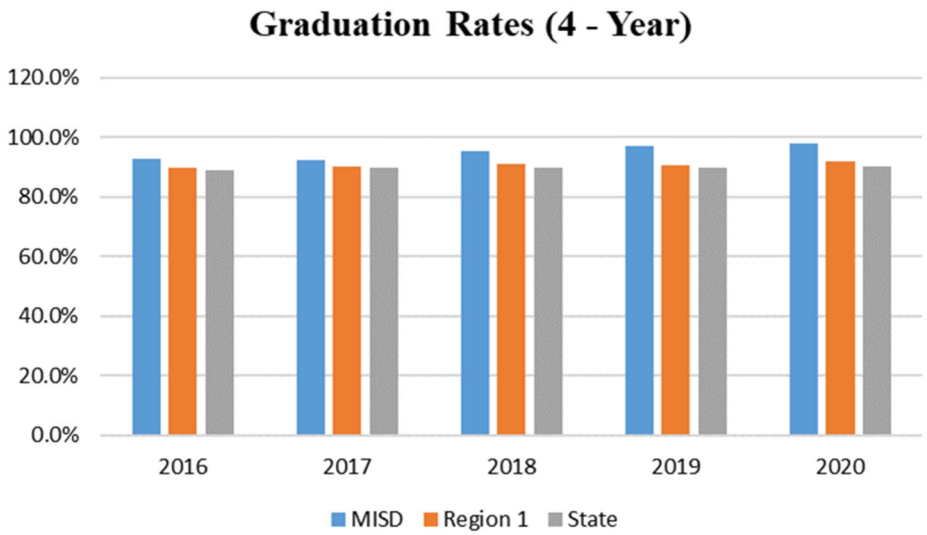
	2017	2018	2019	2020*	2021
MISD	80%	83%	83%	N/A	81%
Region 1	75%	79%	81%	N/A	67%
State	77%	78%	81%	N/A	73%

The following rates are District indicators and their alignment to the Goals and Objectives implemented by the District:



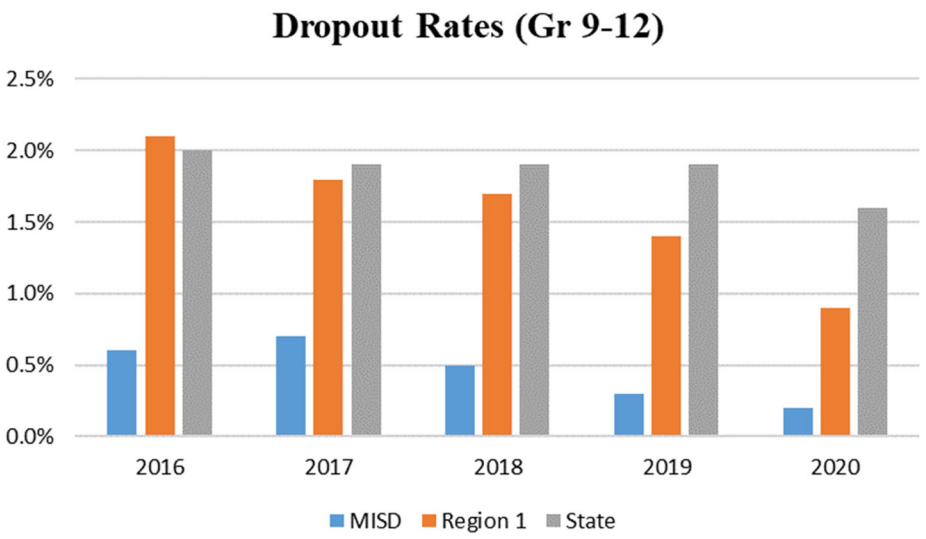
	2017	2018	2019	2020	2021*	2022**
MISD	95.5%	95.5%	95.5%	98.7%	97.0%	91.8%
Region 1	95.7%	95.5%	95.5%	98.3%	TBA	TBA
State	95.7%	95.4%	95.4%	98.3%	TBA	TBA

***2020-21 Texas Academic Performance Report (TAPR) will be published in December 2022**
****2021-22 MISD Rate is based on 5th Six Weeks Average, Texas Academic Performance Report (TAPR) will be published in December 2023**



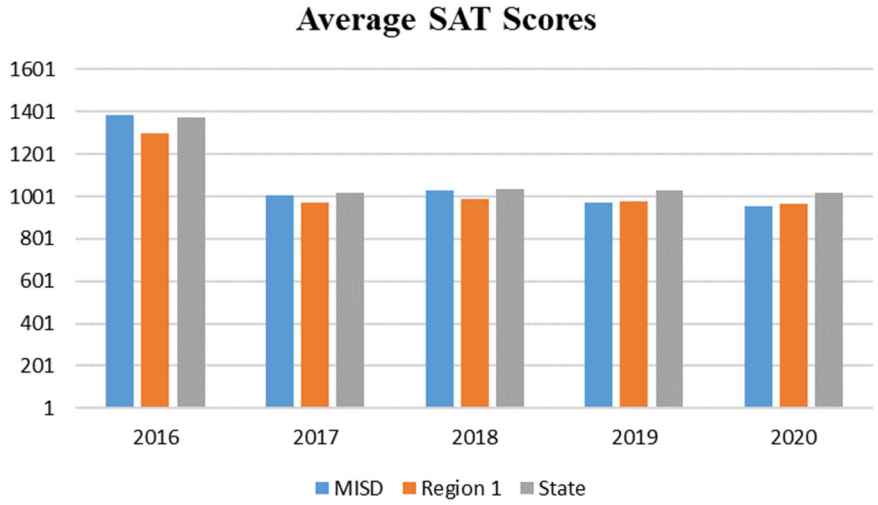
	2016	2017	2018	2019	2020
MISD	92.8%	92.3%	95.4%	97.3%	98.1%
Region 1	89.7%	90.3%	91.2%	90.7%	92.1%
State	89.1%	89.7%	90.0%	90.0%	90.3%

2020-21 Graduation Rates will be published in the Texas Academic Performance Report (TAPR) in December 2022

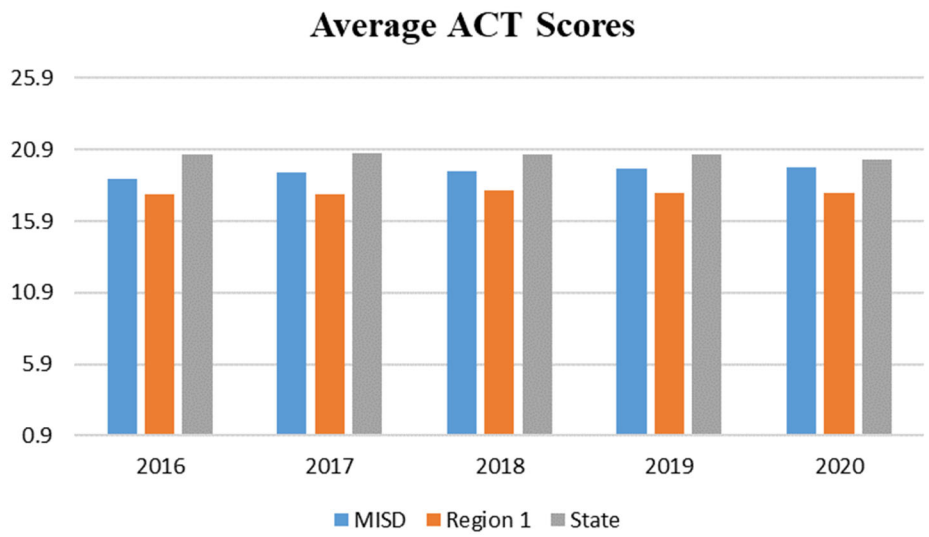


	2016	2017	2018	2019	2020
MISD	0.6%	0.7%	0.5%	0.3%	0.2%
Region 1	2.1%	1.8%	1.7%	1.4%	0.9%
State	2.0%	1.9%	1.9%	1.9%	1.6%

2020-21 Dropout Rates will be published in the Texas Academic Performance Report (TAPR) in December 2022



	2016	2017	2018	2019	2020
MISD	1386	1005	1028	975	958
Region 1	1302	970	987	979	964
State	1375	1019	1036	1027	1019



	2016	2017	2018	2019	2020
MISD	18.9	19.3	19.4	19.6	19.7
Region 1	17.8	17.8	18.1	17.9	17.9
State	20.6	20.7	20.6	20.6	20.2

Percentage of free or reduced-price meals

The Food Service Department transitioned from Special Assistance Provision 2 to Community Eligibility Provision 4 (CEP) during the 2013-2014 school year. The transition increased the monthly free meal reimbursements from the Texas Department of Agriculture due to a rise in meal participation.

	CEP FY 2018	CEP FY 2019	CEP FY 2020	CEP FY 2021	CEP FY 2022
Free	82.10%	82.45%	87.12%	89.10%	90.16%
Reduced	-	-	-	-	-
Paid	17.90%	17.55%	12.88%	10.90%	9.84%

Section 104(a) of the Healthy, Hunger-Free Kids Act of 2010 (Act) amended section 11(a)(1) of the Richard B. Russell National School Lunch Act to provide an alternative that eliminates the need for household applications for free and reduced-price meals in high-poverty Local Education Agencies (LEA) and schools. This alternative, which is now part of the National School Lunch Program (NSLP) and School Breakfast Program (SBP), is referred to as the Community Eligibility Provision (CEP).

Debt Service Bond Amortization Schedule

Year	Principal	Interest	Sub-Total	Other Fees	Total Payment
2022-2023	5,175,000	1,633,200	6,808,200	5,000	6,813,200
2023-2024	5,340,000	1,389,000	6,729,000	5,000	6,734,000
2024-2025	5,290,000	1,165,500	6,455,500	5,000	6,460,500
2025-2026	5,475,000	985,900	6,460,900	5,000	6,465,900
2026-2027	5,695,000	766,900	6,461,900	5,000	6,466,900
2027-2028	5,885,000	584,600	6,469,600	5,000	6,474,600
2028-2029	6,080,000	396,150	6,476,150	5,000	6,481,150
2029-2030	6,280,000	201,300	6,481,300	5,000	6,486,300
Total Debt	**$45,220,000**	**$7,122,550**	**$52,342,550**	**$40,000**	**$52,382,550**

The Debt Service Bond Amortization Schedule above includes the Unlimited Tax Refunding Bonds Series 2020A and 2020B issued on October 15, 2020 in fiscal year 2020-2021.

Bond Ratings

During fiscal year 2021-2022, the District's bond ratings remained the same for Standard & Poor's and Moody's Investors Service.

BOND RATING

Standard & Poor's Rating "AA-"

Moody's Rating "Aa2"

****

BY VIRTUE OF THE PERMANENT SCHOOL FUNDS OF TEXAS:

The District's Unlimited Tax Refunding Bonds Series 2020A and 2020B Series

"Aaa" Rating

The District's Unlimited Tax Refunding Bond Series 2013A and Taxable Series 2013B

"Aaa" and "AAA" Rating

MCALLEN INDEPENDENT SCHOOL DISTRICT
ISSUE BY ISSUE OUTSTANDING DEBT OBLIGATIONS

Debt Obligations	Funding Source	Original Date of Issue	Maturity Date	Interest Rate Payable	Purpose	Principal Amount of Original Issue	Outstanding Balance as of 06/30/2021	*Outstanding Total Debt Per Capita	Spent
Series 2013A Unlimited Tax Refunding Bonds	Interest and Sinking	6/4/2013	2/15/2030	2.00% - 5.00%	Bond Refunding	$ 64,465,000	$ 7,645,000	$ 51.16	X
Series 2013B Unlimited Tax Refunding Bonds	Interest and Sinking	6/4/2013	2/15/2030	2.00% - 4.00%	Bond Refunding	$ 17,355,000	$ 2,070,000	$ 13.85	X
Series 2020A Unlimited Tax Refunding Bonds	Interest and Sinking	10/30/2020	2/15/2030	2.00% - 5.00%	Bond Refunding	$ 8,075,000	$ 8,005,000	$ 53.56	X
Series 2020B Unlimited Tax Refunding Bonds	Interest and Sinking	10/30/2020	2/15/2030	3.00% - 4.00%	Bond Refunding	$ 32,800,000	$ 32,435,000	$ 217.03	X
Subtotal For Interest and Sinking						**$ 122,695,000**	**$ 50,155,000**		
Series 2011 Maintenance Tax Qualified School Construction Notes	Maintenance and Operations	12/20/2011	2/15/2026	4.66%	Energy Conservation Projects	$ 16,485,000	$ 16,485,000 Funds required by ordinance to be set aside as a restricted asset for maturity in 2026	$ 110.31	X
Series 2012 Maintenance Tax Qualified School Construction Notes	Maintenance and Operations	6/15/2012	8/15/2026	4.24%	Roof Replacement at Alvarez Elementary	$ 901,000	$ 391,000	$ 2.62	X
Series 2020 Maintenance Tax Qualified School Construction Notes	Maintenance and Operations	2/11/2020	2/15/2039	4.00 % - 5.00%	Facilities Maintenance	$ 24,010,000	$ 23,225,000	$ 155.41	X
Subtotal For Maintenance and Operations						**$ 41,396,000**	**$ 40,101,000**		
Grand Total						**$ 164,091,000**	**$ 90,256,000**	**$ 603.94**	

*Outstanding Total Debt Per Capita calculated as follows:
Outstanding Balance divided by Population 149,447
7,645,000/149,447 = 51.16

Definition of Overlapping Debt

Overlapping governments are those that coincide, at least in part, with the geographic boundaries of the District. This schedule estimates the portion of the outstanding debt of those overlapping governments that is borne by the residents and the businesses of the District. This process recognizes that, when considering the district's ability to issue and repay long-term debt, the entire debt burden borne by the residents and businesses should be taken into account. However, this does not imply that every taxpayer is a resident, and therefore responsible for repaying the debt, of each overlapping government.

Political Subdivision	*Gross Debt Amounts	As of	Applicable to MISD	Overlapping Debt
DIRECT DEBT				
McAllen ISD - Bonds	$ 56,294,094	6/30/2021	100.00%	$ 56,294,094
McAllen ISD - Capital Leases	5,048,566	6/30/2021	100.00%	5,048,566
McAllen ISD - Maintenance Tax Notes	44,748,567	6/30/2021	100.00%	44,748,567
	$ 106,091,227			$ 106,091,227
OVERLAPPING DEBT				
Edinburg, City Of	$ 92,105,000	6/30/2021	0.52%	$ 478,946
Hidalgo Co.	366,620,000	6/30/2021	20.90%	76,623,580
Hidalgo Co DD #1	172,350,000	6/30/2021	21.75%	37,486,125
McAllen, City Of	100,815,000	6/30/2021	77.85%	78,484,477
South Texas College	128,814,693	6/30/2021	19.58%	25,221,917
Total Net Overlapping Debt				218,295,045
Total Direct and Overlapping Debt:				$ 324,386,272

* Gross Debt Amounts include related premium.

** Overlapping percentage is calculated as follows:
Shared market value between entities from the Appraisal District divided by the total market value of each entity.

*** The overlapping debt is calculated as follows:
The gross debt multiplied by the overlapping percentage = overlapping debt

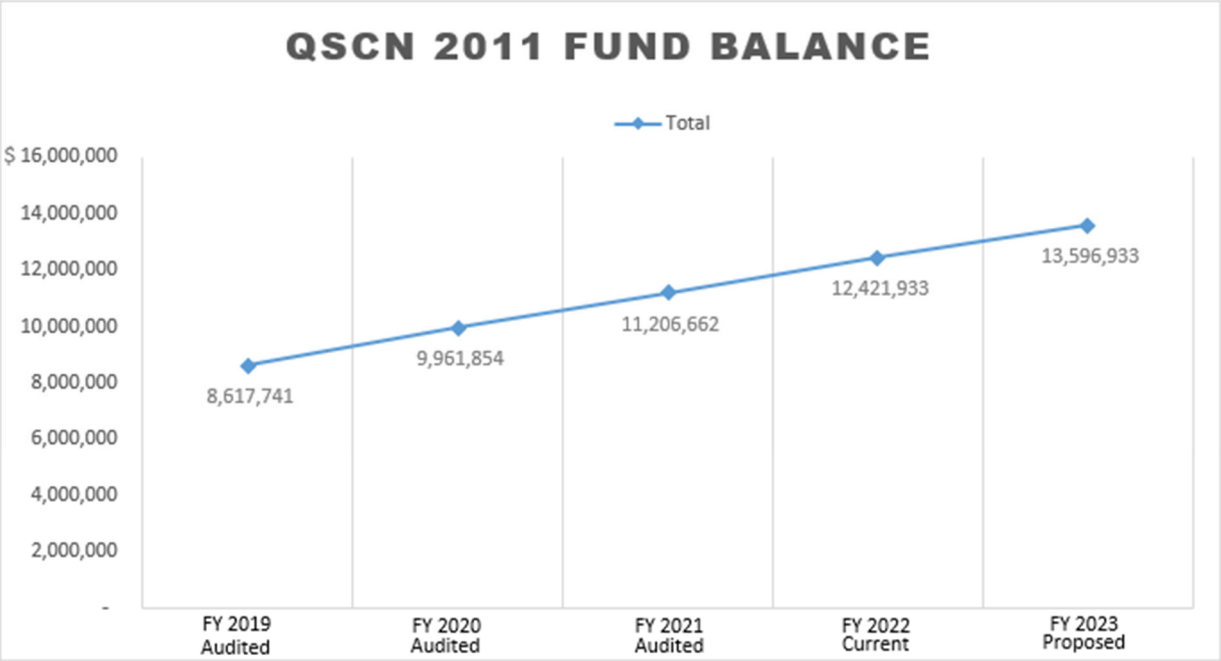
Note: Overlapping governments are those that coincide, at least in part, with the geographic boundaries of the District. This schedule estimates the portion of the outstanding debt of those overlapping governments that is borne by the residents and the businesses of the District. This process recognizes that, when considering the district's ability to issue and repay long term debt, the entire debt burden borne by the residents and businesses should be taken into account. However, this does not imply that every taxpayer is a resident, and therefore responsible for repaying the debt, of each overlapping government.

ACFR
Table L-15
6/30/21

Source: Municipal Advisory Council of Texas

Maintenance Tax Notes Fund Balance

This account is recorded as Other Restrictions of Fund Balance in the General Fund. These funds are required by ordinance to be set aside to pay the maintenance tax notes debt due 2026. Proceeds from the sale of the notes were used for the purpose of energy efficiency projects district wide. These funds are managed by Bank of New York Mellon serving as Trustee of the District.



	Audited			Current	Adopted
	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Total Revenues	$ 2,267,843	$ 2,202,726	$ 3,986,372	$ 3,959,382	$ 3,921,396
Total Expenditures	860,820	858,613	2,741,564	2,744,111	2,746,396
Excess (Deficiency of Revenues Over (Under) Expenditures	1,407,023	1,344,113	1,244,808	1,215,271	1,175,000
Total Other Financing Sources and (Uses)	-	-	-	-	-
Net Change in Fund Balances	1,407,023	1,344,113	1,244,808	1,215,271	1,175,000
Fund Balances - Beginning	7,210,718	8,617,741	9,961,854	11,206,662	12,421,933
Fund Balances - Ending	$ 8,617,741	$ 9,961,854	$ 11,206,662	$ 12,421,933	$ 13,596,933

Maintenance Tax Notes Amortization Schedule

QSCN-2011 Fund 197	QSCN-2012 Fund 197	MTN-2020 Fund 197	Annual Debt Requirements	Pmt. Date Fiscal Yr.	Principal/ Interest
	65,000.00		65,000.00	08-15	P
384,100.50	6,911.20	503,025.00	894,036.70	08-15	I
1,180,000.00		880,000.00	2,060,000.00	02-15	P
384,100.50	5,533.20	503,025.00	892,658.70	02-15	I
			2,125,000.00		P TOTAL
			1,786,695.40		I TOTAL
			3,911,695.40	**2022-23**	**P&I TOTAL**
	65,000.00		65,000.00	08-15	P
384,100.50	5,533.20	481,025.00	870,658.70	08-15	I
1,180,000.00		925,000.00	2,105,000.00	02-15	P
384,100.50	4,155.20	481,025.00	869,280.70	02-15	I
			2,170,000.00		P TOTAL
			1,739,939.40		I TOTAL
			3,909,939.40	**2023-24**	**P&I TOTAL**
	65,000.00		65,000.00	08-15	P
384,100.50	4,155.20	457,900.00	846,155.70	08-15	I
1,180,000.00		970,000.00	2,150,000.00	02-15	P
384,100.50	2,777.20	457,900.00	844,777.70	02-15	I
			2,215,000.00		P TOTAL
			1,690,933.40		I TOTAL
			3,905,933.40	**2024-25**	**P&I TOTAL**
	65,000.00		65,000.00	08-15	P
384,100.50	2,777.20	433,650.00	820,527.70	08-15	I
1,180,000.00		1,020,000.00	2,200,000.00	02-15	P
384,100.50	1,399.20	433,650.00	819,149.70	02-15	I
			2,265,000.00		P TOTAL
			1,639,677.40		I TOTAL
			3,904,677.40	**2025-26**	**P&I TOTAL**
	66,000.00		66,000.00	08-15	P
	1,399.20	408,150.00	409,549.20	08-15	I
		1,070,000.00	1,070,000.00	02-15	P
		408,150.00	408,150.00	02-15	I
			1,136,000.00		P TOTAL
			817,699.20		I TOTAL
			1,953,699.20	**2026-27**	**P&I TOTAL**
			0.00	08-15	P
		381,400.00	381,400.00	08-15	I
		1,120,000.00	1,120,000.00	02-15	P
		381,400.00	381,400.00	02-15	I
			1,120,000.00		P TOTAL
			762,800.00		I TOTAL
			1,882,800.00	**2027-28**	**P&I TOTAL**
			0.00	08-15	P
		353,400.00	353,400.00	08-15	I
		1,180,000.00	1,180,000.00	02-15	P
		353,400.00	353,400.00	02-15	I
			1,180,000.00		P TOTAL
			706,800.00		I TOTAL
			1,886,800.00	**2028-29**	**P&I TOTAL**

QSCN-2011 Fund 197	QSCN-2012 Fund 197	MTN-2020 Fund 197	Annual Debt Requirements	Pmt. Date Fiscal Yr.	Principal/ Interest
			0.00	08-15	P
		323,900.00	323,900.00	08-15	I
		1,235,000.00	1,235,000.00	02-15	P
		323,900.00	323,900.00	02-15	I
			1,235,000.00		P TOTAL
			647,800.00		I TOTAL
			1,882,800.00	**2029-30**	**P&I TOTAL**
			0.00	08-15	P
		293,025.00	293,025.00	08-15	I
		1,300,000.00	1,300,000.00	02-15	P
		293,025.00	293,025.00	02-15	I
			1,300,000.00		P TOTAL
			586,050.00		I TOTAL
			1,886,050.00	**2030-31**	**P&I TOTAL**
			0.00	08-15	P
		260,525.00	260,525.00	08-15	I
		1,365,000.00	1,365,000.00	02-15	P
		260,525.00	260,525.00	02-15	I
			1,365,000.00		P TOTAL
			521,050.00		I TOTAL
			1,886,050.00	**2031-32**	**P&I TOTAL**
			0.00	08-15	P
		226,400.00	226,400.00	08-15	I
		1,435,000.00	1,435,000.00	02-15	P
		226,400.00	226,400.00	02-15	I
			1,435,000.00		P TOTAL
			452,800.00		I TOTAL
			1,887,800.00	**2032-33**	**P&I TOTAL**
			0.00	08-15	P
		197,700.00	197,700.00	08-15	I
		1,490,000.00	1,490,000.00	02-15	P
		197,700.00	197,700.00	02-15	I
			1,490,000.00		P TOTAL
			395,400.00		I TOTAL
			1,885,400.00	**2033-34**	**P&I TOTAL**
			0.00	08-15	P
		167,900.00	167,900.00	08-15	I
		1,550,000.00	1,550,000.00	02-15	P
		167,900.00	167,900.00	02-15	I
			1,550,000.00		P TOTAL
			335,800.00		I TOTAL
			1,885,800.00	**2034-35**	**P&I TOTAL**
			0.00	08-15	P
		136,900.00	136,900.00	08-15	I
		1,610,000.00	1,610,000.00	02-15	P
		136,900.00	136,900.00	02-15	I
			1,610,000.00		P TOTAL
			273,800.00		I TOTAL
			1,883,800.00	**2035-36**	**P&I TOTAL**

QSCN-2011 Fund 197	QSCN-2012 Fund 197	MTN-2020 Fund 197	Annual Debt Requirements	Pmt. Date Fiscal Yr.	Principal/ Interest
			0.00	08-15	P
		104,700.00	104,700.00	08-15	I
		1,675,000.00	1,675,000.00	02-15	P
		104,700.00	104,700.00	02-15	I
			1,675,000.00		P TOTAL
			209,400.00		I TOTAL
			1,884,400.00	**2036-37**	**P&I TOTAL**
			0.00	08-15	P
		71,200.00	71,200.00	08-15	I
		1,745,000.00	1,745,000.00	02-15	P
		71,200.00	71,200.00	02-15	I
			1,745,000.00		P TOTAL
			142,400.00		I TOTAL
			1,887,400.00	**2037-38**	**P&I TOTAL**
			0.00	08-15	P
		36,300.00	36,300.00	08-15	I
		1,815,000.00	1,815,000.00	02-15	P
		36,300.00	36,300.00	02-15	I
			1,815,000.00		P TOTAL
			72,600.00		I TOTAL
			1,887,600.00	**2038-39**	**P&I TOTAL**
TOTAL OUTSTANDING					
4,720,000.00	326,000.00	22,385,000.00	27,431,000.00		P TOTAL
3,072,804.00	34,640.80	9,674,200.00	12,781,644.80		I TOTAL
			(3,107,443.00)		INTEREST SUBSIDY AVAILABLE
7,792,804.00	360,640.80	32,059,200.00	**37,105,201.80**		**P&I TOTAL**

Tax Rate Worksheets

2022 Tax Rate Calculation Worksheet

Form 50-859

School Districts without Chapter 313 Agreements

MCALLEN I S D 1

School District's Name

Phone *(area code and number)*

School District's Address, City, State, ZIP Code

School District's Website Address

GENERAL INFORMATION: Tax Code Section 26.04(c) requires an officer or employee designated by the governing body to calculate the no-new-revenue tax rate and voter-approval tax rate for the taxing unit. These tax rates are expressed in dollars per $100 of taxable value calculated. The calculation process starts after the chief appraiser delivers to the taxing unit the certified appraisal roll or certified estimate of value and the estimated values of properties under protest. The designated officer or employee shall certify that the officer or employee has accurately calculated the tax rates and used values shown for the certified appraisal roll or certified estimate. The officer or employee submit the rates to the governing body by Aug. 7 or as soon thereafter as practicable.

This worksheet is for **school districts without Chapter 313 agreements only.** School districts that have a Chapter 313 agreement should use Comptroller Form 50-884 *Tax Rate Calculation Worksheet, School Districts with Chapter 313 Agreements.*

Water districts as defined under Water Code Section 49.001(1) do not use this form. Use Comptroller Form 50-858 *Water District Voter-Approval Tax Rate Worksheet for Low Tax Rate and Developing Districts* or Comptroller Form 50-860 *Developed Water District Voter-Approval Tax Rate Worksheet.*

All other taxing units should use Comptroller Form 50-856 *Tax Rate Calculation, Taxing Units Other Than School Districts or Water Districts*.

The Comptroller's office provides this worksheet to assist taxing units in determining tax rates. The Texas Education Agency (TEA) provides detailed information on and guidance to school districts in calculating their tax rates. Please review and rely on information provided by TEA when completing this worksheet. Additionally, the information provided in this worksheet is offered as technical assistance and not legal advice. Taxing units should consult legal counsel for interpretations of law regarding tax rate preparation and adoption.

SECTION 1: No-New-Revenue Tax Rate

The no-new-revenue (NNR) tax rate enables the public to evaluate the relationship between taxes for the prior year and for the current year based on a tax rate that would produce the same amount of revenue if applied to the same properties that are taxed in both years (no new taxes). When appraisal values increase, the NNR tax rate should decrease.

Line	No-New-Revenue Tax Rate Worksheet		Amount/Rate
1.	**2021 total taxable value.** Enter the amount of 2021 taxable value on the 2021 tax roll today. Include any adjustments since last year's certification; exclude one-fourth and one-third over-appraisal corrections made under Tax Code Section 25.25(d) from these adjustments. Exclude any property value subject to an appeal under Chapter 42 as of July 25 (will add undisputed value in Line 6). This total includes the taxable value of homesteads with tax ceilings (will deduct in Line 2). [1]		$ 8,441,412,745
2.	**2021 tax ceilings.** Enter 2021 total taxable value of homesteads with tax ceilings. These include the homesteads of homeowners age 65 or older or disabled [2]		$ 836,130,761
3.	**Preliminary 2021 adjusted taxable value.** Subtract Line 2 from Line 1.		$ 7,605,281,984
4.	**2021 total adopted tax rate**.		$ 1.1370 /$100
5.	**2021 taxable value lost because court appeals of ARB decisions reduced 2021 appraised value.**		
	A. Original 2021ARB values:	$ 0	
	B. 2021 values resulting from final court decisions:	– $ 0	
	C. 2021 value loss. Subtract B from A. [3]		$ 0
6.	**2021 taxable value subject to an appeal under Chapter 42, as of July 25.**		
	A. 2021 ARB certified value:	$ 0	
	B. 2021 disputed value:	– $ 0	
	C. 2021 undisputed value. Subtract B from A. [4]		$ 0
7.	**2021 Chapter 42-related adjusted values.** Add Line 5 and 6.		$ 0
8.	**2021 taxable value, adjusted for actual and potential court-ordered adjustments.** Add Line 3 and Line 7.		$ 7,605,281,984
9.	**2021 taxable value of property in territory the school deannexed after Jan. 1, 2021** Enter the 2021 value of property in deannexed territory. [5]		$ 0

[1] Tex. Tax Code § 26.012(14
[2] Tex. Tax Code § 26.012(14)
[3] Tex. Tax Code § 26.012(13)
[4] Tex. Tax Code § 26.012(13)
[5] Tex. Tax Code § 26.012(15)

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Line	No-New-Revenue Tax Rate Worksheet	Amount/Rate
10.	**2021 taxable value lost because property first qualified for an exemption in 2022** If the school district increased an original exemption, use the difference between the original exempted amount and the increased exempted amount. Do not include value lost due to freeport goods-in-transit, or temporary disaster exemptions. Note that lowering the amount or percentage of an existing exemption in 2022 does not create a new exemption or reduce taxable value. **A. Absolute exemptions.** Use 2021 market value: $ 10,293,593 **B. Partial exemptions.** 2022 exemption amount or 2022 percentage exemption times 2021 value: + $ 24,340,095 **C. Value loss.** Add A and B. [6]	$ 34,633,688
11.	**2021 taxable value lost because property first qualified for agricultural appraisal (1-d or 1-d-1), timber appraisal, recreational/ scenic appraisal or public access airport special appraisal in 2022.** Use only properties that qualified in 2022 for the first time; do not use properties that qualified in 2021. **A. 2021 market value.** $ 0 **B. 2022 productivity or special appraised value:** - $ 0 **C. Value loss.** Subtract B from A. [7]	$ 0
12.	**Total adjustments for lost value.** Add Lines 9, 10C and 11C.	$ 34,633,688
13.	**Adjusted 2021 taxable value.** Subtract Line 12 from Line 8.	$ 7,570,648,296
14.	**Adjusted 2021 total levy.** Multiply Line 4 by Line 13 and divide by $100.	$ 86,078,271
15.	**Taxes refunded for years preceding tax year 2021.** Enter the amount of taxes refunded by the district for tax years preceding tax year 2021. Types of refunds include court decisions, Tax Code Section 25.25(b) and (c) corrections and Tax Code Section 31.11 payment errors. Do not include refunds for tax year 2021. This line applies only to tax years preceding tax year 2021. [8]	$ 267,597
16.	**Adjusted 2021 levy with refunds.** Add Line 14 and Line 15. [9] Note: If the governing body of the school district governs a junior college district in a county with a population of more than two million, subtract the amount of taxes the governing body dedicated to the junior college district in 2021 from the result.	$ 86,345,868
17.	**Total 2022 taxable value on the 2022 certified appraisal roll today.** This value includes only certified values and includes the total taxable value of homesteads with tax ceilings (will deduct in line 19). These homesteads include homeowners age 65 or older or disabled. [10] **A. Certified values.** [11] $ 8,998,567,793 **B. Pollution control and energy storage system exemption:** Deduct the value of property exempted for the current tax year for the first time as pollution control or energy storage system property: - $ 0 **C. Total 2022 value.** Subtract B from A.	$ 8,998,567,793
18.	**Total value of properties under protest or not included on certified appraisal roll.** [12] **A. 2022 taxable value of properties under protest.** The chief appraiser certifies a list of properties still under ARB protest. The list shows the appraisal district's value and the taxpayer's claimed value, if any, or an estimate of the value if the taxpayer wins. For each of the properties under protest, use the lowest of these values. Enter the total value under protest. [13] $ 827,865,037 **B. 2022 value of properties not under protest or included on certified appraisal roll.** The chief appraiser gives school districts a list of those taxable properties that the chief appraiser knows about but are not included in the appraisal roll certification. These properties are also not on the list of properties that are still under protest. On this list of properties, the chief appraiser includes the market value, appraised value and exemptions for the preceding year and a reasonable estimate of the market value, appraised value and exemptions for the current year. Use the lower market, appraised or taxable value (as appropriate). Enter the total value not on the roll. [14] + $ 0 **C. Total value under protest or not certified.** Add A and B.	$ 827,865,037
19.	**2022 tax ceilings.** Enter 2022 total taxable value of homesteads with tax ceilings. These include the homesteads of homeowners age 65 or older or disabled. [15]	$ 955,045,891

[6] Tex. Tax Code § 26.012(15)
[7] Tex. Tax Code § 26.012(15)
[8] Tex. Tax Code § 26.012(13)
[9] Tex. Tax Code § 26.012(13)
[10] Tex. Tax Code §§ 26.012, 26.04(c-2)
[11] Tex. Tax Code § 26.012(6)
[12] Tex. Tax Code § 26.01(c) and (d)
[13] Tex. Tax Code § 26.01(c)
[14] Tex. Tax Code § 26.01(d)
[15] Tex. Tax Code § 26.012(6)(B)

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Line	No-New-Revenue Tax Rate Worksheet	Amount/Rate
20.	**2022 total taxable value.** Add Lines 17C and 18C. Subtract Line 19.	$ 8,871,386,939
21.	**Total 2022 taxable value of properties in territory annexed after Jan. 1, 2021.** Include both real and personal property. Enter the 2022 value of property in territory annexed by the school district.	$ 235,400
22.	**Total 2022 taxable value of new improvements and new personal property located in new improvements.** New means the item was not on the appraisal roll in 2021. An improvement is a building, structure, fixture or fence erected on or affixed to land. New additions to existing improvements may be included if the appraised value can be determined. New personal property in a new improvement must have been brought into the school district after Jan. 1, 2021, and be located in a new improvement.	$ 121,739,696
23.	**Total adjustments to the 2022 taxable value.** Add lines 21 and 22.	$ 121,975,096
24.	**Adjusted 2022 taxable value.** Subtract line 23 from line 20.	$ 8,749,411,843
25.	**2022 NNR tax rate.** Divide line 16 by line 24 and multiply by $100.	$ 0.9868 /$100

SECTION 2: Voter-Approval Tax Rate

The voter-approval tax rate is the highest tax rate that a taxing unit may adopt without holding an election to seek voter approval of the rate. Most school districts calculate a voter-approval tax rate that is split into three separate rates. [18]

1. **Maximum Compressed Tax Rate (MCR):** A district's maximum compressed tax rate is defined as the tax rate for the current tax year per $100 of valuation of taxable property at which the district must levy a maintenance and operations tax to receive the full amount of the tier one allotment. [19]
2. **Enrichment Tax Rate (DTR):** [20] A district's enrichment tax rate is defined as any tax effort in excess of the district's MCR and less than $0.17. The enrichment tax rate is divided into golden pennies and copper pennies. School districts can claim up to 8 golden pennies, not subject to compression, and 9 copper pennies which are subject to compression with any increases in the guaranteed yield. [21]
3. **Debt Rate:** The debt rate includes the debt service necessary to pay the school district's debt payments in the coming year. This rate accounts for principal and interest on bonds and other debt secured by property tax revenue.

The MCR and DTR added together make up the school district's maintenance and operations (M&O) tax rate. Districts cannot increase the district's M&O tax rate to create a surplus in M&O tax revenue for the purpose of paying the district's debt service. [22]

If a school district adopted a tax rate that exceeded its voter-approval tax rate without holding an election to respond to a disaster in the prior year, as allowed by Tax Code Section 26.042(e), the school district may not consider the amount by which it exceeded its voter-approval tax rate (disaster pennies) in the calculation this year. This adjustment will be made in Section 4 of this worksheet.

A district must complete an efficiency audit before seeking voter approval to adopt a M&O tax rate higher than the calculated M&O tax rate, hold an open meeting to discuss the results of the audit, and post the results of the audit on the district's website 30 days prior to the election. [23] Additionally, a school district located in an area declared a disaster by the governor may adopt a M&O tax rate higher than the calculated M&O tax rate during the two-year period following the date of the *declaration without conducting an efficiency audit.* [24]

Districts should review information from TEA when calculating their voter-approval tax rate.

Line	Voter-Approval Tax Rate Worksheet	Amount/Rate
26.	**2022 maximum compressed tax rate (MCR).** TEA will publish compression rates based on district and statewide property value growth. Enter the school districts' maximum compressed rate based on guidance from TEA. [25]	$ 0.8911 /$100
27.	**2022 enrichment tax rate (DTR).** Enter the greater of A and B. [26] A. Enter the district's 2021 DTR, minus any required reduction under Education Code Section 48.202(f) ..... $ 0.1286 /$100 B. $0.05 per $100 of taxable value ..... $ 0.0500 /$100	$ 0.1286 /$100
28.	**2022 maintenance and operations (M&O) tax rate.** Add Lines 26 and 27. Note: M&O tax rate may not exceed the sum of $0.17 and the product of the state compression percentage multiplied by $1.00. [27]	$ 1.0197 /$100

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[16] [Reserved for expansion]
[17] [Reserved for expansion]
[18] Tex. Tax Code §26.08(n)
[19] Tex. Edu. Code §48.2551(a)(3)
[20] Tex. Tax Code §26.08(j) and Tex. Edu. Code §45.0032
[21] Tex. Edu. Code §§48.202(a-1)(2) and 48.202(f)
[22] Tex. Edu. Code §45.0021(a)
[23] Tex. Edu. Code §11.184(b)
[24] Tex. Edu. Code §11.184(b-1)
[25] Tex. Edu. Code §§48.255, 48.2551(b)(1) and (b)(2)
[26] Tex. Tax Code §26.08(n)(2)
[27] Tex. Edu. Code §45.003(e)

Line	Voter-Approval Tax Rate Worksheet	Amount/Rate
29.	**Total 2022 debt to be paid with property tax revenue.** Debt means the interest and principal that will be paid on debts that: (1) Are paid by property taxes; (2) Are secured by property taxes; (3) Are scheduled for payment over a period longer than one year; and (4) Are not classified in the school district's budget as M&O expenses. A. **Debt** includes contractual payments to other school districts that have incurred debt on behalf of this school district, if those debts meet the four conditions above. Include only amounts that will be paid from property tax revenue. Do not include appraisal district budget payments. If the governing body of a taxing unit authorized or agreed to authorize a bond, warrant, certificate of obligation, or other evidence of indebtedness on or after Sept. 1, 2022, verify if it meets the amended definition of debt before including it here.[28] Enter debt amount: ..... $ 6,813,200 B. Subtract **unencumbered fund amount** used to reduce total debt. ..... – $ 0 C. Subtract **state aid** received for paying principal and interest on debt for facilities through the existing debt allotment program and/or instructional facilities allotment program. ..... – $ 0 D. **Adjust debt:** Subtract B and C from A.	$ 6,813,200
30.	**Certified 2021 excess debt collections.** Enter the amount certified by the collector.[29]	$ 0
31.	**Adjusted 2022 debt.** Subtract line 30 from line 29D.	$ 6,813,200
32.	**2022 anticipated collection rate.** If the anticipated rate in A is lower than actual rates in B, C and D, enter the lowest rate from B, C and D. If the anticipated rate in A is higher than at least one of the rates in the prior three years, enter the rate from A. Note that the rate can be greater than 100%.[30] A. Enter the 2022 anticipated collection rate certified by the collector.[31] 100.00 % B. Enter the 2021 actual collection rate 96.58 % C. Enter the 2020 actual collection rate 96.65 % D. Enter the 2019 actual collection rate 96.45 %	100.00 %
33.	**2022 debt adjusted for collections.** Divide Line 31 by Line 32. Note: If the governing body of the school district governs a junior college district in a county with a population of more than two million, add the amount of taxes the governing body proposes to dedicate to the junior college district in 2022 to the result.	$ 6,813,200
34.	**2022 total taxable value.** Enter the amount on Line 20 of the *No-New-Revenue Tax Rate Worksheet.*	$ 8,871,386,939
35.	**2022 debt rate.** Divide Line 33 by Line 34 and multiply by $100.	$ 0.0767 /$100
36.	**2022 voter-approval tax rate.** Add Lines 28 and 35. If the school district received distributions from an equalization tax imposed under former Chapter 18, Education Code, add the NNR tax rate as of the date of the county unit system's abolition to the sum of Lines 28 and 35.[32]	$ 1.0964 /$100

SECTION 3: Voter-Approval Tax Rate Adjustment for Pollution Control

A school district may raise its rate for M&O funds used to pay for a facility, device or method for the control of air, water or land pollution. This includes any land, structure, building, installation, excavation, machinery, equipment or device that is used, constructed, acquired or installed wholly or partly to meet or exceed pollution control requirements. The school district's expenses are those necessary to meet the requirements of a permit issued by the Texas Commission on Environmental Quality (TCEQ). The school district must provide the tax assessor with a copy of the TCEQ letter of determination that states the portion of the cost of the installation for pollution control.

This section should only be completed by a school district that uses M&O funds to pay for a facility, device or method for the control of air, water or land pollution.

Line	Voter-Approval Rate Adjustment for Pollution Control Requirements Worksheet	Amount/Rate
37.	**Certified expenses from the Texas Commission on Environmental Quality (TCEQ).** Enter the amount certified in the determination letter from TCEQ.[33] The school district shall provide its tax assessor with a copy of the letter.[34]	$ 0

[28] Tex. Tax Code § 26.012(7)
[29] Tex. Tax Code §§26.012(10) and 26.04(b)
[30] Tex. Tax Code §§26.04(h), (h-1) and (h-2)
[31] Tex. Tax Code §26.04(b)
[32] Tex. Tax Code §26.08(g)
[33] Tex. Tax Code § 26.045(d)
[34] Tex. Tax Code § 26.045(i)

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Line	Voter-Approval Rate Adjustment for Pollution Control Requirements Worksheet	Amount/Rate
38.	**2022 total taxable value.** Enter the amount on Line 20 of the *No-New-Revenue Tax Rate Worksheet.*	$ 8,871,386,939
39.	**Additional rate for pollution control.** Divide line 37 by line 38 and multiply by $100.	$ 0 /$100
40.	**2022 voter-approval tax rate, adjusted for pollution control.** Add line 36 and line 39.	$ 1.0964 /$100

SECTION 4: Voter-Approval Tax Rate Adjustment in Year Following Disaster

If a school district adopted a tax rate that exceeded its voter-approval tax rate without holding an election to respond to a disaster in the prior year, as allowed by Tax Code Section 26.042(e), the school district may not consider the amount by which it exceeded its voter-approval tax rate in the calculation this year. [35] As such, it must reduce its voter-approval tax rate for the current tax year.

NOTE: This section will not apply to any taxing units in 2021. It is added to implement Senate Bill 1438 (87th Regular Session) and does not apply to a school district that adopted a tax rate without the required election in 2020, as provided for in the recently repealed Tax Code Section 26.08(a-1).

In future tax years, this section will apply to school district in a disaster area that adopts a tax rate greater than its voter-approval tax rate without holding an election in the prior year, as provided for by Tax Code Section 26.042(e).

Line	Prior Year Disaster Adjustment Worksheet	Amount/Rate
41.	**2021 adopted tax rate.** Enter the rate in Line 4 of the *No-New-Revenue Tax Rate Worksheet.*	$ 1.1370 /$100
42.	**2021 voter-approval tax rate.** If the school district adopted a tax rate above the 2020 voter-approval tax rate without holding an election due to a disaster, enter the voter-approval tax rate from the prior year's worksheet.	$ 1.1370 /$100
43.	**Increase in 2021 tax rate due to disaster (disaster pennies).** Subtract Line 42 from Line 41.	$ 0 /$100
44.	**2022 voter-approval tax rate, adjusted for prior year disaster.** Subtract Line 43 from one of the following lines (as applicable): Line 36 or Line 40 (school districts with pollution control).	$ 1.0964 /$100

SECTION 5: Total Tax Rate

Indicate the applicable total tax rates as calculated above.

No-New-Revenue Tax Rate..... $ 0.9868 /$100

Enter the 2022 NNR tax rate from Line 25.

Voter-Approval Tax Rate..... $ 1.0964 /$100

As applicable, enter the 2022 voter-approval tax rate from Line 36, Line 40 or Line 44. Indicate the line number used: 36

SECTION 6: School District Representative Name and Signature

Enter the name of the person preparing the tax rate as authorized by the governing body of the school district. By signing below, you certify that you are the designated officer or employee of the school district and have calculated the tax rates in accordance with requirements in Tax Code and Education Code. [36]

print here

Printed Name of School District Representative

sign here

School District Representative Date

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[35] Tex. Tax Code §26.042(f) and Tex. Edu. Code § 45.0032(d)
[36] Tex. Tax Code §26.04(c)

Pay Information

MCALLEN ISD

2022 - 2023 Teacher / Librarian Minimum Hiring Pay Structure

Pay Grade	Job Title	Work Days	Minimum	Maximum
		Daily	$278.88	$331.93
	Teacher	187	187	$52,150	$62,070
	Librarian	197	197	$54,939	$65,390

MCALLEN ISD

2022 - 2023
Administrative Education Pay Structure

Pay Grade	Job Title	Work Days		Minimum	Midpoint	Maximum
1			**Daily**	**$218.63**	**$265.00**	**$311.38**
	Piano Accompanist	187	**187**	$40,884	$49,555	$58,228
2			**Daily**	**$257.98**	**$312.70**	**$367.42**
	Advisor, Dual Enrollment	201	**187**	$48,242	$58,475	$68,708
	Attendance Officer	207	**192**	$49,532	$60,038	$70,545
	Assistant, Speech Pathology (SpEd/RSD)	192	**197**	$50,822	$61,602	$72,382
	Audiologist Assistant	197	**201**	$51,854	$62,853	$73,851
	Nurse (All Level)	192	**207**	$53,402	$64,729	$76,056
	Social Worker	187	**221**	$57,014	$69,107	$81,200
	Specialist, Graduation	201	**226**	$58,303	$70,670	$83,037
	Specialist, Parent & Family Engagement	187				
	Specialist, Prevention Intervention	207, 226				
	Specialist, RDSPD Student Support	207				
	Specialist, Student Transfer	226				
	Student Support Officer	221				
3			**Daily**	**$290.23**	**$351.79**	**$413.35**
	Athletic Trainer	205	**190**	$55,144	$66,840	$78,537
	Campus Testing Coordinator	201	**192**	$55,724	$67,544	$79,363
	Coordinator, IB Program	203	**197**	$57,175	$69,303	$81,430
	Counselor (ES, MS, HS)	190, 201, 203	**201**	$58,336	$70,710	$83,083
	District Nurse	226	**203**	$58,917	$71,413	$83,910
	Evaluator, Federal/Special Funds	226	**205**	$59,497	$72,117	$84,737
	Gear-Up Facilitator	201, 203	**217**	$62,980	$76,338	$89,697
	Head Nurse (HS)	201	**221**	$64,141	$77,746	$91,350
	Manager, Family Treatment Program	226	**226**	$65,592	$79,505	$93,417
	Social Services Case Manager	197				
	Specialist, College Admissions/Scholarships	201				
	Specialist, College/Career Readiness	201				
	Specialist, Emotional Quotient (Fund 289)	192				
	Specialist, Grant Development & Compliance	212				
	Specialist, Instructional Technology	217				
	Strategist, Early Literacy (K-3)	221				
	Strategist, Federal Programs	226				
	Strategist, Math (K-3)	221				
	Strategist, Professional Learning	221				
	Strategist, RDSPD Instructional	203				
4			**Daily**	**$304.74**	**$369.38**	**$434.02**
	Assistant Principal, Elementary	207	**197**	$60,034	$72,768	$85,502
	Counselor, Lead	207	**203**	$61,862	$74,984	$88,106
	Diagnostician (SpEd/RDSPD)	197	**207**	$63,081	$76,462	$89,842
	Diagnostician, Dyslexia	197				
	Psychology/LSSP	203				

MCALLEN ISD

2022 - 2023
Administrative Education Pay Structure

Pay Grade	Job Title	Work Days		Minimum	Midpoint	Maximum
5			**Daily**	**$321.92**	**$387.85**	**$453.78**
	Assistant Principal, MS	207, 212	**192**	$61,809	$74,467	$87,126
	Coordinator, Advance Academics	221	**197**	$63,418	$76,406	$89,395
	Coordinator, Career Technical Education	221	**207**	$66,637	$80,285	$93,932
	Coordinator, College Readiness	226	**212**	$68,247	$82,224	$96,201
	Coordinator, Early Childhood Instruction	221	**217**	$69,857	$84,163	$98,470
	Coordinator, Fine Arts	221	**221**	$71,144	$85,715	$100,285
	Coordinator, Gifted & Talented	221	**226**	$72,754	$87,654	$102,554
	Coordinator, Instructional Materials	226				
	Coordinator, Language Arts (Sec)	221				
	Coordinator, Language Arts/Reading (Elem)	221				
	Coordinator, Mathematics (Elem/Sec)	221				
	Coordinator, Science (Elem/Sec)	221				
	Coordinator, Social Studies (Elem/Sec)	221				
	Coordinator, Special Education	221				
	Coordinator, Student Assessment	226				
	Instructional Support Officer	212				
	Occupational Therapist	197				
	School Improvement Facilitator (MS/HS)	212, 217				
	Speech Pathologist (SpEd/RDSPD)	192				
6			**Daily**	**$345.34**	**$411.12**	**$476.90**
	Assistant Director, Student Operations	226	**212**	$73,212	$87,157	$101,103
	Assistant Principal (I&G, AECHS, Lamar)	212, 222	**222**	$76,665	$91,269	$105,872
	Assistant Principal, HS	212, 222	**226**	$78,047	$92,913	$107,779
	Coordinator, Title I Migrant	226				
	Dean of Instruction	222				
7			**Daily**	**$370.42**	**$435.79**	**$501.16**
	Assistant Director, Athletics	226	**226**	$83,715	$98,489	$113,262
	Coordinator, Athletic Head Coach	226				
8			**Daily**	**$392.65**	**$461.94**	**$531.23**
	Director, Bilingual/ESL/Foreign Language	226	**212**	$83,242	$97,931	$112,621
	Director, Career Technical Education	226	**226**	$88,739	$104,398	$120,058
	Director, College/Career/Counseling	226				
	Director, Digital Learning & Library Services	226				
	Director, Health Services	226				
	Director, Professional Learning & Literacy	226				
	Director, Regional Day School for the Deaf	226				
	Director, Section 504/RTI/Dyslexia	226				
	Director, Special Ed Teaching & Learning	226				
	Director, Student Assessment	226				
	Director, Student Support Services	226				
	Principal, I&G	212				
	Principal, Elementary	212				

MCALLEN ISD

2022 - 2023
Administrative Education Pay Structure

Pay Grade	Job Title	Work Days		Minimum	Midpoint	Maximum
9			**Daily**	**$416.21**	**$489.66**	**$563.11**
	Director, Advanced Academics	226	**217**	$90,318	$106,256	$122,195
	Director, Athletics	226	**222**	$92,399	$108,705	$125,010
	Director, Fine Arts	226	**226**	$94,063	$110,663	$127,263
	Director, Special Funding (ESSER)	226				
	Director, State-Federal Program	226				
	Director, UTRGV-MISD College Academy	226				
	Principal, (AECHS & Lamar)	222				
	Principal, MS	217				
10			**Daily**	**$441.18**	**$519.04**	**$596.90**
	Executive Director, Special Education	226	**226**	$99,707	$117,303	$134,899
	Principal, HS	226				
11			**Daily**	**$498.10**	**$586.00**	**$673.90**
	Assistant Supt, Instructional Services	226	**226**	$112,571	$132,436	$152,301
	Associate Supt, Instructional Leadership	226				

MCALLEN ISD

2022 - 2023
Administrative Management Pay Structure

Pay Grade	Job Title	Work Days		Minimum	Midpoint	Maximum
1			**Daily**	**$202.13**	**$245.00**	**$287.88**
	Buyer	226	226	$45,681	$55,370	$65,061
	Specialist, Budget & Cost	226				
	Specialist, Cybersecurity Project	226				
	Specialist, Inventory & Receiving (CN)	226				
	Specialist, Sourcing & Cost (CN)	226				
	Specialist, Student Outreach	226				
	Specialist, Technology Services Project	226				
2			**Daily**	**$217.58**	**$262.15**	**$306.72**
	Specialist, Facilities Safety	226	**226**	$49,173	$59,246	$69,319
	Specialist, Student Data	226				
	Supervisor, Operations (CN)	226				
	Supervisor, Production (CN)	226				
	Supervisor, Transportation Safety	226				
	Supervisor, Warehouse	226				
3			**Daily**	**$232.82**	**$280.50**	**$328.19**
	Internal Staff Auditor	226	**226**	$52,617	$63,393	$74,171
	Senior Buyer	226				
	Specialist, Child Nutrition Procurement	226				
	Specialist, Cybersecurity	226				
	Specialist, Finance (CN)	226				
	Specialist, Systems & Data	226				
	Specialist, Technology Resources	226				
	Staff Accountant I	226				
4			**Daily**	**$252.95**	**$302.94**	**$352.93**
	Analyst, Compensation/HR	226	**217**	$54,890	$65,738	$76,586
	Specialist, Child Nutrition Menu & Production	226	**226**	$57,167	$68,464	$79,762
	Specialist, Child Nutrition Operations	226				
	Specialist, Community Information	217				
	Specialist, Computer Network	226				
	Specialist, Finance & Operations	226				
	Specialist, Marketing	217				
	Staff Accountant II	226				
	Systems Analyst, Child Nutrition Program	226				
5			**Daily**	**$273.20**	**$327.18**	**$381.16**
	Coordinator, Accounting	226	**217**	$59,284	$70,998	$82,712
	Coordinator, Budget	226	**226**	$61,743	$73,943	$86,142
	Coordinator, Child Nutrition Finance & Systems	226				
	Coordinator, Payroll	226				
	Coordinator, Purchasing	226				
	Coordinator, Risk Management	226				
	MITV Producer	217				
	Network Analyst	226				
	Police Captain	226				
	Project Manager, Facilities Contruction	226				
	Systems Analyst	226				

MCALLEN ISD

2022 - 2023
Administrative Management Pay Structure

Pay Grade	Job Title	Work Days		Minimum	Midpoint	Maximum
6			**Daily**	**$303.69**	**$361.53**	**$419.37**
	Coordinator, Cybersecurity & Compliance	226	**226**	$68,634	$81,706	$94,778
	Coordinator, Network	226				
	Coordinator, Student Data-PEIMS	226				
	Coordinator, Student Enrollment & Attendance	226				
	Coordinator, Technology Service & Support	226				
	Systems Administrator	226				
7			**Daily**	**$334.05**	**$397.68**	**$461.31**
	Assistant Director, Child Nutrition Program	226	**226**	$75,495	$89,876	$104,256
	Assistant Director, Community Information	226				
	Assistant Director, Facilities Maintenance	226				
	Assistant Director, Facilities Operations	226				
	Assistant Director, Transportation	226				
	Internal Auditor	226				
8			**Daily**	**$371.83**	**$437.45**	**$503.07**
	Director, Accounting	226	**226**	$84,034	$98,864	$113,694
	Director, Child Nutrition	226				
	Director, Community Information	226				
	Director, Employee Benefits & Safety Risk Mngmt.	226				
	Director, Human Resources	226				
	Director, Payroll	226				
	Director, Purchasing	226				
	Director, Strategic Partnerships & Student Outreach	226				
	Director, Student Operations	226				
	Director, Technology	226				
	Director, Transportation	226				
	Police Chief	226				
9			**Daily**	**$422.03**	**$496.51**	**$570.99**
	Chief Financial Officer	226	**226**	$95,379	$112,211	$129,044
	Executive Director, Facilities Maintenance Ops.	226				
	Executive Director, Technology	226				
10			**Daily**	**$498.13**	**$586.03**	**$673.93**
	Assistant Superintendent, Business Operations	226	**226**	$112,577	$132,443	$152,308
	Assistant Superintendent, District Operations	226				
	Assistant Superintendent, Human Resources	226				

MCALLEN ISD

2022 - 2023
Clerical / Technical Pay Structure

Pay Grade	Job Title	Work Days		Minimum	Midpoint	Maximum
1			**Hourly**	**$12.00**	**$14.50**	**$17.00**
	Clerk, Administration	226	**197**	$18,912	$22,852	$26,792
	Clerk, Assessment	226	**201**	$19,296	$23,316	$27,336
	Clerk, Attendance (HS)	201	**207**	$19,872	$24,012	$28,152
	Clerk, Audiologist	197	**221**	$21,216	$25,636	$30,056
	Clerk, Campus	197, 201, 207, 226	**222**	$21,312	$25,752	$30,192
	Clerk, Federal Programs	226	**226**	$21,696	$26,216	$30,736
	Clerk, Parent Involvement	226				
	Clerk, Special Education Program	197, 207, 226				
	Clerk, Testing	221				
	Receptionist, Campus	222, 226				
	Receptionist Clerk (Adm)	226				
2			**Hourly**	**$13.48**	**$16.24**	**$19.00**
	Assistant Registrar	226	**197**	$21,244	$25,594	$29,944
	Clerk, Attendance (AECHS & Lamar)	222	**201**	$21,676	$26,114	$30,552
	Clerk, Counselor	201, 203	**203**	$21,892	$26,374	$30,856
	Clerk, Family Treatment Program	201	**207**	$22,323	$26,893	$31,464
	Clerk, Fixed Assets	207, 212	**212**	$22,862	$27,543	$32,224
	Clerk, Gear-up	203	**217**	$23,401	$28,193	$32,984
	Clerk, Head Attendance	226	**221**	$23,833	$28,712	$33,592
	Clerk, Professional Learning	207	**222**	$23,940	$28,842	$33,744
	Clerk, Student Data	197, 226	**226**	$24,372	$29,362	$34,352
	Secretary, Assistant Principal	212				
	Secretary, Coordinator	221				
	Secretary, Counselor	203, 207				
	Secretary, Dean of Instruction	222				
3			**Hourly**	**$14.82**	**$17.86**	**$20.90**
	Clerk, Data Processing (Campus/Dept)	212, 217, 222, 226	**212**	$25,135	$30,291	$35,446
	Specialist, New Generations	226	**217**	$25,728	$31,005	$36,282
			222	$26,320	$31,719	$37,118
			226	$26,795	$32,291	$37,787
4			**Hourly**	**$16.31**	**$19.65**	**$22.99**
	Bookkeeper (Campus/Dept)	217, 226	**207**	$27,009	$32,540	$38,071
	Clerk, Accounts Payable (CN)	226	**212**	$27,662	$33,326	$38,991
	Clerk, Data Management (Admin)	207, 226	**217**	$28,314	$34,112	$39,911
	Clerk, Special Ed Medicaid	207	**221**	$28,836	$34,741	$40,646
	Clerk, Student Support Services	226	**222**	$28,967	$34,898	$40,830
	Migrant Student Recruiter	226	**226**	$29,488	$35,527	$41,566
	Registrar	222, 226				
	Secretary, FM&O	226				
	Secretary, Principal (ES/MS/I&G)	212, 217				
	Secretary, Student Support Services	226				

MCALLEN ISD

2022 - 2023
Clerical / Technical Pay Structure

Pay Grade	Job Title	Work Days		Minimum	Midpoint	Maximum
5			**Hourly**	**$17.79**	**$21.32**	**$24.85**
	Clerk, Accounting	226	**221**	$31,453	$37,694	$43,935
	Clerk, Human Resources	226	**222**	$31,595	$37,864	$44,134
	Clerk, Payroll	226	**226**	$32,164	$38,547	$44,929
	Clerk, Purchasing	226	**242**	$34,441	$41,276	$48,110
	Clerk, Warehouse	242				
	Secretary, Director	221, 226				
	Secretary, Principal (HS/AECHS/Lamar)	222, 226				
	Secretary, Title I Migrant	226				
	Technician, Computer Graphics	221				
6			**Hourly**	**$19.04**	**$22.81**	**$26.58**
	Specialist, Internal Audit	226	**226**	$34,424	$41,240	$48,057
	Specialist, Facilities Procurement & Ops	242	**242**	$36,861	$44,160	$51,459
	Specialist, STOP Grant	226				
7			**Hourly**	**$20.38**	**$24.41**	**$28.44**
	Secretary, Assistant Superintendent	226	**226**	$36,847	$44,133	$51,420
	Secretary, Associate Superintendent	226				
	Specialist, Accounting	226				
	Specialist, District Budget	226				
	Specialist, Employee Benefits Accounting	226				
	Specialist, Employee Leave Benefits	226				
	Specialist, Payroll	226				
	Specialist, PEIMS	226				
	Specialist, Position Control	226				
	Specialist, Workers Compensation	226				
	Student Recruiter	226				
	Technician, Network	226				
	Technician, Technology Support	226				
8			**Hourly**	**$22.32**	**$26.73**	**$31.14**
	Secretary, Board of Trustees	226	**226**	$40,355	$48,328	$56,301
	Specialist, Certification	226				
	Specialist, Classified Personnel	226				
	Specialist, Employee Benefits	226				
9			**Hourly**	**$25.27**	**$30.07**	**$34.87**
	MITV Video/Editor	217	**217**	$43,869	$52,202	$60,534
	Secretary, Superintendent	226	**226**	$45,688	$54,367	$63,045

MCALLEN ISD

2022 - 2023
Instructional Support Pay Structure

Pay Grade	Job Title	Work Days		Minimum	Midpoint	Maximum
1			**Hourly**	**$12.15**	**$14.75**	**$17.35**
	Instructional Assistant, AEP	187	**187**	$18,176	$22,066	$25,956
	Instructional Assistant, At-Risk	187				
	Instructional Assistant, Bilingual (HS/Elem)	187				
	Instructional Assistant, CTE	187				
	Instructional Assistant, In-School Suspension	187				
	Instructional Assistant, Instruction & Guidance	187				
	Instructional Assistant, Parental Involvement	187				
	Instructional Assistant, Physical Education	187				
	Instructional Assistant, Pre-Kinder	187				
	Instructional Assistant, Sci-Tech Lab	187				
2			**Hourly**	**$13.00**	**$15.64**	**$18.28**
	Health Assistant (CMA,RMA,CNA)	192	**187**	$19,448	$23,397	$27,347
	Instructional Assistant, Computer Lab	187	**192**	$19,968	$24,023	$28,078
	Instructional Assistant, Dyslexia	187				
	Instructional Assistant, Kinder (ESSER)	187				
	Instructional Assistant, Resource Media	187				
	Instructional Assistant, Special Education	187				
	Technician Assistant, Special Education Behavior (ESSER)	187				
3			**Hourly**	**$13.76**	**$16.58**	**$19.40**
	Instructional Assistant, Radio/TV Prog	187	**187**	$20,585	$24,804	$29,022
	Instructional Assistant, RDSPD	187				
	Instructional Assistant, Visually Impaired	187				
4			**Hourly**	**$15.00**	**$17.91**	**$20.82**
	Reserved for Future Use					
5			**Hourly**	**$17.53**	**$20.87**	**$24.21**
	Instructional Assistant, Sign Language Interpreter (Cert)	187	**187**	$26,225	$31,222	$36,218
	Licensed Vocational Nurse	192	**192**	$26,926	$32,056	$37,187
	Rover Licensed Vocational Nurse (ESSER)	192				

MCALLEN ISD

2022 - 2023
Auxiliary Pay Structure

Pay Grade	Job Title	Work Days		Minimum	Midpoint	Maximum
1			**Hourly**	**$11.00**	**$13.20**	**$15.40**
	Bus Aide	187 (5.5 hrs)	**187**	$11,314	$13,576	$15,839
	Child Nutrition Worker (Itinerant)	187 (6 hrs)	**187**	$12,342	$14,810	$17,279
	Child Nutrition Worker (ES)	187	**187**	$16,456	$19,747	$23,038
	Custodian	242	**242**	$21,296	$25,555	$29,814
	Custodian (Itinerant)	242				
2			**Hourly**	**$11.91**	**$14.26**	**$16.61**
	Child Nutrition Worker (CK/MS/HS)	187	**187**	$17,817	$21,333	$24,849
	Custodian, Lead Day (HS)	242	**242**	$23,058	$27,607	$32,157
	Groundskeeper	242				
3			**Hourly**	**$12.86**	**$15.40**	**$17.94**
	Asst Manager, Child Nutrition (ES)	187	**187**	$19,239	$23,038	$26,838
	Custodian, Head I (Elem/MS/Alt)	242	**242**	$24,897	$29,814	$34,732
	Electrician, Helper	242				
	General Maintenance	242				
	Groundskeeper, HS Athletic Complex	242				
	Plumber, Helper	242				
4			**Hourly**	**$13.89**	**$16.63**	**$19.37**
	AG Facility Assistant	226	**187**	$20,779	$24,878	$28,978
	Asst Manager, Child Nutrition (CK/MS/HS)	187	**226**	$25,113	$30,067	$35,021
	Campus General Maintenance	242	**242**	$26,891	$32,196	$37,500
	Custodian, Head II (HS)	242				
	Warehouse/Delivery Worker	242				
5			**Hourly**	**$15.00**	**$17.96**	**$20.92**
	Communication Officer	244	**187**	$22,440	$26,868	$31,296
	Dispatcher (FMO/Transp)	242	**242**	$29,040	$34,771	$40,501
	HVAC Duct Cleaner	242	**244**	$29,280	$35,058	$40,836
	Manager, Child Nutrition (ES)	187				
	Painter	242				
	Roofer	242				
	Security Camera Monitor	187				
	Specialist, Irrigation	242				
6			**Hourly**	**$16.65**	**$19.94**	**$23.23**
	Carpenter	242	**187**	$24,908	$29,830	$34,752
	Crew Leader, Painters	242	**242**	$32,234	$38,604	$44,973
	Leader, General Maintenance	242				
	Locksmith	242				
	Manager, Child Nutrition (HS Specialty/MS)	187				
	Mechanic	242				
	Technician, Transportation Safety	242				
	Warehouse Leader (Fixed Assets/CN)	242				

MCALLEN ISD

2022 - 2023
Auxiliary Pay Structure

Pay Grade	Job Title	Work Days		Minimum	Midpoint	Maximum
7			**Hourly**	**$18.34**	**$21.83**	**$25.32**
	Electrician, Journeyman	242	**221**	$32,425	$38,595	$44,766
	Manager, Child Nutrition Comprehensive HS/CK	221	**242**	$35,506	$42,263	$49,020
	Plumber, Journeyman	242				
	Technician, Equipment (CN)	242				
	Technician, HVAC	242				
	Technician, Transportation Route	242				
8			**Hourly**	**$20.08**	**$23.90**	**$27.72**
	Electrician, Master	242	**226**	$36,305	$43,211	$50,118
	Plumber, Master	242	**242**	$38,875	$46,270	$53,666
	Police Officer I	226				
9			**Hourly**	**$21.58**	**$25.69**	**$29.80**
	Emergency Management Officer	226	**226**	$39,017	$46,448	$53,878
	Police Investigator	226	**242**	$41,779	$49,736	$57,693
	Processor, Instructional Materials	226				
	Specialist, Crime Prevention	226				
	Supervisor, Area Custodial	242				
	Supervisor, Auxiliary Services	242				
	Supervisor, Construction	242				
	Supervisor, Electrical	242				
	Supervisor, Grounds & Athletic Fields	242				
	Supervisor, HVAC	242				
	Supervisor, Plumbing	242				
11			**Hourly**	**$24.90**	**$29.29**	**$33.68**
	Police Sergeant	226	**226**	$45,019	$52,956	$60,893
BD			**Hourly**	**$16.25**	**$19.12**	**$21.99**
	Bus Drivers	187 (6 hrs)	**187**	$18,233	$21,453	$24,673

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
PART TIME RATES

	Hourly Rate
Student Worker (Coop. Student)	$7.25
ESSER - PT Intern - Technician Technology Support	$12.00
ESSER - Student Recruiter	$19.00
Part Time Athletic Trainer (MS)	Minimum AE-03
Part-time clerk	$8.00
Part-time Teacher (Degree & Certified)	$23.00
Part-time Teacher (Degree & Certified)	Summer Program Rate
Part-time (Professional)	Minimum of AE/AM schedule
Tutor - out of district (HS or GED)	$8.00
Tutor - out of district (48+ college hrs. req.)	$10.00
Tutor - UTRGV Teacher Residency	$15.00
Tutor - out of district (Degreed)	$19.00
Tutor - out of district (Degree & Certified)	$23.00

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
ATHLETIC PROGRAM RATES

Varsity Football	Hourly Rate
Chain Crew	$35.00 (flat rate)
Game Manager	$13.00
Bookkeeper	$13.00
Ticket Seller	$12.50
Usher/Ticket taker	$9.75
Gate Keeper (East/West)	$10.25
Spotter	$9.75
Press Box Supervisor	$10.75
25 Second Clock	$12.00
Clock/Scorekeeper	$12.00
Announcer	$100 per game

Sub-Varsity Football/Soccer	Hourly Rate
Game Manager	$13.00
Clock	$12.00
Ticket Seller	$12.50
Ticket Taker	$9.75
Gate Keeper	$10.25

Varsity Basketball & Volleyball	Hourly Rate
Ticket Seller	$12.50
Gate Keeper	$10.25

Wrestling	Hourly Rate
Ticket Seller	$12.50

Baseball & Softball	Hourly Rate
Pitch Counter	$35 (per game)
Ticket Seller	$12.50

Other	Hourly Rate
Part Time Coaching:	
- Non-MISD employee (Deg & Cert, w/ 20+ yrs. exp.)	$23.00
- Non-MISD employee	$10.25
- MISD employee	$10.25
Lifeguard (Certified)	$10.25
Facilitator, MS Summer Recreation Program (Deg & Cert)	$23.00
Ticket Clerk (during the day)	$9.25

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
SUBSTITUTE RATES

	Daily Rate	Daily Rate Through May 31, 2023
Full day substitute teacher (non-degreed)	80.00	
Full day substitute teacher (degreed)	100.00	115.00
Full day substitute teacher (degreed & certified)	125.00	140.00
Full day substitute nurse (RN)	200.00	
Full day substitute for an instructional assistant	Rate based on credentials	

Note: Rates remain the same in long term positions.

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 SUMMER SCHOOL RATES
Board Approved
February 28, 2022

REMEDIATION/RECOVERY PROGRAM

CATEGORY	RATE and/or STIPEND	Additional Rate (ESSER III Grant)	SUMMER SCHOOL TOTAL RATE
Principal	$40/hour	$15/hour	$55/hour
Lead Teachers (SIF Middle School and High School)	$36/hour	$15/hour	$51/hour
Teachers	$35/hour	$15/hour	$50/hour
Librarian	$33/hour	$15/hour	$48/hour
Counselors	$33/hour	$15/hour	$48/hour
Registered Nurse	$33/hour	$15/hour	$48/hour
Parent & Family Engagement Specialist	$30/hour	$15/hour	$45/hour
Graduation Specialist	$30/hour	$15/hour	$45/hour
Social Worker	$30/hour	$15/hour	$45/hour
Secretary	$12.50/hour	$10/hour	$22.50/hour
Clerk	$10.50/hour	$10/hour	$20.50/hour
Instructional Aides	$11/hour	$10/hour	$21/hour
Computer Lab Aide	$11/hour	$10/hour	$21/hour
Child Care Aide	$10.50/hour	$10/hour	$20.50/hour
Bus Aides	$10/hour	$10/hour	$20/hour
Bus Drivers	current hourly rate	$10/hour	current hourly rate + $10/hour
Child Nutrition Workers	current hourly rate	$10/hour	current hourly rate + $10/hour
Child Nutrition Asst Managers/Managers	current hourly rate	$15/hour	current hourly rate + $15/hour
Licensed Vocational Nurse (Medical Assistants)	$20/hour	$10/hour	$30/hour
Substitute Pay (for degreed and certified)	$20/hour	$10/hour	$30/hour
Teacher and Professionals - Staff Development	$13.33 per hour	$10 per hour	$23.33 per hour
Professional and Paraprofessional – Workday and Registration	$10.00 per hour	$10 per hour	$20 per hour
Tutors – Certified Teachers	$25/hour	$10/hour	$35/hour
Tutors – Non-certified, bachelor's degree	$20/hour	$10/hour	$30/hour
Tutors- College students	$12/hour	$5/hour	$17/hour
Other hourly employees asked to work beyond their work calendar for summer school	current hourly rate	$10/hour	current hourly rate + $10/hour

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 SUMMER SCHOOL RATES
Board Approved
February 28, 2022

ENRICHMENT PROGRAM

CATEGORY	RATE and/or STIPEND	Additional Rate (ESSER III Grant)	SUMMER SCHOOL TOTAL RATE
Lead Teachers (only in Middle School and High School)	$29/hour	$15/hour	$44/hour
Teachers	$28/hour	$15/hour	$43/hour
EQ Specialists	$28/hour	$15/hour	$43/hour
Librarian	$27/hour	$15/hour	$42/hour
Counselors	$26/hour	$15/hour	$41/hour
Registered Nurse	$25/hour	$15/hour	$40/hour
Parent & Family Engagement Specialist	$25/hour	$15/hour	$40/hour
Social Worker	$25/hour	$15/hour	$40/hour
Secretary	$11/hour	$10/hour	$21/hour
Clerk	$10.50/hour	$10/hour	$20.50/hour
Instructional Aides, Computer Aide	$10/hour	$10/hour	$20/hour
Parent Educators (Paraprofessional)	$10/hour	$10/hour	$20/hour
Bus Aides	$10/hour	$10/hour	$20/hour
Teacher and Professionals - Staff Development	$13.33 per hour	$10 per hour	$23.33 per hour
Professional and Paraprofessional – Workday and Registration	$10.00 per hour	$10 per hour	$20 per hour
Substitute Pay (for degreed and certified)	$20/hour	$10 per hour	$30 per hour
Other hourly employees asked to work beyond their work calendar for summer school	current hourly rate	$10/hour	current hourly rate + $10/hour

McALLEN INDEPENDENT SCHOOL DISTRICT

2022 - 2023
EVENING STUDY CENTER RATES

	Hourly Rate
Lead Teacher / Program Coordinator	$24
Teacher (certified)	$23
Social Worker	$23
Parent and Family Engagement Specialist	$23
Tutors (degreed)	$19
Tutors (48+ College hours)	$10
Attendance Clerk	$10
Child Care Aide	$10
Computer Lab Aide	$10

2022 - 2023
SAFE AND SECURE CHILD CARE RATES

	Hourly Rate (unless noted)
Director / Facilitator	$24
Facilitator (non-degreed MISD employed)	Weighted Average
Nurse	$24
Teacher (certified)	$23
Tutors (48+ College hours)	$10
Clerk/Bookkeeper	$10
Computer Lab Aide	$10
Child Care Aide	$10
Student Worker (Coop Students)	$7.25

Stipends

980

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
ATHLETIC PROGRAMS

High School Head Coaching Positions	# of Positions	* Extra Days *	Yearly Stipend
Baseball	3	15	$7,500
Basketball	6	15	$7,500
Cheer	3	15	$7,500
Powerlifting	3	15	$7,500
Soccer	6	15	$7,500
Softball	3	15	$7,500
Volleyball	3	15	$7,500
Wrestling	3	15	$7,500
Cross Country	6	15	$7,500
Track	6	15	$7,500
Year Round Sports			
Golf	3	15	$8,700
Swim Coordinator / Diving	1	15	$10,000
Swimming	3	15	$8,700
Tennis	3	15	$8,700
High School Asst. Coaching Positions	**# of Positions**	***Extra Days***	**Yearly Stipend**
Asst. Athletic Coordinator *	3	0	$7,500
Baseball Asst.	9	15	$4,000
Basketball Asst.	24	15	$4,000
Cheer Asst.	3	7	$4,000
Football - 9th grade	12	15	$4,000
Football - Defensive Coordinator	3	20	$7,500
Football - Offensive Coordinator	3	20	$7,500
Football - Varsity Asst.	18	15	$5,500
Powerlifting	3	7	$4,000
Soccer Asst.	12	15	$4,000
Softball Asst.	9	15	$4,000
Strength & Conditioning	3	15	$4,000
Volleyball Asst.	12	15	$4,000
Wrestling Asst.	3	15	$4,000
Year Round Sports			
Cross Country Asst.	6	15	$4,000
Swimming Asst.	3	15	$5,500
Tennis Asst.	3	15	$5,500
Track Asst.	24	15	$4,000
Golf Asst.	3	15	$5,500
Middle School Coaching Positions	**# of Positions**	*** Extra Days ***	**Yearly Stipend**
Athletic Coordinator + Coach	6	5 non-football or 10 football	$6,200
Assistant Athletic Coordinator	6	5	$2,200
Baseball Coach	12	0	$2,200
Basketball Coach	48	0	$2,200
Cross Country Coach	12	0	$2,200
Football Coach	42	0	$2,200
Golf Coach	6	0	$2,200
Soccer Coach	24	0	$2,200
Softball Coach	12	0	$2,200
Swimming/ Diving Coach	12	0	$2,200
Tennis Coach	12	0	$2,200
Track Coach	48	0	$2,200
Volleyball Coach	24	0	$2,200
Cheer Coach	12	5	$2,200
Other	**# of Positions**	*** Extra Days ***	**Yearly Stipend**
Athletic Trainer	6	0	$6,000
Athletic Technology Coordinator	1	0	$5,000
Asst. Athletic Technology Coordinator	1	0	$3,600

Fund 183
HR Entered

Notes:

1) H.S. Asst. Coaching: H.S. Assistants coaching only one (1) sport will receive 7 extra days.

2) H.S. Asst. Coaching: * Asst. Athletic Coordinator must be a head coach of a boys or girls sport.

3) Extra days - As of 2015-16 new hire & returning teachers new to coaching extra days are paid at $270 daily rate. For returning coaches, extra days were capped based on their 15-16 daily rate.

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
ADVANCED ACADEMICS

Assignment	# of Positions	Stipend per semester
OnRamps Dual Teacher	8	$100/section
STC Dual Teacher	6	$100/section
AP + OnRamps Dual Teacher	7	$200/section
AP + STC Dual Teacher	5	$200/section

Fund 155
Department Supplemental

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
BILINGUAL PROGRAM

Assignment	# of Students	Yearly Stipend
Elementary Early Exit Bilingual Teacher	10+	$1,200
	5 - 9	$1,000
	2 - 4	$800
Elementary and Secondary Dual Language Teacher	N/A	$1,700

Fund 164
Department Supplemental

Note:

1) Staff must meet eligibility criteria and submit complete application to receive stipend.
2) Schools with 2 - 4 LEP Bilingual students in a specific grade level must group them in a single classroom.

Position	# of Positions	Yearly Stipend
Teacher Coach	4	$2,500

Fund 199
HR Entered

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
CAREER TECHNICAL EDUCATION PROGRAM

HIGH SCHOOL		
Position	**# of Positions**	**Yearly Stipend**
Future Farmers of America (FFA)	3	$2,000
Future Farmers of America (FFA) Co-Sponsor	3	$800
Distributive Education Clubs of America (DECA)	3	$2,000
Distributive Education Clubs of America (DECA) Co-Sponsor	3	$800
Family Career and Community Leaders of America (FCCLA)	4	$2,500
Family Career and Community Leaders of America (FCCLA) Co-Sponsor	4	$800
Business Professional of America (BPA)	4	$2,000
Business Professional of America (BPA) Co-Sponsor	4	$800
Skills USA	6	$2,000
Skills USA (Audio Video)	4	$2,500
TxPSTA Law Enforcement Sponsor	4	$2,000
TxPSTA Law Enforcement Co-Sponsor	4	$800
Health Occupations Students of America (HOSA) Sponsor	6	$2,500
Health Occupations Students of America (HOSA) Co-Sponsor	1	$800
First Tech Challenge (FTC) Robotics	5	$2,000
First Tech Challenge (FTC) Robotics Co-Sponsor	1	$800
MIDDLE SCHOOL		
First Tech Challenge (FTC) or First Lego League (FLL) (Robotics)*	6	$1,200*

Note:
Stipends will be pro-rated based on level of competition achieved and Career Technical Student Organization (CTSO) requirements met.

POST-SECONDARY

Assignment	# of Positions	Stipend per semester
Dual Enrollment	18	$100

ONE TIME SIGN-ON

Position	Stipend Total
Health Science Teacher	$5,000

Note:
1st Year $3,000 December paycheck and 2nd Year $2,000 December paycheck

Fund 162
**Fund 199*
Department Supplemental

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
FINE ARTS PROGRAM

High Schools	# of Positions	Extra Days	Stipend (per year unless noted otherwise)
Head Band Director	3	25	$11,500
Asst. Band Director	12	15	$8,500
Head Orchestra Director	3	15	$7,000
Asst. Orchestra Director	3	15	$4,000
Head Choir Director	3	13	$7,000
Asst. Choir Director	4	8	$4,000
Head Theater Arts Director	3	15	$9,500
Theatre Arts Director (Lamar)	1	0	$2,000
Asst. Theater Arts Director	4	15	$8,000
Mariachi Director	3	15	$8,500
Asst. Mariachi Director	3	15	$7,500
Dance / Folklorico Director	3	10	$7,000
Asst. Dance Team Sponsor	3	5	$3,000
Flag Corp	3	0	$3,000 (per semester)
Art teacher (All but I&G)	10	0	$1,000

Middle Schools	# of Positions	Extra Days	Stipend (per year unless noted otherwise)
Band Director	6	15	$7,500
Asst. Band Director	6	15	$5,500
Choir Director	6	8	$5,000
Asst. Choir Director	5	8	$4,000
Orchestra Director	6	15	$5,000
Asst. Orchestra Director (based on enrollment)	3	15	$4,000
Art Teacher	8	0	$1,000
Dance (After school)	6	3	$1,500

Fund 184
HR Entered

Notes:

1) Extra days will be paid based on teacher daily rate

2) The stipend for school productions include:

A) Assist HS Fall/Spring Drama Production - $1,000 (1 per primary H.S.)

B) Assist HS Collaborative Broadway Musical - $1,500 (1 per primary H.S.)

C) Piano Accompanist (only if assists with musical) - $1,000

3) Additional Duty Stipend

A) Assist HS Fall Marching (Football & Pigskin) - $2000 (up to 6)

B) Lead Art Teacher - $2,000

C) Lead Theater Arts Teacher - $2,000

D) Lead Elementary Music Teacher - $2,000

E) Assist HS Mariachi - $2,000 (up to 3)

F) Auditorium Manager - $2,000 (1 per primary H.S.)

Fund 184
Department Supplemental

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
REGIONAL DAY SCHOOL PROGRAM FOR THE DEAF (RDSPD)

TEACHER	# of Positions	Yearly Stipend
Teacher (Incl. Itinerate)* - Auditory Impaired (AI) certified - Traditional route	29	$1,500 - $5,500
Teacher (Incl. Itinerate)* - AI certified - Alt. certification route		$1,500 - $5,500
Teacher (incl. Itinerate)* - Challenger		$1,500 - $5,500
Teacher (incl. Itinerate)* - Experienced		$1,500 - $5,500
Teacher (incl. Itinerate)* - Grandfathered		$5,500
RDSPD Lead Teacher (incl. Itinerant)	5	$400-$2,000
RDSPD VAC (Vocational Adjustment Coordinator) Teacher	1	$1,000
PROFESSIONAL STAFF: Non-Teaching		
Director (see 2 components below)	1	$1,500-$5,500
Counselor	1	$1,500 - $5,500
Strategist, RDSPD Instructional	1	$1,500 - $5,500
Specialist, Student Support	1	$1,500 - $5,500
Diagnostician - AI certified	2	$1,500 - $5,500
Speech Pathologist	1	$1,500 - $5,500
Speech Pathologist Assistant**	1	$1,500 -$4,500
Audiology Assistant	1	$3,000 - $5,500
PARAPROFESSIONAL STAFF		
Certified Interpreter - Level I (Grandfathered)	TBD	$3,000
Certified Interpreter - Level II (Former Certification or Grandfathered)	TBD	$3,500
Certified Interpreter - Board of Evaluation of Interpreters (BEI) Basic	TBD	$4,000
Certified Interpreter - Board of Evaluation of Interpreters (BEI) Advanced	TBD	$5,000
Certified Interpreter - Board of Evaluation of Interpreters (BEI) Master	TBD	$6,000

Fund 435
HR Entered

NOTES:

1) Stipend amount depends on education, certification, examination, and/or specific training requirements.
2) Certified Interpreter - Basic level is more rigorous to achieve than Level I. Due to state change in certification system Level I is grandfathered.
3) Must be funded by RDSPD to qualify for any of the above RDSPD stipends.

TEACHER COMPONENTS- Payment requirements: (One of the following) (Max: $5,500/year)*

1) Traditional Route – $1,500 - Graduate from a Deaf Education teacher training program and passes the Deaf and Hard of Hearing Certification Test; $4,000 - received upon completion of the Texas Assessment of Sign Competency (TASC) exam

2) Alternate Certification – $1,500 - Completed Alternative Certification Program and passes the Deaf and Hard of Hearing Certification Test; $1,500 - received upon completion of the Texas Assessment of Sign Competency exam; $2,500 - received upon completion of 12 hours from a Deaf Education teacher training program (Local requirement)

3) Challenger - $1,500 - Certified in another area then challenges and passes the Deaf and Hard of Hearing (DHH) Certification test; $1,500 - received when completion of the Texas Assessment of Sign Competency exam; $2,500 - received upon completion of 12 hours from a Deaf Education teacher training program (Local requirement)

4) Experienced Teacher – Falls under "Alternative Certification" or "Challenger" category; $2,500 - received upon completion of 12 hours from a Deaf Education teacher training program (Local requirement)

5) Grandfathered – Grandfathered from taking the TASC (2017-18 school year stipend requirements changed) $5,500 - Certified in Deaf and Hard of Hearing or Hearing Impaired

PROFESSIONAL NON-TEACHING COMPONENTS-

1) $1,500 - Deaf and Hard of Hearing (DHH) Certification,Hearing Impairment, or Deaf/Hard of Hearing

2) $4,000 - Texas Assessment of Sign Competency (TASC) or Grandfathered from the TASC

3) **Speech Path. Asst .- $1,500 - Pass Deaf or Hard of Hearing Certification Exam; $3,000 Demonstration of basic proficiency in American Sign Language or Sign System

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
SPECIAL EDUCATION PROGRAM

Assignment	# of Positions	Yearly Stipend
Special Education Teacher - Self contained	37	$1,200
Special Education Teacher	87	$1,000
Preschool Teachers for Children with Disabilities	7	$1,200
Visually Impaired (VI) Teacher	2	$2,500
Vocational Adjustment Coordinator	3	$1,000
Social Worker	1	$1,000
Diagnostician	21	$1,000
Licensed Specialist in School Psychology (LSSP)	7	$1,000
Special Education Counselor	3	$1,000
Occupational Therapist	4	$1,000
Speech Pathologist	16	$1,000
Speech Assistant	6	$1,000
Teacher: Board Certified Behavior Analyst	1	$2,500
Behavior Support	3	$1,000
Lead Department Chair STRIDES	1	$2,500
STRIDES Teachers-Self-contained	5	$1,200

Fund 173 / 224
Department Supplemental

Notes:

1) Staff must be certified in area of assignment to receive stipend.

2) Stipend will be pro-rated on number of class periods assigned to SPED and days worked.

3) Stipends are paid 1/2 in December and 1/2 in May

Certification Supplement	# of Positions	Yearly stipend
Lead Speech Pathologist	2	$2,500
Speech Pathologist (with Masters)	16	$5,000
Speech Assistant Therapist	6	$1,800
Lead Licensed Specialist in School Psychology (LSSP)	1	$2,500

Fund 173 / 224
HR Entered

Special Assignment Supplement	# of Positions	Yearly stipend
Adapted Physical Education	3	$1,000
Adapted Physical Education (Special Olympics)	3	$1,500

Fund 173 / 224
HR Entered

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
SPECIAL DUTY ASSIGNMENTS

Assignment (Classroom)	# of positions	Yearly Stipend	Fund/Entered
Master degree (grandfathered prior to 12-13)	TBD	$2,000	TBD/ HR
Master degree in subject area (effective 12-13) (Monitored for stipend eligibility as per assignment)	306	$2,000	TBD/ HR
Secondary Science & Engineering Fair Campus Coordinator	11	• $200 – Campus has students participating in one-third (1/3) of the available slots for all categories at the district competition (stipend includes any students participating at regionals). • $300 – Campus has students participating in two-thirds (2/3) of the available slots for all categories at the district competition (stipend includes any students participating at regionals). • $400 – Campus has students participating in 100% (3/3) of the available slots for all categories at the district competition (stipend includes any students participating at regionals). • Additional $150 for any number of students participating at the state and international competitions. * Stipend is paid out to the teacher after the last level students compete.	199/Science Coord.
Secondary Science Olympiad Coach	11	• $600 – regional competition Additional $300 – state competition Additional $300 – national competition * Stipend is paid out to the teacher after the last level students compete.	199/Science Coord.
Secondary Science Olympiad Assistant Coach	11	• $300 – regional competition Additional $150 – state competition Additional $150 – national competition * Stipend is paid out to the teacher after the last level students compete.	199/Science Coord.
Teaching Extra Class	TBD	$5,000 (Other)	TBD/ HR
	TBD	$7,000 (Math)	TBD/ HR
	TBD	$7,000 (Science)	TBD/ HR
Math & Science Teacher (eligibility based on Admin. guidelines)	TBD	$2,000 (Content Certified)	199/HR Director
Instruction & Guidance Teacher	TBD	$500	199/Campus Submit
Team Leaders (Middle School)	TBD	$500	199/Campus Submit
ROTC Senior Instructor	3	$10,000	199/HR

Assignment (Non-classroom)	# of positions	Yearly Stipend	Fund/Entered
Campus Technology Facilitator	70	$1,000	199/ Inst. Tech.
Instructional Coach (Secondary Math/Literacy)	2	$10,000	199/ HR
Lead Librarian (Elementary / Secondary)	2	$1,500	199/ Inst. Tech.
Child Nutrition Team Lead	5	$1,200	101/ CNP
District UIL / Chess Coordinator	1	$5,000	199/ UIL Coord.
Grant Writing	TBD	$250,000-$499,999 = $1,000/Grant(s) $500,000-$999,999 = $2,500/grant(s) $1,000,000 or more = $5,000/grant(s)	
Sports commentator	1	$125 per game	199/ Comm. Info.
Sports executive producer	1	$425 per game	199/ Comm. Info.
Sports video producer	1	$325 per game	199/ Comm. Info.
Sports video anchor	2	$225 per game	199/ Comm. Info.
Sports social media	1	$125 per game	199/ Comm. Info.
Principal (in lieu of additional Asst. Principal)	1	$10,000	199/ HR
Asst. Principal (in lieu of additional Asst. Principal)	1	$4,000	199/ HR
Administrator - Central Office (Interim / Additional duties) *	N/A	* Up to $4,000	199/ HR
Lead Teacher - AP Program	TBD	$2,500	199/ Adv. Acad.
Lead Teacher Strategist (+10 days)	0	$2,000	199/ HR
District Executive Committee (DEC)	4	** Up to $1,500	804/Athletics
Master Teacher (Qualifications as listed on job description)	10	$7,000	255/ HR

Notes:
* Pro-rate pay based on number of days served unless directed otherwise by Superintendent. Exceptions typically reserved for Senior-level duties and responsibilities.
** Stipend amount is determined and reimbursed as per DEC plan.

Support Staff	# of positions	Yearly Stipend	Fund/Entered
MISD Police Department			
Corporal	7	$1,500	199/ HR
Drone Operator	2	$1,500	199/ HR
Instructor	5	$1,000	158/ HR
K-9 Officer	4	$1,200	199/ HR
Terminal Agency Coordinator	1	$500	199/ HR
Transportation			
Certified State Vehicle Inspector Certification	2	$1,000	199/ Transportation
Paid Leave (Reference DEC/Local)	**# of positions**	**Upon Retirement**	**Fund/Entered**
Professional (maximum of 75 Local/State Days)	TBD	$125	TBD/ Payroll
Support Staff (maximum of 75 Local/State Days)	TBD	$70	TBD/ Payroll

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
GRANT FUNDED STIPENDS

DYSLEXIA PROGRAM

Position	# of Positions	Yearly Stipend
Certified Academic Language Therapists (CALT)	2-3	$3,000
Certified Academic Language Practitioners (CALP)	TBD	$2,000
Diagnostician Dyslexia	1	$1,000

Fund 157
HR Entered

READING ACADEMY

Assignment	# of Positions	Stipend Amount
English Language Arts (or "General Ed.") path	TBD	$750
Biliteracy path	TBD	$1,250

Federal Funding
Department Supplemental

Note:

1) TEA mandated the HB3 Reading Academies for teachers in grades Kindergarten through 3rd grade including those who conduct small group interventions. The district has until the 2022-2023 school year to fulfill the reading academies requirement. Starting with the 2023-2024 school year, all teachers (including the new teachers) must have completed this requirement.

2) Stipends will not be paid for employees who leave the district prior to official notification of course completion.

STATE & FEDERAL PROGRAMS

Position	# of Positions	Yearly Stipend
Social Worker	10	$1,000

Fund 193
Department Supplemental

Title I, Part A

Position	# of Positions	Yearly Stipend
Title I ELA Coach	1	$10,000
Title I Math Coach	1	$10,000
Title I Literacy Coach (Writing 3-8)	1	$7,000
Instructional Coach- Reading Interventionist (K-5)	1	$7,000

Fund 211/193
HR Entered

Title II, Part A

Position	# of Positions	Yearly Stipend
Mentors of New Teachers (Years 0-3)	TBD	$1,000

Fund 255
Department Supplemental

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
GRANT FUNDED STIPENDS (cont.)

ESSER STIPENDS

Position	# of Positions	Yearly Stipend	Working Calendar
ESSER Elementary Intervention Counselor	9	$3,200 (0-19 yrs exp)	190
ESSER Elementary Intervention Counselor		$3,600 (20+ yrs exp)	190
ESSER Instructional Coach K-2 / Literacy Coach 3-5 / Reading Teacher	36	$3,200 (0-19 yrs exp)	197
ESSER Instructional Coach K-2 / Literacy Coach 3-5 / Reading Teacher		$3,600 (20-29 yrs exp)	197
ESSER Instructional Coach K-2 / Literacy Coach 3-5 / Reading Teacher		$4,000 (30+ yrs exp)	197
ESSER Specialist, Emotional Quotient	2	$5,000	192
ESSER Student Learning Facilitator Elementary	18	$10,000	207
ESSER Student Learning Facilitator Secondary	3*	$17,000	212
ESSER Strategist, SPED Reading and Math	4	$8,000	203
ESSER Strategist, 3-8 Literacy	1	$15,000	221

* One employee is classified on AE scale and does not qualify for stipend

Fund 282
HR Entered

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
DEPARTMENT/GRADE LEVEL CHAIR / UIL / EXTRACURRICULAR STIPENDS

HIGH SCHOOL		
Department Chair	**Yearly Stipend**	**# positions**
Number of members **excludes** Chairperson		
Lamar/ ECH 2-4	$400	TBD
5-10	$1,000	TBD
11-15	$1,500	TBD
16-20	$2,000	TBD
21+	$2,500	TBD
AP Coordinator	Based on Membership	4
UIL Sponsorship	**Yearly Stipend**	**# positions**
Coordinator	$2,500	4
Accounting	$1,200	4
Calculator	$1,200	4
Chess (Non-UIL)	$1,100	4
Computer Application	$1,200	4
Computer Science	$1,200	4
Congressional Debate	$1,200	4
Copy Editing	$1,200	4
Cross Examination	$1,200	4
Current Events	$1,200	4
Editorial Writing	$1,200	4
Feature Writing	$1,200	4
Headline Writing	$1,200	4
Informative Speaking	$1,200	4
Lincoln Douglas Debate	$1,200	4
Literary Criticism	$1,200	4
Math	$1,200	4
News Writing	$1,200	4
Number Sense	$1,200	4
Persuasive Speaking	$1,200	4
Poetry	$1,200	4
Prose	$1,200	4
Ready Writing	$1,200	4
Robotics	$1,200	4
Science	$1,200	4
Social Studies	$1,200	4
Spelling	$1,200	4
Theatrical Design	$1,200	4
Young Filmmakers	$1,200	4
Extra Curricular Activities	**Yearly Stipend**	**# positions**
Art Society/ Art Club	$600	TBD
Campus Magazine	$600	TBD
Coach Mock Trial	$1,200	5
Citizen Bee	$1,000	5
Crime Stoppers	$1,200	TBD
French Honor Society	$600	TBD
Freshman or Sophomore Sponsor	$600	TBD
Interact Club	$600	TBD
Junior or Senior Sponsor	$1,200	TBD
Masterminds/ Quiz Bowl	$900	TBD
National Honor Society	$850	TBD
Newspaper	$1,000	TBD
Spanish National Honor Society	$600	TBD
Student Council	$1,200	TBD
Thespian Honor Society	$600	TBD
Yearbook	$1,500	TBD
JROTC Color Guard	$600	TBD
JROTC Drill Team (Armed / Unarmed)	$600	TBD
JROTC Honor Guard	$600	TBD
JROTC Physical Fitness Team	$600	TBD
JROTC Rifle	$600	TBD

Fund 199
HR / Business Budgeted

Notes:

1) With the exception to Elementary UIL, stipends are paid 1/2 in December and other 1/2 in May and are subject to proration based on days worked.

2) Elementary UIL Stipends will be from January to May and will be paid in full in May.

MIDDLE SCHOOL		
Department Chair	**Yearly Stipend**	**# positions**
Number of members **excludes** Chairperson		
3-5	$700	TBD
6-9	$1,000	TBD
10-14	$1,200	TBD
15+	$1,500	TBD
UIL Sponsorship	**Yearly Stipend**	**# positions**
Coordinator	$1,250	6
Calculator	$700	6
Chess (Non-UIL)	$1,100	6
Dictionary Skills	$700	6
Impromptu speaking	$700	6
Listening skills	$700	6
Maps, Graphs & Charts	$700	6
Math	$700	6
Modern oratory	$700	6
Number Sense	$700	6
Poetry	$700	6
Prose	$700	6
Ready Writing	$700	6
Duet Acting	$700	6
Robotics (Non-UIL)	$1,100	6
Science	$700	6
Spelling	$700	6
Extra Curricular Activities	**Yearly Stipend**	**# positions**
Cyber Patriot Club	$750	6
Student Council	$700	6
National History Day Coach	$1,200	6
National Honor Society	$700	6
Publication / Yearbook	$500	6

Fund 199
HR / Business Budgeted

ELEMENTARY SCHOOL		
Grade Level Chair	**Yearly Stipend**	**# positions**
Grade Level Chair	$400	TBD
UIL Sponsorship	**Yearly Stipend**	**# positions**
Art Smart (Grade 5)	$500	18
Chess (Non-UIL)	$1,100	18
Creative writing (Grade 2)	$500	18
Dictionary skills (Grade 5)	$500	18
Maps, Graphs & Charts (Grade 5)	$500	18
Math (Grades 3-5)	$500	18
Number Sense (Grades 4-5)	$500	18
Oral reading (Grades 3-5)	$500	18
Ready Writing (Grades 3-5)	$500	18
Robotics (Non-UIL)	$1,000	18
Science (Grade 5)	$500	18
Spanish oral reading (Grades 3-5)	$500	18
Spelling (Grades 3-5)	$500	18

Fund 199
HR / Business Budgeted

Extra Curricular Activities	**Yearly Stipend**	**# positions**
High School		
eSports	$1,200	10
Tech Wars Competition Club	$700-$1,200	28
Middle School		
eSports	$1,200	6
Elementary		
Little eSports	$500	18

Fund 199
Digital Learning
Department Supplemental

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
EXTRA DUTY PAY

I. PRESENTERS (*Pre- or post-contract, weekend, after school*):

A. If the presentation is intended for a district-wide audience as a part of the School for
   1. Professional development or any campus presentations the District will pay:

Schedule:	Rate per Presenter (maximum of 3)	Maximum Pay:
Presentation	$26 per hour / 6 hour maximum	$156
Preparation	$18 per hour / 6 hour maximum	$108
Set-up / Take down	$11 per hour / 4 hour maximum	$ 44
	Total	$308

B. Presentation rate for a repeat session will be:

Schedule:	Rate per Presenter (maximum of 3)	Maximum Pay:
Presentation	$26 per hour / 6 hour maximum	$156
Preparation	$18 per hour / 2 hour maximum	$ 36
Set-up / Take down	$11 per hour / 4 hour maximum	$ 44
	Total	$236

II. PRESENTERS (*During contract*):

A. If the teacher presents during a contracted day, preparation rate for a first-time presentation will be:

Schedule:	Rate per Presenter	Maximum Pay:
Preparation	$18 per hour / 6 hour maximum	$108
Set-up / Take down	$11 per hour / 4 hour maximum	$ 44
	Maximum Total:	$152

B. Preparation rate for a repeat session during a contracted day:

Schedule:	Rate per Presenter	Maximum Pay:
Preparation	$18 per hour / 2 hour maximum	$ 36
Set-up / Take down	$11 per hour / 4 hour maximum	$ 44
	Maximum Total:	$80

NOTE:

1) ***Presentation, preparation, and set-up time is to be determined by Coordinator or Administrator.***
2) ***McAllen ISD Presenter form must be completed and agreed upon by all parties prior to presentation***.

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
EXTRA DUTY PAY (Cont.)

III. TEACHER PARTICIPATION IN DISTRICT SPONSORED SATURDAY OR AFTER SCHOOL TRAINING SESSIONS DURING THE SCHOOL YEAR WILL BE:

Number of hours:	Rate:
2 hours	$27 for completion of a two-hour session
3 hours	$40 for completion of a three-hour session
6 hours	$80 for completion of a six-hour session

NOTE: Courses eligible for stipends and the designated audience will be identified in the ERO.

IV. FOLLOWING HOURLY RATES ARE APPLICABLE FOR DISTRICT STAFF PERFORMING EXTRA DUTIES:

- Extra duties must be approved in advance by Assistant Superintendent.
- Employee must be qualified to perform extra duties. Some duties require degree and/or certification.
- Examples may include, but are not limited to: Testing proctor, LAS Assessment, LPAC, Student registration, Tutoring (outside of contract day), Credit by exam, Migrant tutoring, Clerical, etc.

District Employees	Hourly Rate:
Degreed Professional & Certified	$23.00 (outside of contract day)
Non-Degreed Employees / Paraprofessional (48 hrs. required)	Min. $10.00 (FLSA applies)

V. CURRICULUM DEVELOPMENT (Sequencing, alignment activities, correlations, etc.)

District Employees	Hourly Rate:
Degreed Professional & Certified	$25.00

VI. COVID-RELATED VACCINATION EXTRA DUTY INCENTIVES:

District Employees	Hourly Rate: Effective 11/13/21
Nurses	$34.50
Medical Assistant / LVN (non-exempt) *	$23.00
Other Professionals	$23.00
All other non-exempt staff *	$15.00

*Non-exempt employees are eligible for overtime.

Staffing Guidelines

McALLEN INDEPENDENT SCHOOL DISTRICT
STAFF COUNT - ALL FUNDS
(Source: PEIMS)

	2017-18	2018-19	2019-20	2020-21	2021-22	Proposed 2022-23	Change
TEACHERS							
(047) - Substitute Teacher			5.58		6.53	0.00	-6.53
(087) - Teacher	1,600.85	1,557.49	1,555.30	1,540.41	1,491.01	1,459.00	-32.01
TOTAL=	**1,600.85**	**1,557.49**	**1,560.88**	**1,540.41**	**1,497.54**	**1,459.00**	**-38.54**
Professional Support							
(006) - Audiologist				0.50	1.00	1.00	0.00
(008) - School Counselor	71.00	67.74	67.90	67.03	73.20	74.00	0.80
(011) - Educational Diagnostician	17.00	17.00	17.77	18.86	22.50	23.00	0.50
(013) - Librarian	32.65	29.72	31.85	32.40	31.78	32.00	0.22
(016) - Occupational Therapist	3.99	3.98	4.00	4.00	4.00	4.00	0.00
(022) - School Nurse	39.00	33.88	34.00	32.00	29.11	30.00	0.89
(023) - LSSP/Psychologist	6.50	7.00	7.00	7.00	4.55	6.00	1.45
(024) - Social Worker	6.01	4.99	5.00	11.97	11.23	11.00	-0.23
(026) - Speech Thrpst/Speech-Lang Path	22.64	22.04	24.00	24.00	23.98	25.00	1.02
(030) - Truant Officer/Visiting Teacher	12.00	10.00	10.00	10.00	8.94	10.00	1.06
(041) - Teacher Facilitator	37.93	33.83	49.04	51.12	54.75	55.00	0.25
(054) - Department Head	7.14	6.51	8.92	7.80	4.56	5.00	0.44
(056) - Athletic Trainer	6.00	6.00	6.00	6.00	6.00	6.00	0.00
(100) - Instructional Materials Coordinator	1.00	1.00	1.00	1.00	1.00	1.00	0.00
(102) - Communications Professional	5.50	5.00	5.00	5.00	6.00	6.00	0.00
(104) - Internal Auditor	2.00	2.00	2.00	2.00	2.00	2.00	0.00
(105) - Security	2.00	2.00	2.00	2.00	2.00	2.00	0.00
(106) - District/Campus Information Technology Professional	15.00	13.00	16.00	21.00	21.67	22.00	0.33
(107) - Food Service Professional	2.00	2.00	5.00	6.00	8.65	12.00	3.35
(108) - Transportation	4.00	4.00	4.00	5.00	3.72	5.00	1.28
(109) - Athletics (Other than Athletic Director)	1.70	3.46	2.50	2.50	2.24	3.00	0.76
(111) - Maintenance – Staff serving in a professional/management role	2.00	2.00	3.00	3.00	3.00	3.00	0.00
(112) - Business Services Professional	15.50	16.00	19.00	20.07	21.57	22.00	0.43
(113) - Other District Exempt Professional Auxiliary	11.00	10.12	11.00	13.50	13.00	13.00	0.00
(114) - Other Campus Exempt Professional Auxiliary	47.34	38.77	36.61	37.49	24.73	25.00	0.27
(119) - Family and Community Liaison					16.50	17.00	0.50
(120) - Instructional Coach					27.45	28.00	0.55
TOTAL=	**370.90**	**342.04**	**372.59**	**391.24**	**429.13**	**443.00**	**13.87**
Campus Administration (School Leadership)							
(003) - Assistant Principal	52.00	50.57	48.87	46.34	45.37	45.00	-0.37
(020) - Principal	33.00	31.00	31.00	31.00	30.00	30.00	0.00
(028) - Teacher Supervisor	3.01	4.50			3.61	4.00	0.39
TOTAL=	**88.01**	**86.07**	**79.87**	**77.34**	**78.98**	**79.00**	**0.02**
Central Administration							
(027) - Superintendent	1.00	1.00	1.00	1.00	1.00	1.00	0.00
(004) - Assistant/Associate/Deputy Superintendent	5.00	3.00	5.00	5.00	5.00	5.00	0.00
(012) - District Instructional Program Director or Executive Director	10.00	11.00	12.00	13.00	12.00	12.00	0.00
(028) - Teacher Supervisor	14.00	12.00	12.00	14.00	10.00	10.00	0.00
(040) - Athletic Director	1.00	1.00	1.00	1.00	1.00	1.00	0.00
(043) - Business Manager	1.00	1.00	1.00	1.00	1.00	1.00	0.00
(045) - Director of Personnel/Human Resources	2.00	2.00	2.00	2.00	2.00	2.00	0.00
TOTAL=	**34.00**	**31.00**	**34.00**	**37.00**	**32.00**	**32.00**	**0.00**
Educational Aides:							
(033) - Educational Aide	364.54	352.80	387.50	381.82	406.59	406.00	-0.59
(036) - Certified Interpreter	2.00	1.00	1.00	1.00	1.68	1.00	-0.68
TOTAL=	**366.54**	**353.80**	**388.50**	**382.82**	**408.27**	**407.00**	**-1.27**
Auxiliary Staff:							
(201) - Business/Finance	29.00	24.00	22.00	9.00	16.57	17.00	0.43
(202) - Campus Office/Clerical	181.00	185.50	208.00	407.69	279.23	138.00	-141.23
(203) - Central Office/Clerical (Receptionist, Secretary)	95.00	85.00	82.00	58.00	70.95	103.00	32.05
(204) - Child Nutrition	189.00	179.50	159.00	39.00	135.72	238.00	102.28
(205) - Human Resources	8.00	8.00	8.00	7.00	7.00	7.00	0.00
(206) - Information Technology	17.00	16.00	17.00	6.00	13.00	13.00	0.00
(213) - Custodial	170.00	163.00	161.00	164.00	161.13	163.00	1.87
(214) - Maintenance	63.00	62.00	54.00	53.00	50.96	54.00	3.04
(215) - Plumber	5.00	5.00	5.00	5.00	4.72	5.00	0.28
(216) - Painter	6.00	5.00	6.00	6.00	6.00	6.00	0.00
(217) - HVAC	12.00	12.00	10.00	12.00	12.00	12.00	0.00
(218) - Electrician	6.00	5.00	6.00	6.00	5.04	6.00	0.96
(220) - Safety/Security	47.00	58.00	68.00	69.00	66.95	69.00	2.05
(221) - Transportation	59.00	61.25	59.75	57.00	65.37	70.00	4.63
TOTAL:	**887.00**	**869.25**	**865.75**	**898.69**	**894.64**	**901.00**	**6.36**
Total Staff =	**3,347.30**	**3,239.65**	**3,301.59**	**3,327.50**	**3,340.56**	**3,321.00**	**-19.56**
FTE Difference from Previous Year =	**-34.70**	**-107.65**	**61.94**	**25.91**	**13.06**	**-19.56**	**-32.62**
Student Enrollment =	**23,721**	**22,875**	**22,280**	**22,427**	**20,410**		
Student/Staff FTE Ratio =	**7.09**	**7.06**	**6.75**	**6.74**	**6.11**		

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
ELEMENTARY SCHOOL STAFFING GUIDELINES

ADMINISTRATIVE SUPPORT		DAYS	FUND
Principal	One (1) Full-Time person	212	199
Assistant Principal	350-800 students = Full-Time person, 801 + students = 2 Full-Time persons	207	199
Counselor	0 - 600 = 1 Full-Time person, 601 + = 2 Full-Time persons	190	199
Nurse	One (1) Full-Time person	192	199
Librarian	One (1) Full-Time person	197	199
TEACHER			
Teacher, Pre-K - CSR	One (1) teacher per 18 students - Situation Dependent	187	199
Teacher, Pre-K-4	One (1) Teacher per 22 students	187	199
Teacher, 5th Grade	One (1) Teacher per 25 students	187	199
Teacher, Music	Allocations based on enrollment	187	199
Teacher, PE	0-700 students = One (1) Teacher	187	199
	701+ students = Two (2) Teachers	187	199
Teachers, PPCD (3-5 yrs.)	One (1) Teacher per 12 students	187	173
Teachers, Self- Contained	One (1) Teacher per 12 students	187	173
Teachers, Spec. Ed. Adaptive PE	Situation Dependent	187	173
Teacher Special Language	1/2 (.5) Person per campus (Situation Dependent)	187	263
Dyslexia	1-15 students = 1/2 (.5) Person per campus, 31-35 students = 1 Full-Time person	187	199
Math Interventionist	One (1) Full-Time person	187	193
Language Literacy Interventionist	One (1) Full-Time person	187	211
K-2 Early Literacy Interventionist	One (1) Full-Time person, 600+ students = Two (2) Full-Time persons per Title I campus	187	193/211
Literacy Coach	One (1) per Title I campus	187	193/211
ESSER Instructional Coach K-2 (SY 21-22, 22-23, 23-24)	One (1) Full-Time person	187	282
ESSER Student Learning Facilitator (SY 21-22, 22-23, 23-24)	One (1) Full-Time person	187	282
ESSER Intervention Counselor (SY 21-22, 22-23, 23-24)	1/2 (.5) Person per campus	187	282
INSTRUCTIONAL PARAPROFESSIONAL			
Instructional Assistant, PE	0 - 500 = One (1) Paraprofessional	187	199
	501 - 700 = Two (2) Paraprofessionals	187	199
	701 - 900 = Three (3) Paraprofessionals	187	199
	901 + = Two (2) Paraprofessionals	187	199
Instructional Assistant, Pre-K	One (1) Paraprofessional per class	187	164/199
Instructional Assistant, Dyslexia	16-30 students = 1/2 (.5) Person per campus, 36+ students = 1 Full-Time person	187	199
Instructional Assistant - Computer Lab	One (1) per campus	187	193
Instructional Assistant - At-Risk Assistant	One (1) per campus	187	193
Instructional Assistant - Science Technology	One (1) per Title I school	187	193
Instructional Assistant - Resource Media	600+ = One (1) Paraprofessional	187	199
Instructional Assistant - Bilingual	One (1) per campus	187	164
ESSER Instructional Assistant - Kinder (SY 21-22, 22-23, 23-24)	One (1) per campus	187	282
ESSER Certified Medical Assistant (SY 21-22, 22-23, 23-24)	Situation Dependent	187	282

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
ELEMENTARY SCHOOL STAFFING GUIDELINES

SECRETARY/CLERICAL PARAPROFESSIONAL		DAYS	FUND
Secretary	One (1) Full-Time person	212	199
Clerk, Data Processing	One (1) Full-Time person	212	199
Clerk, Student Data	500 + = 1 Full-Time person	201	199
Clerk Campus	700+ = 1 Full-Time person	207	199
SUPPLEMENTAL PROFESSIONAL POSITIONS			
Teacher, Spec. Ed. Homebound	Situation Dependent	187	224
Teacher, Behavioral Strategist	Three (3) Teachers district wide	187	224
AEP	One (1) Teacher district wide	187	193
Parent and Family Engagement Specialist	One (1) per campus (Also assigned other campuses)	187	211
Social Worker	Situation Dependent	187	193
Teacher, RSD (Regional School for the Deaf)	Situation Dependent	187	435
Diagnostician	Situation Dependent	197	173
Occupational Therapist	Situation Dependent	221	224
Speech Pathologist	Situation Dependent	192	173/224
SUPPLEMENTAL PARAPROFESSIONAL POSITIONS			
Inst. Assistant - Spec. Ed. Life Skills	Situation Dependent	187	173/224
Inst. Assistant - RSD	Situation Dependent	187	435
Aide, Deaf Interpreter	Situation Dependent	187	435
Inst. Assistant - AEP	One (1) Person district wide	187	193
ESSER Behavior Technician Assistant (SY 21-22, 22-23, 23-24)	Situation Dependent	187	282
CUSTODIAL			
Custodian Head I	One (1) per campus	242	199
Custodian	Custodial allocations are based upon the cleanable Square Footage (SF) of the facility. Cleanable SF is defined as being 90% of the gross SF. Secondary campuses are staffed at one (1) custodian per 19, 000 SF of cleanable floor space. This staffing standard does include the Head Custodian.	242	199
CHILD NUTRITION PROGRAM			
Child Nutrition Manager	One (1) per campus	190	101
Child Nutrition Assistant Manager	One (1) per campus	190	101
Child Nutrition Worker	One (1) per 19-25 meals/labor hour. Kitchens are staffed based on labor hours, not the number of people. Labor hours are converted into employee equivalents.	190	101

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
MIDDLE SCHOOLS STAFFING GUIDELINES

ADMINISTRATIVE SUPPORT		DAYS	FUND
Principal	One (1) per campus	217	199
Assistant Principal	One (1) per campus	212	199
Assistant Principal	801+ = 1 Full-time person	207	199
School Improvement Facilitator	One (1) per campus	207	211
Counselor	0-500 = 1 Full-time person, 501+ = 2 Full-time persons	201	199
Counselor - Gear Up	Morris MS/Travis MS	201	274
Librarian	One (1) per campus	197	199
Nurse	One (1) per campus	192	199
Social Worker	One (1) per campus	187	193
TEACHER			
English	One (1) per 25 students per six (6) periods	187	199
Mathematics	One (1) per 25 students per three (3) periods	187	199
Science	One (1) per 25 students per six (6) periods	187	199
Social Studies	One (1) per 25 students per six (6) periods	187	199
Art	One (1) per 25 students per six (6) periods	187	199
Theatre Arts	One (1) per 25 students per six (6) periods	187	199
Head Band Director	One (1) per campus	202	199/184
Assistant Band Director	One (1) per campus, 300+ = +1	202	199/184
Choir Head Director	One (1) per campus	195	199/184
Assistant Choir Director	One (1) per 200+ students	195	199/184
Orchestra Head Director	One (1) per campus	202	199/184
Assistant Orchestra Director	One (1) per 150+ students	202	199/184
Spanish	One (1) Full-Time Person (De Leon IB MYP, Fossum DL)	187	199
Sci Tech Teacher	One (1) per campus	187	193
Language Literacy Interventionist	Two (2) per campus @ 18:1, One (1) per campus @ 18:1	187	211
Dyslexia	One (1) per campus	187	199
Instructional Coach	One (1) per campus @ Travis and Brown	192	211
Technology Applications	One (1) per 25 students per six (6) periods	187	199
Technology Education	One (1) per 25 students per six (6) periods	187	199
Physical Education	One (1) per 25 students per six (6) periods	187	199
Special Education - Inclusion	One (1) per 20 students	187	173
Special Education - Visually Impaired	Situation Dependent	187	173
Special Education - Self Contained (5320)	One (1) per 12 students	187	224
AVID teacher	Situation Dependent	187	199
ESSER Student Learning Facilitator (SY 21-22, 22-23, 23-24)	One (1) Full-Time person (Brown, Travis, De Leon)	187	282

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
MIDDLE SCHOOLS STAFFING GUIDELINES

INSTRUCTIONAL PARAPROFESSIONAL		DAYS	FUND
Inst. Assistant - Special Ed.	Situation Dependent	187	173
Inst. Assistant - In School Susp.	One (1) per campus	187	199
Inst. Assistant - At-Risk	One (1) per campus	187	193
Inst. Assistant - Computer Lab (6365)	One (1) per campus	187	193
Instructional Assistant - Resource Media	700+ = One (1) Paraprofessional	187	199
SUPPLEMENTAL PROFESSIONAL POSITIONS			
IB Coordinator	One (1) @DeLeon MS	187	199
Master Teacher	One (1) per core subject (Brown, Travis, De Leon)	187	255
Literacy CSR	Situation Dependent, One (1) per 18 students	187	193
RSD Hearing Impaired (5240) - Brown MS	Situation Dependent	187	435
Diagnostician	One (1) per campus (Also assigned other campuses)	197	173
Speech Pathologist	One (1) per campus (Also assigned other campuses)	192	173
Speech Pathologist Assistant	Situation Dependent	192	173
Speech Pathologist - RSD - Brown MS	Situation Dependent	192	435
Licensed Vocational Nurse	One (1) District Wide	192	199
Parent and Family Engagement Specialist (1151)	.5 per campus	187	211
Speech Pathologist Assistant - RSD (1181) - Brown MS	Situation Dependent	192	435
SUPPLEMENTAL PARAPROFESSIONAL POSITIONS			
Inst. Assistant - RSD (6383)	Situation Dependent	187	435
Inst. Assistant - Parental Involvement (6474)	Brown MS/Travis MS	187	211
Inst. Assistant - Deaf Interpreter - RSD (6475)	Situation Dependent	187	435
Certified Medical Assistant	Situation Dependent	192	199/211
ESSER Certified Medical Assistant (SY 21-22, 22-23, 23-24)	Situation Dependent	187	282
ESSER Behavior Technician Assistant (SY 21-22, 22-23, 23-24)	Situation Dependent	187	282
SECRETARY/CLERICAL PARAPROFESSIONAL			
Secretary - Principal	One (1) per campus	217	199
Clerk - Campus	One (1) per campus	201	199
Clerk - Counselor	One (1) per campus	201	199
Clerk - Data Processing	One (1) per campus	217	199

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
MIDDLE SCHOOLS STAFFING GUIDELINES

CUSTODIAL		DAYS	FUND
Custodian Head I	One (1) Full-Time person	242	199
Custodian	Custodial allocations are based upon the cleanable Square Footage (SF) of the facility. Cleanable SF is defined as being 90% of the gross SF. Secondary campuses are staffed at one (1) custodian per 19, 000 SF of cleanable floor space. This staffing standard does include the Head Custodian.	242	199
CHILD NUTRITION PROGRAM			
Child Nutrition Manager	One (1) per campus	190	101
Child Nutrition Assistant Manager	One (1) per campus	190	101
Child Nutrition Worker	One (1) per 19-25 meals/labor hour. Kitchens are staffed based on labor hours, not the number of people. Labor hours are converted into employee equivalents.	190	101

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
HIGH SCHOOL STAFFING GUIDELINES

ADMINISTRATIVE SUPPORT		DAYS	FUND
Principal	One (1) per campus	226	199
Principal - Lamar Academy/Achieve Early College HS	One (1) per campus	222	199
Principal - I & G Center	One (1)	212	193
Assistant Principal	One (1) per campus	222	199
Assistant Principal	601-1300 = 1 Full-time person, 1301-2100 = 2 Full-time persons, 2101+ = 3 Full-time persons	212	199
Dean of Instruction	One (1) per campus	222	199
School Improvement Facilitator	One (1) per campus	212	211
Coordinator Athletic Head Coach	One (1) per campus	226	183
Counselor, Lead	One (1) per campus	207	199
Counselor	401-800 = 1 Full-time person, 801-1200 = 2 Full-time persons, 1201-1600 = 3 Full-time persons, 1600+ = 4 Full-time persons	203	199
Counselor - Lamar Academy/Achieve Early College HS	450+ = 1/2 (.5) person	203	199
Counselor - CTE	One (1) per campus	203	162
Counselor - Special Ed.	Situation Dependent	203	173
Counselor - Gear Up	Rowe HS	201	274
Specialist, College Admissions	One (1) per campus	201	155
Specialist, Graduation	One (1) per campus	197	193
Specialist, Graduation AECHS/Lamar Academy	One half (.5) per campus	197	193
Specialist, College and Career Readiness	Two (2) per campus	201	193
Specialist, Parent and Family Engagement	One half (.5) per campus	187	211
Specialist, Social Emotional Learning	One (1) per campus	187	289
Campus Testing Coordinator	One (1) per campus (comprehensive), One (1) per campus (Lamar Academy)	187	199
IB Coordinator	One (1) @Lamar IB	187	199
Diagnostician	Situation Dependent	197	173
Librarian	Two (2) per campus (comprehensive), One (1) per campus (AECHS/Lamar Academy)	197	199
Head Nurse, RN	One (1) per campus	192	199
Social worker	One (1) per campus	187	193
Speech Pathologist	Situation Dependent	192	173 / 224
Speech Pathologist Assistant	Situation Dependent	192	173
Athletic Trainer	Two (2) per campus	205	183
TEACHER			
English	One (1) Teacher per 25 students x 6 periods	187	199 / 193 / 153
Mathematics	One (1) Teacher per 25 students x 6 periods	187	199 / 193 / 153
Science	One (1) Teacher per 25 students x 6 periods	187	199 / 153
Economics	One (1) Teacher per 25 students x 6 periods	187	199 / 162
American Sign Language	One (1) Teacher per 25 students x 6 periods	187	199
Credit Recovery	Situation Dependent	187	193
ELA CSR	Situation dependent	187	255
Math CSR	Situation dependent	187	255

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
HIGH SCHOOL STAFFING GUIDELINES

TEACHER (cont.)		DAYS	FUND
ELA Bridging	Situation dependent	187	193
Math Bridging	Situation dependent	187	193
Science Bridging	Situation Dependent	187	211
RSD Hearing Impaired (5240) - Memorial HS	Situation dependent	187	435 / 315
Transition Teacher	Situation Dependent	187	211
Transition Teacher - AECHS/Lamar Academy	One (1) per campus	187	211
Art	One (1) Teacher per 25 students x 6 periods	187	199
AVID	Situation Dependent	187	199
Head Band Director	One (1) per campus	212	199 / 184
Assistant Band Director	Three (3) per campus	202	199 / 184
Choir Head Director	One (1) per campus	200	199 / 184
Assistant Choir Director	One (1) per campus, 200+ = +1	195	199 / 184
Dance	One (1) per campus	187	199
Drama - Lamar Academy	One (1)	187	199 / 193
French	One (1) Teacher per 25 students x 6 periods	187	199
Health	One (1) Teacher per 25 students x 6 periods	187	199
Journalism	One (1) Teacher per 25 students x 6 periods	187	199
Mariachi	One (1) per campus	202	199 / 184
Mariachi Assistant Director	One (1) per campus	202	199 / 184
Orchestra Head Director	One (1) per campus	202	199 / 184
Orchestra Assistant Director	One (1) per campus	202	199 / 184
Piano Accompanist	Two (2) per campus	187	199
ROTC	Two (2) per campus	226	199
Sociology	One (1) Teacher per 25 students x 6 periods	187	199
Social Studies	One (1) Teacher per 25 students x 6 periods	187	199
Spanish	One (1) Teacher per 25 students x 6 periods	187	199
Speech	One (1) Teacher per 25 students x 6 periods	187	199
Theatre Arts	One (1) Teacher per 25 students x 6 periods	187	199
General Education Homebound - Lamar Academy	Situation Dependent	187	199
CTE Teacher	Number of CTE students per Teacher depends on the Square Footage of the classroom or the number of computers per classroom. Range of students per Teacher is 16-25.	187 / 226	162
AEP	Two (2) per campus	187	193
Physical Education	One (1) Teacher per 25 students x 6 periods	187	199
PRS Teacher - Lamar Academy	One (1) per campus	187	193
Special Education - Inclusion	One (1) Teacher per 20 students	187	173
Special Education - Visually impaired	Two (2) Teachers District wide	187	173
Special Education - Self Contained (5320)	One (1) per 12 students	187	224
Special Education - Voc. Adj. Coordinator	Situation Dependent	221	173
Licensed Vocational Nurse	One (1) per campus (Comprehensive)	192	199
Certified Medical Assistant	One (1) per campus (Comprehensive)	192	199

McALLEN INDEPENDENT SCHOOL DISTRICT
2022 - 2023
HIGH SCHOOL STAFFING GUIDELINES

INSTRUCTIONAL PARAPROFESSIONAL		DAYS	FUND
Inst. Assistant - Bilingual	One (1) per campus	187	164
Inst. Assistant - Special Education	One (1) per campus - 80+ students = One (1) additional aide	187	173 / 224
Inst. Assistant - In school suspension	One (1) per campus	187	199
Inst. Assistant - Resource Media	One (1) per comprehensive H.S. / 750+ = One (1) Paraprofessional	187	199
Inst. Assistant - Radio & TV prog. - McAllen HS	One (1)	187	199
Inst. Assistant - Computer Lab (6365)	Two (2) per campus	187	193
Inst. Assistant - Computer Lab (6365) AECHS/Lamar Academy	One (1) per campus	187	193
Inst. Assistant - Instruction & Guidance (6384)	One (1) per campus	187	193
Inst. Assistant - RSD (6383) - Memorial HS	Situation Dependent	187	435
Inst. Assistant - Parental Involvement (6474)	One (1) per campus	187	211
Inst. Assistant - At Risk	Three (3) per campus	187	193
SECRETARY/CLERICAL PARAPROFESSIONAL			
Secretary - Principal	One (1) per campus	226	199
Secretary - Assistant Principal	One (1) per campus	212	199
Secretary - Dean of Instruction	One (1) per campus	222	199
Secretary - Counselor	One (1) per campus	207	199
Secretary - Counselor	One (1) per campus	203	199
Secretary - Counselor (CTE)	One (1) per campus	203	244
Bookkeeper	One (1) per campus	217	199
Clerk - Head Attendance	One (1) per campus	226	199
Clerk - Attendance	One (1) per campus	201	199
Registrar	One (1) per campus	226	199
Assistant Registrar	One (1) per campus	226	199
Clerk - Campus	One (1) per campus	226	199
Clerk - Counselor	One (1) per campus	203	199
Clerk - Data Processing	Two (2) per campus	222	199
Secretary - Principal - Lamar Academy/Achieve Early College HS	One (1) per campus	222	199
Secretary - Principal - I & G Center	One (1) per campus	212	199
Clerk - Attendance - Lamar Academy/Achieve Early College HS	One (1) per campus	222	199
Registrar - Lamar Academy/Achieve Early College HS	One (1) per campus	222	199
Clerk - Data Processing - I & G Center	One (1) per campus	212	199
CUSTODIAL			
Custodian Lead Day	One (1) per campus	242	199
Custodian Head II	One (1) per campus	242	199
Custodian	Custodial allocations are based upon the cleanable Square Footage (SF) of the facility. Cleanable SF is defined as being 90% of the gross SF. Secondary campuses are staffed at one (1) custodian per 19, 000 SF of cleanable floor space. This staffing standard does include the Head Custodian.	242	199
CHILD NUTRITION PROGRAM			
Child Nutrition Manager	One (1) per campus	221	101
Child Nutrition Assistant Manager	One (1) per campus	190	101
Child Nutrition Worker	One (1) per 22-23 meals/labor hour. Kitchens are staffed based on labor hours not the number of people. Labor hours are converted into employee equivalents.	190	101
15:1 ratio for DAEP teacher	1002		

Glossary of Terms

Ad Valorem Tax: The primary source of local funding for school districts is ad valorem taxes levied against the local tax base. Ad valorem means according to the value.

Adjusted Basic Allotment: The base allotment is adjusted based on how much it costs to educate students in that region of the state as assigned by the cost of index (CEI).

Appraise: To make an estimate of value, particularly of the value of property. Note, if the property is valued for purposes of taxation, the less-inclusive term "assess" is substituted for the above term.

Appropriated Budget: The expenditure authority created by the appropriation bills or ordinances that are signed into law and related estimated revenues. The appropriated budget would include all reserves, transfers, allocations, supplemental appropriations, and other legally authorized legislative and executive changes.

Appropriation: An authorization granted by a legislative body to make expenditures and to incur obligations for specific purposes. An appropriation is usually limited in amount and as to the time when it may be expended.

Assessed Valuation: A valuation set upon real estate or other property by the County Appraisal District to be used as a basis for levying taxes.

Audit: A comprehensive review of the manner in which the government's resources were actually utilized. A certified public accountant issues an opinion over the presentation of financial statements, tests the controls over the safekeeping of assets and makes recommendations for improvements for where necessary.

Average Cost Per Student: the total costs of the district divided by the total enrollment.

Average Daily Attendance (ADA): The number of students in ADA can be found by adding the number of students who are in attendance each day of the school year for the entire school year and dividing by the number of days of instruction to compute average daily attendance. ADA is used in the formula to distribute funding to Texas public school districts.

Balanced Budget: A budget with total expenditures not exceeding total revenues and monies available in the fund balance within an individual fund.

Basic Allotment: The basic allotment is a set dollar amount to which each school district is entitled per student in ADA. It is used to calculate foundation program costs and state aid to school districts.

Bond: A written promise, generally under seal, to pay a specified sum of money, called the face value, at a fixed time in the future, called the date of maturity, and carrying interest at a fixed rate, usually payable periodically. The difference between a note and a bond is that the latter usually runs for a longer period of time and requires greater legal formality.
School Bonds are issued by a public school district to finance buildings or other capital projects. In the simplest terms, bonds for school projects are similar to a mortgage for a home. To be able to sell bonds a school district must have voter approval through an election.

Bonded Debt: The part of the school district debt which is covered by outstanding bonds of the district. Sometimes called "Funded Debt or Bonded Indebtedness".

Bonds Authorized and Unissued: Bonds which have been legally authorized, but not issued, and which can be issued and sold without further authorization.

Bonds Issued: Bonds sold.

Budget: A plan of financial operation embodying an estimate of proposed expenditures for a given period or purpose and the proposed means of financing them.

Budget Amendment: This is the reallocation of budgeted funds from one function code to another. All budget amendments are required to be adopted by the last day of the fiscal year.

Budget Transfer: This is the reallocation of budgeted funds from within the same function code.

Capital Expenditures/Outlay: Land, building, machinery, furniture, and other equipment which the school district intends to hold or continue in use for more than one (1) year, and has a per unit value of $5,000 or more. "Fixed" denotes probability or intent to continue use or possession, and does not indicate immobility of an asset.

Capital Projects Fund: A government fund type with budgetary control established to account for projects that are financed by the proceeds from bond issues, or for capital projects otherwise mandated to be so accounted for in this fund.

Cash Basis of Accounting: Basis of accounting that recognizes transactions or events when related cash amounts are received or disbursed.

Cash Balance: the amount of funds available in liquid investments to cover expenditures at a single point in time.

Cash Flow: the net of cash receipts and cash disbursements during a particular accounting period.

Co-Curricular Activities: This function is used for expenditures/expenses for school-sponsored activities outside the school day. These activities are generally to provide students with experiences such as motivation and the enjoyment and improvement of skills in either a competitive or noncompetitive setting are that not part of the regular instructional program. Examples include athletics, clubs, band and orchestra, drill team, Future Farmers of America (FFA), cheerleading, one-act plays, speech, debate, National Honor Society, etc.

Comprehensive Annual Financial Report (CAFR): A financial report that encompasses all funds and component units of the government. The CAFR is the governmental unit's official annual report.

Cost of Education Index (CEI) or Adjustment: An index the State uses to adjust the basic allotment to account for geographic or other cost differences beyond local school district control. The current index has not been updated since 1990.

Current Year's Tax Levy: Taxes levied for the current fiscal period.

Debt: An obligation resulting from the borrowing of money or from the purchase of goods and services. Debts of local education agencies include bonds, loans, and leases, etc.

Debt Limit: The maximum amount of gross or net debt which is legally permitted by law.

Debt Service Fund: A governmental fund with budgetary control that accounts for expenditures for the retirement of Bonded Debt and expenditures for interest on Bonded Debt.

Delinquent Taxes: Taxes remaining unpaid on and after the date on which they become delinquent by statute, which is after February 1st.

Education Service Center (ESC): Twenty intermediate education units located in regions throughout Texas that assist and provide Services for local school Districts.

Effective Tax Rate: State law in Texas prescribes a formula for calculating the effective tax rate for districts. The net effect of the formula is to produce a tax rate that generates approximately the same revenue as the year before.

Enrollment: The number of students, early education through grade 12, registered in a school at a designated time in the school year. This designated time is the last Friday in October, also referred to as The Public Education Information Management System "snapshot date."

Existing Debt Allotment (EDA): Eligibility is determined by the date of first payment made on general obligation bonds issued by a school district. Bonds for which the first payment was made before the end of a state biennium are eligible to receive EDA. The amount of funding is determined by the district's I & S tax effort during the last year of the preceding state biennium.

- Application not necessary, for bonds only
- State aid limited to 29 cents of debt rate

Expenditures: An expenditure is a payment or disbursement incurred for governmental funds under the modified accrual basis of accounting. For example, the expenditure may be for the purchase of an asset, a reduction of a liability, or it could be an expense.

Expenses: An outflow of financial resources that occurs when the liability for a payment for goods or services is incurred for proprietary (enterprise and internal service) funds under the accrual basis of accounting.

Fiscal Period: Any period at the end of which a local education agency determines its financial position and the results of its operations. The period may be a month, or a year, depending upon the scope of operations and requirements for managerial control and reporting.

Fiscal Year (FY): A twelve-month period of time to which the annual budget applies and at the end of which a local education agency determines its financial position and the results of its operations. The District's fiscal year is July 1 through June 30.

Fixed Assets: Land, building, machinery, furniture, and other equipment which the school district intends to hold or continue in use for more than one (1) year, and has a per unit value of $5,000 or more. "Fixed" denotes probability or intent to continue use or possession, and does not indicate immobility of an asset.

Food Service: Those activities which have as their purpose the preparation and serving of regular and incidental meals, lunches, or snacks in connection with school activities.

Forecasting Expenditures: the projected results for future years.

Forecasting Revenues: the projected results for future years.

Foundation School (FSP): A program for the support of a basic instructional program for all Texas school children. Money to support the program comes from the Permanent School Fund, Available School Fund, Foundation School Fund, State general revenue, and local property taxes. Currently, the FSP described in the Texas Education Code consists of three parts or tiers:

1. The first tier provides funding for a basic program.
2. The second tier provides a guaranteed-yield system so that school districts have substantially equal access to revenue sufficient to support an accredited program.
3. The third tier equalizes debt service requirements for existing facilities debt.

Function: A function represents a general operational area in a school district and groups together related activities; for example, instruction, campus administration, maintenance and operations, etc. As applied to expenditures, this term has reference to an activity or service aimed at accomplishing a certain purpose or end.

Fund: An independent fiscal and accounting entity with a self-balancing set of accounts recording cash and/or other resources, together with all related liabilities, obligations, reserves, and equities which are segregated for the purpose of carrying on in accordance with special regulations, restrictions, or limitations.

Fund Balance: Fund balance is the difference between assets and liabilities at a given point in time. The change in fund balance is the difference between revenues and expenditures. Governmental Fund financial statements breaks down the fund balance into 5 categories:

- ***Non-Spendable*** – the portion of the gross fund balance that is not expendable (such as inventories, pre-paid items) or is legally earmarked for a specific use (such as the self-funded reserves program).
- ***Restricted*** – amounts constrained to a specific purpose by the provider, such as special populations programs and grants.
- ***Committed*** –that portion of the fund balance that is constrained to a specific purpose by the Board.
- ***Assigned*** – that portion of the fund balance that is spendable or available for appropriation but has been tentatively earmarked for some specific purpose by the Superintendent or designee.
- ***Unassigned*** – includes amounts available for any legal purpose. This portion of the total fund balance in the general fund is available to finance operating expenditures. The unassigned fund balance shall be the difference between the total fund balance and the total of the non-spendable fund balance, restricted fund balance, committed fund balance and assigned fund balance.

General Fund: A fund group with budgetary control used to show transactions resulting from operations of ongoing organizations and activities from a variety of revenue sources for which fund balance is controlled by and retained for the use by the local education agency. The General Fund is used to finance the ordinary operations of a governmental unit except those activities required to be accounted for in another fund.

General Obligation Debt: Tax supported bonded debt which is backed by the full faith and credit of the District.

Government Finance Officers Association (GFOA): A professional association of state/provincial and local finance officers in the United States and Canada, and has served the public finance profession since 1906. The association members are dedicated to the sound management of government financial resources.

Governmental Funds: Funds generally used to account for tax-supported activities. There are five different types of governmental funds: the general fund, special revenue funds, debt service funds, capital projects funds and permanent funds.

Grant: A contribution by one organization to another. The contributions are usually made to aid in the support of specified function (for example, At Risk Students), but it is sometimes also for general purposes.

Infrastructure: Long-lived capital assets that normally are stationary in nature and normally can be preserved for a significantly greater number of years than most capital assets. Examples of infrastructure assets include roads, bridges, tunnels, drainage systems, water and sewer systems, dams, and lighting systems.

Instructional Facilities Allotment (IFA): The IFA program provides funding to school districts for debt service payments on debt principal and interest associated with the purchase, construction, renovation, and expansion of instructional facilities. IFA is application-based and is used for bonds or lease purchases. The yield is $35 per ADA per penny of tax effort.

Interest and Sinking (I & S): Funds that are used to pay the principal and interest of bonded debt. Bonds used by a government to finance major construction projects, to be paid by tax levies over a period of years, require a debt service (I & S) fund to account for their repayment.

Levy: (Verb) to impose taxes or special assessments. (Noun) The total of taxes or special assessments imposed by a governmental unit.

Maintenance and Operation (M & O) Tax Rate: The tax rate calculated to provide the revenues needed to cover Maintenance & Operations. M & O includes such things as salaries, utilities, and day-to-day operations.

Membership: The total number of public school students who were reported in membership as of the October snapshot date (the last Friday in October) at any grade, from early childhood education through grade 12. Membership is a slightly different number from enrollment because it does not include those students who are served in the district for fewer than 2 hours per day.

Modified Accrual Basis: A basis of accounting in which expenditures are accrued when incurred and revenues are accounted for when they become measurable and available.

Object: the particular type of good or services utilized. Examples include payroll cost, supplies, travel, etc.

Other Financial Sources: An increase in current financial resources that is reported separately from revenues to avoid distorting revenue trends. The use of the other financing sources category is limited to items so classified by GAAP.

Other Financing Uses: A decrease in current financial resources that is reported separately from expenditures to avoid distorting expenditure trends. The use of the other financing uses category is limited to items so classified by GAAP.

Personnel, Administration: Personnel on the school payroll who are primarily engaged in activities which have as their purpose the general regulation, direction, and control of the affairs of the school district that are system-wide and not confined to one school, subject, or narrow phase of school activity; for example, superintendent of schools.

Personnel, Full-Time: School employees who occupy positions, the duties of which require them to be on the job on school days, throughout the school year, at least the number of hours the schools in the system are in session.

Personnel, Part-Time: Personnel who occupy positions, the duties of which require less than full-time service. This includes those employed full-time for part of the school year, part-time for all of the school year, and part-time for part of the school year. See also Personnel, Full- Time.

Principal of Bonds: The face value of bonds.

Refined ADA: Refined Average Daily Attendance is based on the number of days of instruction in the school year. The aggregate eligible day's attendance is divided by the number of days of instruction to compute the refined average daily attendance. See also ADA.

Refunding Bonds: Bonds issued to pay off bonds already outstanding.

Revenue: inflow of resources that results from the income of a government from various sources.

Rollback Tax: Reference to current State of Texas school finance laws that require maintenance and operations tax rate increases (above a certain limit) to be voted on by the public. Rollback elections that fail, roll the tax rate back to the previous lower level.

Rollback Tax Rate: A tax rate that exceeds the rollback tax rate will automatically trigger an election. If the election to limit school taxes is successful, the tax rate the district may impose for the current year is limited to the calculated rollback tax rate.

Salary: The total amount regularly paid or stipulated to be paid to an individual, before deductions, for personal services rendered while on the payroll of the school district.

School, Elementary: A school classified as elementary by State and local practice that is composed of any span of grades not above grade six. In this District this term includes kindergartens and pre-kindergartens.

School, Middle: A school classified as middle by State and local practice that is composed of any span of grades six through eight.

School, Secondary: A school classified as secondary by State and local practices that is composed of any span of grades beginning with the next grade following the elementary/middle school, and ending with or below grade 12, including the different types of high schools and alternative high schools.

Special Revenue Fund: A governmental fund type with budgetary control, used to account for the proceeds of specific revenue sources, other than expendable trusts or for major capital projects that are legally restricted to expenditures for specified purposes.

State Compensatory Education (SCE): Compensatory education is defined in law as programs and/or services designed to supplement the regular education program for students identified as at risk of dropping out of school.

Tax Base: The total value of all real personal and mineral property in the District as of January 1st of each year as certified by the County Appraisal Board. The tax base represents net value after all exemptions.

Tax Rate: Total tax rate is set by the Board of Trustees and is made up of two components:

a. Maintenance and Operations
b. Interest and Sinking

Tax Rate Limitation: A school may not impose a maintenance and operation tax rate that exceeds $1.17 per $100 valuation of taxable property, nor an interest and sinking rate that exceeds $.50.

Tax Ratification Election (TRE): A special election called by the Board of Trustees asking voters to approve a tax rate that is above the $1.04 tax rate allowed by the state law.

Tax Roll: The official list showing the amount of taxes levied against each taxpayer or property.

Taxes: Compulsory charges levied by a governmental unit for the purpose of financing services performed for the common benefit. It does not include special assessments.

Teacher Retirement System (TRS): TRS delivers retirement and related benefits authorized by law for members and their beneficiaries.

Texas Association of School Business Officials (TASBO): An independent, not-for-profit professional, association dedicated to being the trusted resource for school finance and operations in Texas.

Texas Education Agency (TEA): The Texas Education Agency provides leadership, guidance, and resources to help schools meet the educational needs of all students. Located in Austin, Texas, TEA is the administrative unit for primary and secondary public education.

Texas Education Code (TEC): This code applies to all educational institutions supported in whole or in part by state tax funds.

Total Tax Rate: The total tax rate is the sum of all I & S and M & O.

Underlying Bond Rating: The rating the district would be given by investor services to give relative indications of credit quality to stand alone without the permanent bond guarantee by the State.

Weighted Students in Average Daily Attendance (WADA): In Texas, students with special educational needs are weighted for funding purposes to help recognize the additional costs of educating those students. Weighted programs include special education, career and technology, bilingual, gifted and talented, and compensatory education.

Works Cited

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BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: 6/13/2022

SUBJECT: Approval of Resolution to Approve the Designated Officer Responsible for Calculating and Reporting the No-New-Revenue Tax Rate and the Voter-Approval Tax Rate

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
Texas Property Tax Code Section 26.04(c) requires an officer or employee designated by the governing body to calculate the no-new-revenue tax rate and voter-approval tax rate for the taxing unit. These tax rates are expressed in dollars per $100 of taxable value calculated. The calculation process starts after the chief appraiser delivers to the taxing unit the certified appraisal roll or certified estimate of value and the estimated values of properties under protest. The designated officer or employee shall certify that the officer or employee has accurately calculated the tax rates and used values shown for the certified appraisal roll or certified estimate. The officer or employee submit the rates to the governing body by Aug. 7 or as soon thereafter as practicable.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
In accordance with Section 26.04(c) of the Texas Property Tax Code, the Board of Trustees must designate the individual authorized to calculate the no-new revenue tax rate, the voter-approval tax rate and other truth-in-taxation requirements.

LEGAL REVIEW:
None required.

BUDGETARY CONSIDERATIONS:
None required.

RECOMMENDED BOARD ACTION:
That the Board of Trustees approve the Resolution to Approve the District's Tax Assessor Collector as the Designated Officer Responsible for Calculating and Reporting the No-New-Revenue Tax Rate and the Voter-Approval Tax Rate as determined by state law.

SUBMITTED BY: _____ **SUPERVISOR:** Cynthia Medrano-Richards

For further information contact:
Name: Iris Luna, RTSBA
Office: (956) 618-6016
eMail: iris.luna@mcallenisd.net

Approved for presentation to the Board of Education:

1012 **Superintendent of Schools**

THE STATE OF TEXAS §

COUNTY OF HIDALGO §

McALLEN INDEPENDENT SCHOOL DISTRICT §

RESOLUTION

WHEREAS, the Board of Trustees ("Board") of the McAllen Independent School District ("District") is authorized by Texas Education Code § 11.151 to govern and oversee the management of the public schools in the District; and

WHEREAS, the Board, as authorized by Texas Education Code § 45.002, .003(a) may levy, assess, and collect annual ad valorem taxes for the maintenance of the district's schools. Taxes may not be levied unless authorized by a majority of the qualified voters of the district, voting at an election called for that purpose; and

WHEREAS, after the District's assessor submits the appraisal roll to the board, an officer or employee designated by the board shall calculate the no-new-revenue tax rate and the voter-approval tax rate for the district; and

WHEREAS, the designated officer or employee shall use the tax rate calculation forms prescribed by the comptroller under Tax Code 5.07 in calculating the no-new-revenue tax rate and the voter-approval tax rate; and

WHEREAS, pursuant to Texas Tax Code § 26.04(c), (d-1), (d-3), as soon as practicable after the designated officer or employee calculates the no-new-revenue tax rate and the voter-approval tax rate of the district, the designated officer or employee shall submit the tax rate calculation forms used in calculating the rates to the county assessor-collector for each county in which all or part of the territory of the district is located.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT:

RESOLVED, the Board of Trustees hereby approves the District's Tax Assessor Collector as the designated officer responsible for calculating and reporting the no-new-revenue tax rate and the voter-approval tax rate as determined by state law.

RESOLVED, the authority granted by this resolution is effective henceforth unless the Board takes action to change the title of the appointee.

PASSED AND APPROVED this ____ day of _____ 2022 by the Board of Trustees for the McAllen Independent School District.

By: _____

Tony Forina
President
Board of Trustees
McAllen Independent School District

ATTEST:

_____

Marco Suarez
Secretary
Board of Trustees
McAllen Independent School District

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Contract No. 2023-045 Walsh Gallegos Trevino Russo & Kyle P.C through RFP/Q 2023-1000

REFERENCE: Goal 4 - Financial Priorities; Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On April 6, 2022 the McAllen Independent School District solicited Request for Proposals with Qualifications for General Legal Counsel Services. Two hundred four (204) firms were invited to submit qualification statements and eight (8) firms responded.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

On May 25, 2022, The Board of Trustees interviewed and ranked four (4) firms. The Board of Trustees tasked Administration to negotiate a contract with the highest ranked firm, Walsh Gallegos Russo & Kyle P.C.

LEGAL REVIEW:

N/A

BUDGETARY CONSIDERATIONS:

Funds for this service are available through the General Fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Contract No. 2023-045 Walsh Gallegos Trevino Russo & Kyle P.C through RFP/Q 2023-1000 for a term of three (3) years, beginning July 1, 2022, with the option to renew for two (2) additional one (1) year terms.

Alejandra Gonzalez
SUBMITTED BY: _____

Cynthia Medrano-Richards
SUPERVISOR: _____

For further information contact:
Name: Alejandra Gonzalez
Office: (956) 657-4480
eMail: Alejandra.Gonzalez@mcallenisd.net

Approved for presentation to the Board of Education:

_____
Superintendent of Schools

WALSH GALLEGOS
TREVIÑO KYLE & ROBINSON P.C.

LEGAL SERVICES AGREEMENT

This is an agreement between McAllen Independent School District, hereinafter referred to as "Client," and Walsh Gallegos Treviño Kyle & Robinson P. C., Attorneys at Law, hereinafter referred to as "Law Firm," for legal representation. Client, acting by and through the authorized Representative or Employee whose signature appears below, hereby retains Law Firm to provide the following legal services:

> Services as needed and requested by District to provide legal consultation and representation regarding all areas of law as outlined in Request for Proposal with Qualifications ("RFP/Q") No. 2023-1000 for General Legal Counsel Services except Special Education and Section 504 and litigation matters covered by District's insurance carriers ("Legal Matters").

This Agreement is for a primary term of three (3) years, effective July 1, 2022, with the option to renew for two (2) additional one (1) year terms. However, Law Firm and Client reserve the right to review the fee structure at the end of each year of the agreement and make adjustments as mutually agreed to in writing. Client employs Law Firm to handle legal matters on the following terms and conditions:

1. Client agrees to pay Law Firm a flat fee ("Flat Fee") of $14,583 per month, plus expenses as outlined in #3 below, for services, in accordance with the Specifications and Scope of Work of the RFP/Q, with the exception of Section 13.1.2 "Special Education and Section 504" services.

2. Law Firm will provide one day of training per year at no charge to Client on topics requested by Client. Any additional training will be negotiated through separate contracts with Client.

3. In the event that client requests that Law Firm travel outside the geographic area known as the Rio Grande Valley, Client agrees to reimburse Law Firm for travel expenses advanced by Law Firm on Client's behalf in connection with the Legal Matters described in the Scope of Work. Client will also reimburse Law Firm for other expenses advanced by Law Firm on Client's behalf such as long distance telephone and facsimile charges, copying charges, certified mail charges, courier charges, and expert witness fees. Mileage will be charged at the IRS approved reimbursable rate for any Client approved travel. Law Firm will not charge mileage for its Rio Grande Valley based attorneys to travel to and from Law Firm's offices in Harlingen to Client's location in McAllen. Mileage will be charged for any attorney based outside of the Rio Grande Valley to travel to McAllen upon request by Client.

4. Client will be mailed a statement each month itemizing work performed and expenses incurred during the billing period by Law Firm. Client agrees to pay the balance due upon receipt of monthly billings by Law Firm to Client. Client's failure to pay within 30 days will be grounds for termination of this agreement by Law Firm, unless Client has disputed a charge and notified Law Firm in writing.

5. Client empowers Law Firm to do all things that Client could do in its own right in handling Legal Matters in its behalf. Law Firm is also empowered to use and employ such other third party person(s) and/or entities that Law Firm deems necessary for the proper handling of this matter, but shall do so only after obtaining Client's approval of such employment.

6. This Agreement can be terminated at any time by either party with thirty (30) days' written notice to the other party. In the event of termination, Client agrees to pay for services performed by Law Firm through the date of notice of termination.

7. Compliance with Texas Government Code Chapter 2271: Pursuant to Texas Government Code Chapter 2271, as amended, Walsh Gallegos verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

8. Compliance with Texas Government Code Chapter 2252: Pursuant to Texas Government Code Chapter 2252, as amended, Walsh Gallegos verifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152.

9. Compliance with Texas Government Code Chapter 2274 and 809: Pursuant to Texas Government Code Chapters 2274 and 809, as amended, Walsh Gallegos verifies that it does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

10. Compliance with Texas Government Code Chapter 2274: Pursuant to Texas Government Code Chapter 2274, as amended, Walsh Gallegos verifies that it does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement.

11. This Agreement establishes a limited attorney-client relationship only between Law Firm and Client. This Agreement does not impose any duty upon Law Firm to provide advice or work to Client regarding other legal matters absent a request for such advice or work on a matter by Client. Law Firm and Client acknowledge and represent that this Agreement does not establish an attorney-client relationship between Law Firm and any individual Representative, Agent or Employee of Client. If a lawsuit or other adversarial matter is brought against Client and/or any Employee of Client, Law Firm shall require the execution of one or more separate Letters of Engagement signed by all parties prior to undertaking an attorney-client relationship in those additional matters.

12. Texas Lawyer's Creed: Under rules of the Texas Supreme Court and the State Bar of Texas, we advise our clients of the contents of the Texas Lawyer's Creed, a copy of which is enclosed. In addition, we advise clients that the State Bar of Texas investigates and prosecutes complaints of professional misconduct against attorneys licensed in Texas. A

brochure entitled Attorney Complaint Information is available at all of our offices and is likewise available upon request. A client that has any questions about the State Bar's disciplinary process should call the Office of the General Counsel of the State Bar of Texas at 1-800-932-1900 (toll free).

AGREED TO on behalf of McAllen Independent School District on the ____ day of _____, 2022.

_____

Tony Forina, President, Board of Trustees

Printed Name and Title

AGREED TO on behalf of Walsh Gallegos Treviño Kyle & Robinson P. C., on the ___ day of _____, 2022.

_____

Joe A. De Los Santos, Managing Shareholder

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13, 2022

SUBJECT: Approval of Agreement No. 2023-048 Legal Consultation Agreement with O'Hanlon, Demerath, & Castillo

REFERENCE: Goal 4 - Financial Priorities; Strategy 7 - Financial Priorties

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District ("the District") utilizes additional professional legal consultation and services on an as-needed basis.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District utilizes services from O'Hanlon, Demerath, & Castillo for additional professional legal consultation and services including, but not limited to, Office of Civil Rights, staffing, elections, and financial issues.

LEGAL REVIEW:

The Agreement has been approved by the legal counsel.

BUDGETARY CONSIDERATIONS:

Funds for these services are budgeted through the General Fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Agreement No. 2023-048 Legal Consultation Agreement with O'Hanlon, Demerath, & Castillo, for a term of one (1) year from July 1, 2022 through June 30, 2023.

Alejandra Gonzalez
SUBMITTED BY: _____

Cynthia Medrano-Richards
SUPERVISOR: _____

For further information contact:
Name: Alejandra Gonzalez
Office: 956-657-4480
email: alejandra.gonzalez@mcallenisd.net

Approved for presentation to the Board of Education:

_____
Superintendent of Schools

O'HANLON, DEMERATH & CASTILLO
ATTORNEYS AND COUNSELORS AT LAW
808 WEST AVENUE
AUSTIN, TEXAS 78701
PHONE: (512) 494-9949
FAX: (512) 494-9919

KEVIN THOMAS O'HANLON
Board Certified, Civil Trial Law
Board Certified, Civil Appellate Law
kohanlon@808west.com

Rio Grande Valley Office
426 W. Caffery Ave.
Pharr, Texas 78577

San Antonio Office
117 W. Craig Place
San Antonio, Texas 78212

June 2, 2022

Mr. Tony Forina, Board President &
Members of the Board of Trustees
McAllen Independent School District
2000 N. 23rd St.
McAllen, Texas 78501

RE: Legal representation agreement

President Forina,

The purpose of this letter is to provide you the terms and conditions under which our firm proposes to undertake all necessary legal work, as directed by you ("Client"), related to providing legal counsel services to the District. Please review the agreement, and if you wish to retain the Firm's services, execute and return the agreement to our office by either facsimile or email.

We have made the following fee and staffing arrangements.

1. Firm's Personnel: Kevin O'Hanlon will have primary responsibility for this engagement. Other attorneys and legal and staff assistants in our office may also be used in the course of this matter. The use of such personnel will be based on the exercise of our professional judgment and will depend on the nature of the work to be performed and the qualifications, skill and specialized expertise needed to perform a particular aspect of a specific engagement.

2. Fees: Our firm policy is to charge a reasonable fee for services rendered based primarily upon the time spent by each attorney and legal assistant working on the case. Our hourly rates for personnel assigned to this matter will be $ 165.00 per hour for attorney work performed by attorneys in the firm, $ 95.00 per hour for work performed by paralegals and $45 per hour for work performed by law clerks. Time will be billed in .25 hour increments.

3. Expenses: In addition to our fees, we will be entitled to payment or reimbursement of all costs and expenses at the actual rate charged to the firm incurred in performing services in this engagement, such as messenger and delivery service, travel (including mileage at $.50/mile,

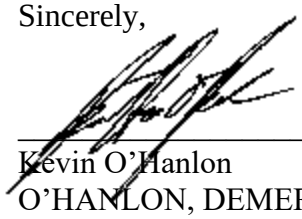
parking, airfare, ground transportation), and copying charges. You will not be charged for long-distance telephone, or facsimile transmissions.

4. Billing: Client will receive monthly invoices for the services provided by the firm. Client will be responsible for all additional fees and costs at the rates as set forth in Paragraphs 2 and 3. Any outstanding amounts due and owed to the firm are payable within thirty (30) days of invoicing.

5. Conflict Issues: We have reviewed the goals that the Client wishes to achieve and have not detected any conflict between our firm and your interests in this engagement.

On a personal note, I am very pleased that are considering our firm to assist in this important project. We look forward to serving you, and we shall use our best efforts on your behalf.

Sincerely,



_____
Kevin O'Hanlon
O'HANLON, DEMERATH & CASTILLO

AGREED TO:

_____
Mr. Tony Forina, Board President
MCALLEN INDEPENDENT SCHOOL DISTRICT

Approved as to form:
Atlas, Hall, & Rodriguez LLP
by: Stephen L. Crain
Stephen L. Crain (Jun 7, 2022 07:55 CDT)
Stephen Crain

O'Hanlon, Demerath & Castillo | 808 West Avenue | Austin Texas 78701
Telephone (512) 494-9949 | Facsimile (512) 494-9919

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: June 13 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):

Board Workshop- March 7, 2022 - 5:30 P.M.
Regular Board Meeting - May 9, 2022 - 5:00 P.M.
Special Board Meeting - May 9, 2022 - 7:30 P.M.
Special Board Meeting - May 16, 2022 - 5:30 P.M.
Special Board Meeting - May 18, 2022 5:00 P.M.
Board Workshop - May 18, 2022 5:10 P.M.
Regular Board Meeting - May 23, 2022 - 5:00 P.M.
Board Workshop- May 24, 2022 5:30 P.M.
Special Board Meeting - May 25, 2022 4:30 P.M.
Special Board Meeting - June 3, 2022 6:30 P.M.
Special Board Meeting - June 6, 2022 - 4:00 P.M.
Board Workshop - June 6, 2022 - 5:30 P.M.

SUBMITTED BY: Natalia Goza

SUPERVISOR: Tony Forina (Jun 8, 2022 17:03 CDT)

For further information contact:
Name: Natalia Goza
Office: 956-618-6094
eMail: natalie.goza@mcallenisd.net

Approved for presentation to the Board of Education:

1022

Superintendent of Schools Jun 8, 2022

Board Workshop

Monday, May 9, 2022 7:30 PM
Texas Our Texas room/Staff Development Building, Achieve Early College High School, 1601 North 27th Street, McAllen, TX 78501

Attendance Taken at 7:30 PM.

Tony Forina, President:	Present
Debbie Aliseda, Vice-President:	Present
Marco Suarez, Secretary:	Present
Conrado Alvarado, Trustee:	Absent
Sofia Peña, Trustee:	Absent
Sam Saldivar, Jr., Trustee:	Present
Daniel Vela, Trustee:	Present

1. **CALL MEETING TO ORDER**
The meeting was called to order at 7:30 P.M.

2. **PUBLIC COMMENTS**
The following community member(s) addressed the Board;
None

3. **BOARD WORKSHOP #3**
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 7:50 P.M. This motion, made by Trustee Marco Suarez and seconded by Trustee Daniel Vela.

Board President

Board Secretary