Agenda of Regular Meeting

The Board of Trustees
McAllen Independent School District

A Regular Meeting of the Board of Trustees of the McAllen Independent School District will be held Monday, February 13, 2023, 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. **RECOGNITION(S)**
6. **PROCLAMATION(S)**
   A) Discussion and Possible Action to Adopt the Proclamation Regarding Career Technical Education Month (February 2023) 6
   Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

   Presenter: Dr. J. A. Gonzalez, Superintendent
7. Discussion and Possible Action to Reconsider item 5.C) of the January 9, 2023 Board Meeting and Agenda in Closed Session
8. **RECESS TO CLOSED SESSION: Board of Trustees may go into Closed Session pursuant to Section(s) 551.071, 551.072, 551.074, 551.076, and 551.089 Texas Government Code, to discuss the following:**
   A) Discussion of Human Resources Recommendation(s) for School Year 2022-2023
   B) Discussion of Human Resources Employee Resignation(s) for School Year 2022-2023
   C) Discussion-Superintendent Evaluation-Board Policy BJCD (Legal) and (Local)

D) Consultation with Attorney and Discussion Regarding a Complaint or Charge against an Officer or Employee

E) Discussion Regarding School Safety and Security

F) Pending and/or Potential Litigation

G) Possible Real Estate Acquisition

9. **RECONVENE IN OPEN SESSION**

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

A) Discussion of and Possible Action of Human Resources Recommendation(s) for School Year 2022-2023 — 8
Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

B) Discussion of Human Resources Employee Resignation(s) for School Year 2022-2023 — 9
Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

C) Discussion and Possible Action-Superintendent Evaluation-Board Policy BJCD (Legal) and (Local)

D) Discussion and Possible Action Regarding a Complaint or Charge against an Officer or Employee as discussed in Closed Session

E) Discussion Regarding School Safety and Security

F) Pending and/or Potential Litigation

G) Possible Real Estate Acquisition

11. **SUPERINTENDENT'S REPORT(S)** - McAllen ISD...We are about Excellence!

Presenter: Dr. J. A. Gonzalez, Superintendent

12. **DONATION(S)**

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

A) Board Committee Reports

1. Instructional Services Briefing - Chair - Sofia Peña
2. Human Resources Briefing - Chair - Daniel Vela
3. District Operations Briefing - Chair - Conrado Alvarado
4. Business Operations Briefing - Chair - Debbie Crane Aliseda
5. Board Officers Briefing - Tony Forina

B) District Reports

1. Report Regarding the Delinquent Tax Collections for the Period of October 1, 2022 to December 31, 2022 — 10
Item Submitted: Adel Felix, Assistant Superintendent for Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

2. Report Regarding Career Technical Education 16
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

3. Report Regarding the Monthly Financial and Quarterly Investment Report for December 2022 31
Item Submitted: Adel Felix, Assistant Superintendent for Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

4. Report Regarding Intention to Apply for the 2023-2024 Community Development Block Grant (CDBG) for an All-Inclusive Playground at Juan Seguin Elementary and a Track lighting Project at Dorothea Brown Middle School Community 93
Item Submitted: Adel Felix, Assistant Superintendent for Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

14. **CONSENT AGENDA ITEMS**

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)

1. Discussion and Possible Action on Request for Maximum Class Size Waiver Application for 2022-2023 101
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

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

1. Discussion of the Texas Association of School Board (TASB) Localized Policy Manual Update 120 (First Reading) 103
Item Submitted: Todd Miller, Assistant Superintendent for Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

2. Discussion of Update to Board Policy DEC (LOCAL) - Compensation and Benefits, Leaves and Absences (First Reading) 105
Item Submitted: Todd Miller, Assistant Superintendent for Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

3. Discussion and Possible Action on the Amended Resolution Ordering the Election for Trustees in McAllen Independent School District to be held on Saturday, May 6, 2023 113
Item Submitted: Todd Miller, Assistant Superintendent for Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

C) **District Operations Item(s)** (Alejandra Gonzalez)

1. Discussion and Possible Action on Contract No. 2023-160 Noble Texas Builders LLC through RFCQ 2023-1024 Kitchen Renovations for Theodore Roosevelt Elementary, Sam Rayburn Elementary, Reynaldo G. Garza Elementary, and Woodrow Wilson Elementary 125
   Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent

2. Discussion and Possible Action on Contract No. 2023-156 Hellas Construction Inc. through RFCQ 2023-1026 McAllen High School Football Field Sports Lighting 191
   Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent

3. Discussion and Possible Action on Bid No. 2023-1027 Sale of Real Property James-Bonham Elementary School and Approval of Resolution No. 2023-166 279
   Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent

4. Discussion and Possible Action on Competitive Sealed Proposal No. 2023-1031 David Crockett Annex Building Re-Roof 330
   Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent

D) **Business Operations Item(s)** (Adel Felix)

1. Approval of the McAllen Independent School District January Budget Amendment for Fiscal Year Beginning July 1, 2022 and Ending June 30, 2023 478
   Item Submitted: Adel Felix, Assistant Superintendent for Business Operations

   Presenter: Dr. J. A. Gonzalez, Superintendent

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

1. Approval of Board of Education Meeting Minutes 484
   a) Regular Board Meeting - January 23, 2023
   b) Board Workshop - February 6, 2023
   c) Special Board Meeting - February 6, 2023 5:30 P.M.

16. **SCHEDULE OF FUTURE MEETINGS**

A) School Safety and Security Meeting - February 20, 2023 - 3:30 P.M.

B) Regular Board Meeting - February 27, 2023 - 5:00 P.M.

C) Budget Workshop - March 6, 2023 - 5:30 P.M.

D) Regular Board Meeting - March 20, 2023 - 5:00 P.M.

E) Special Board Meeting - March 27, 2023 - 5:30 P.M.

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 February 10 , 2023 at 4:00 P.M.
Natalia Goza
on behalf of the Board of Trustees

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Discussion and Possible Action to Adopt the Proclamation Regarding Career Technical Education Month (February 2023)

REFERENCE: Goal 2: People Development

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The month of February is designated as Career Technical Education Month by the National Association of Career and Technical Education (ACTE) and the McAllen Independent School Board of Trustees. CTE Month is a public awareness campaign ACTE holds each February to celebrate Career and Technical Education and the achievements and accomplishments of CTE programs across the country. CTE month is designed to provide opportunities to inform the public of the innovation and excellence that exists within your local CTE programs and raise awareness of the crucial role that CTE plays in equipping our students for careers and our nation for economic success.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:N/A

LEGAL REVIEW: None required.

BUDGETARY CONSIDERATIONS: None required.

RECOMMENDED BOARD ACTION:
That the Board of Trustees adopt the Proclamation Regarding Career Technical Education Month (February 2023).

SUBMITTED BY: Lilia Sandoval Silva

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Lilia Sandoval-Silva
Office: (956) 632-5181
eMail: lilia.sandovalsilva@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools Feb 7, 2023

MCALLEN
INDEPENDENT SCHOOL DISTRICT

Proclamation

State of Texas
County of Hidalgo
McAllen Independent School District

Whereas, February 2023, has been designated Career Technical Education Month® by the Association for Career and Technical Education; and the McAllen Independent School District; and

Whereas, students in career technical education programs participate in authentic, meaningful experiences that improve the quality of their education and increase student engagement and achievement while gaining the academic, technical and employability skills necessary for true career readiness; and

Whereas, ensuring that employers have access to a qualified workforce which is a crucial step in ensuring continued economic growth and global competitiveness;

Now Therefore, I, Sofia M. Peña, Member, Board of Trustees of the McAllen Independent School District, do hereby proclaim that the month of February 2023 be observed as

"Career and Technical Education Month"

McAllen ISD encourages all students, staff and community members to become familiar with the services and benefits offered by the career technical education programs at McAllen ISD and to support and participate in these programs to enhance their individual skills and productivity.

IN WITNESS WHERE OF, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 13th day of February 2023.

_____
Sofia M. Peña, Member, 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: February 13, 2023

SUBJECT: Discussion and Possible Action on 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 Recommendation(s) 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:

J. Salinas

Superintendent of Schools Jan 31, 2023

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Discussion of Human Resources Employee Resignation(s) for School Year 2022-2023

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

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

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

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

LEGAL REVIEW: Not Applicable

BUDGETARY CONSIDERATIONS: Not Applicable

RECOMMENDED BOARD ACTION:

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

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

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

Approved for presentation to the Board of Education:

Superintendent of Schools Jan 31, 2023

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Report Regarding the Delinquent Tax Collections for the Period of October 1, 2022 to December 31, 2022

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

In order to keep the Board of Trustees informed, the firm of Linebarger, Goggan, Blair & Sampson LLP has prepared the enclosed Delinquent Tax Collection Report.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The report summarizes the results achieved by Linebarger, Goggan, Blair & Sampson LLP on the delinquent tax collection efforts for the 2022 - 2023 fiscal year.

LEGAL REVIEW:

Not required.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

The Report Regarding the Delinquent Tax Collections for the Period of October 1, 2022 to December 31, 2022 is submitted to the Board for information purposes only and requires no Board action.

SUBMITTED BY: _____ **SUPERVISOR:** _____

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

DELINQUENT TAX COLLECTION REPORT

FEBRUARY 13, 2023

LINEBARGER
ATTORNEYS AT LAW

1512 South Lone Star Way, Edinburg, Texas 78539 ✪ Tel. (956) 383-4500

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

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

February 13, 2023

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

RE: Delinquent Tax Collections for the period of October 01, 2022 through December 31, 2022

Dear Dr. Gonzalez and Board of Trustees:

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

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

Sincerely,



Kelly R. Salazar
Capital Partner

LINEBARGER
ATTORNEYS AT LAW

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

MAILINGS

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

1 Demand Mailing – 1,316 Statements Mailed

CONTACTS

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

1,090
Phone Calls

88
Pay Off

156
On-Site Visits

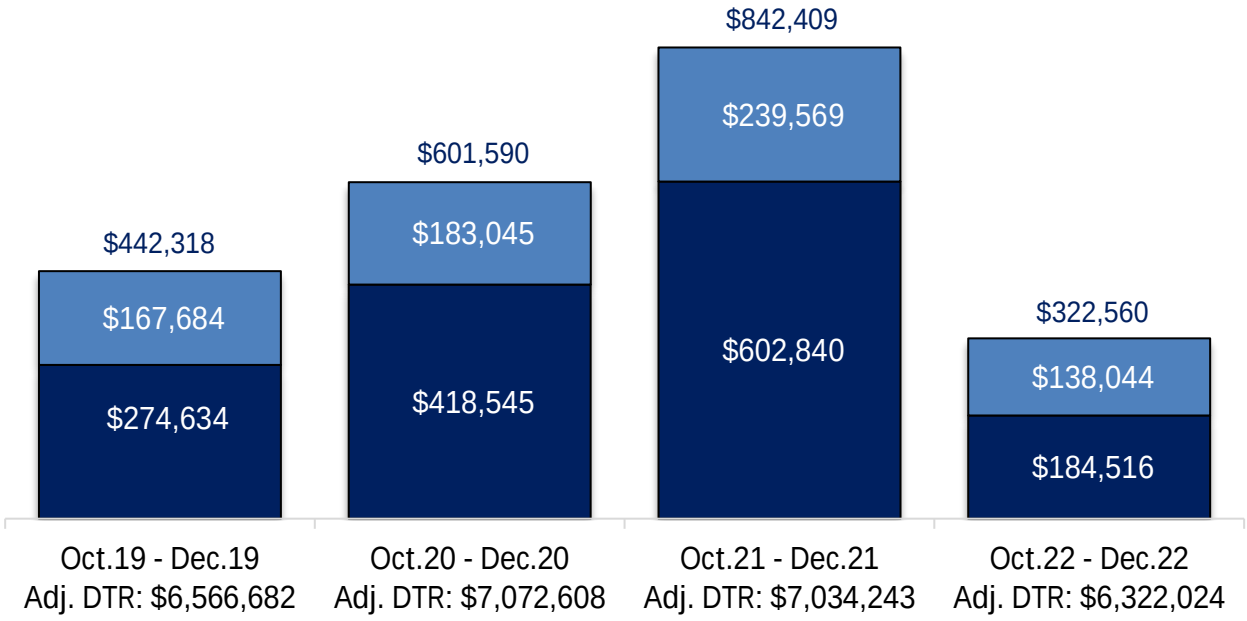
LITIGATION

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

Litigation Activity	Cases	Base, Penalty and Interest
• Filed Lawsuits	18	$99,581
• Lawsuits Disposed	29	$94,169
• Judgments Taken	17	$39,902
• Tax Warrants	3	$4,940
• Pending Litigation as of 1/2023	325	$1,548,248

COLLECTIONS

2ND QUARTER COLLECTION COMPARISON



Source: Hidalgo County Tax Office Reports

FUTURE OVERVIEW

Our office is committed to making necessary adjustments to our collection procedures and methods to best advocate for McAllen Independent School District. We will continue to offer firm yet flexible payment options for the McAllen Independent School District taxpayers.

Review of Pending Judgments and the Filing of Additional Lawsuits

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

Continued Monitoring of Bankruptcy Accounts

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

Mailing Program

We have completed our scheduled mailing on behalf of the School District for the upcoming quarter. In addition to our scheduled mailing, our in-house letter program sends letters to taxpayers who are otherwise non-responsive to phone calls. These letters inform the delinquent taxpayer of options available for payment during this period.

Scheduling of Property Sales

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

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

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Report Regarding Career Technical Education

REFERENCE: Goal 1: Students Achievement/Student Focus

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The Career Technical Education Program will be providing the department annual update.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS: McAllen ISD's Career Technical Education program is working pro actively working to ensure that all students are afforded rigorous academic instruction and leadership development with relevant career-readiness skills that lead to high-wage, in-demand career and post-secondary opportunities. McAllen ISD's CTE Program works closely with the community to establish opportunities for students and CTE staff to ensure that students are college and career ready in their chosen program of study.

LEGAL REVIEW: None required.

BUDGETARY CONSIDERATIONS: No required

RECOMMENDED BOARD ACTION:
This item is for information purposes only.

SUBMITTED BY: Lilia Sandoval Silva

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Lilia Sandoval-Silva
Office: 956-632-5181
eMail: lilia.sandovalsilva@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools Feb 7, 2023

Career Technical Education Department 2022-23

Lilia Sandoval Silva, Director Career Technical Education
Diana A. Peña, Coordinator Career Technical Education
David Lyons, Coordinator Career Technical Education
Monica Peña, Coordinator Career Technical Education

CTE GOALS



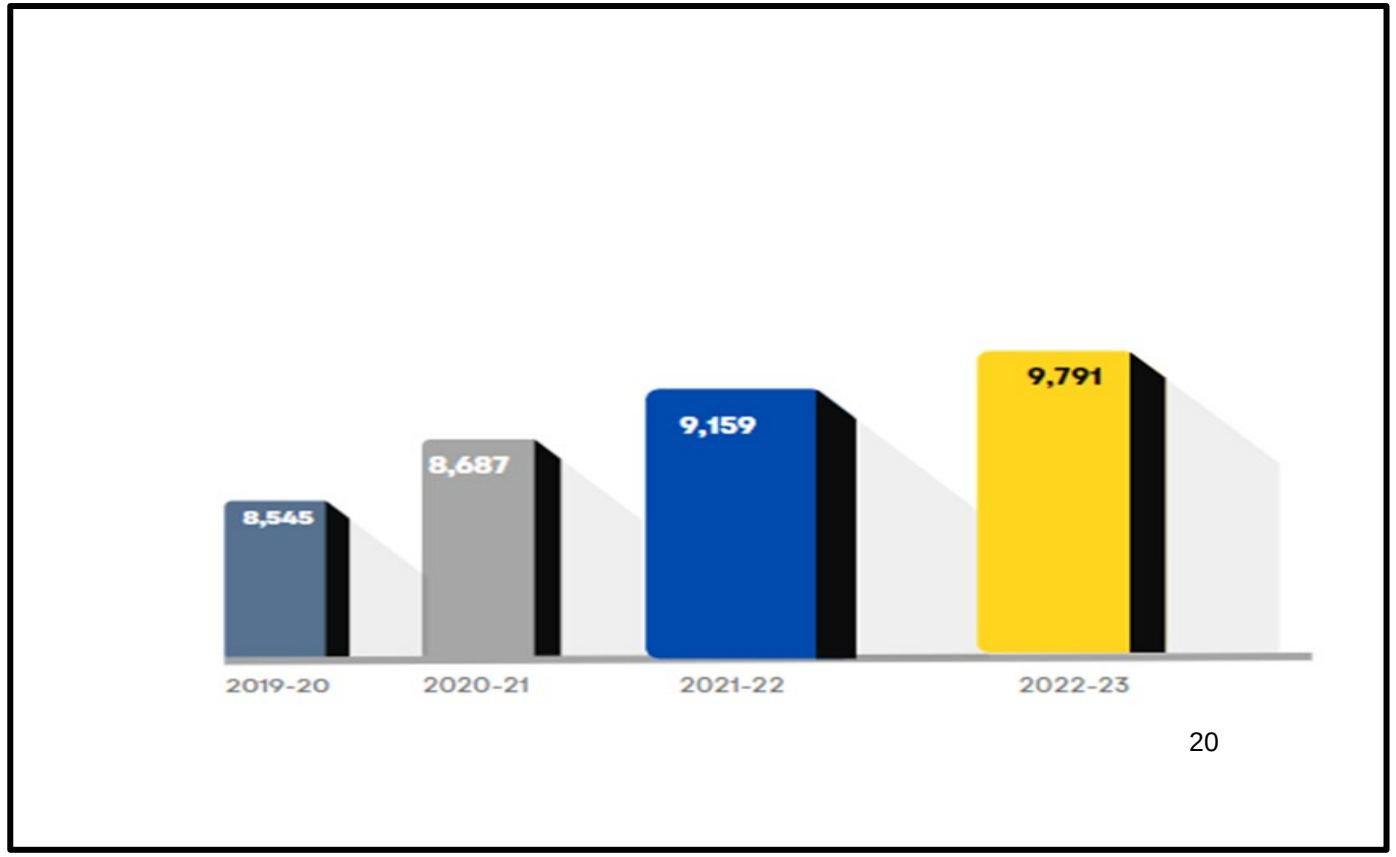
1. Increase number of Industry Based Certifications & Dual Enrollment opportunities in programs of study
2. Enhance Participation in Career Technical Student Organizations
3. Increase Community Partnerships that provide opportunities for Student Internships & Work Based Learning
4. Expand Career Awareness and Career Exploration opportunities from grades K-12.

CTE Value Added Progress Monitoring System

Activity 1 Career Awareness/Career	Activity 2 MS & HS CTE Xello	Activity 3 CTSO's	Activity 4 IBC's Earned All Students	Activity 5 IBC's Earned Emerging Bilingual Students	Activity 6 IBC's Earned Sprecial Education Students
0%-25%	60%- 79%	40%-50%	5% growth from prior year	1%-3% growth from prior year	1%-- 3% growth from prior year
26%-40%	80-89%	50.1%-79.9%	6% to 9% from prior year	4%-%5 growth from prior year	4%-%5 growth from prior year
41%-100%	90% -100% o	80% - 100%	>10% graowth from prior year	>6%-growth from prior year	>6%-growth from prior year

Needs Improvement
Met Standard
Exemplary

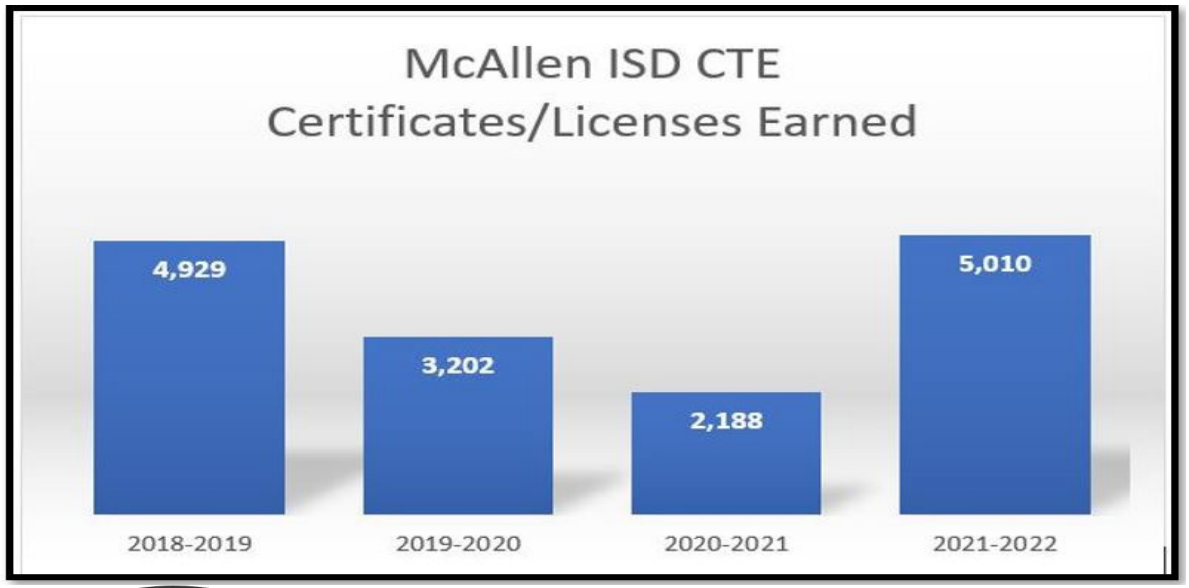
CTE Student Enrollment







CTE GOAL 1


McAllen ISD CTE
Certificates/Licenses Earned
4,929
3,202
2,188
5,010
2018-2019
2019-2020
2020-2021
2021-2022

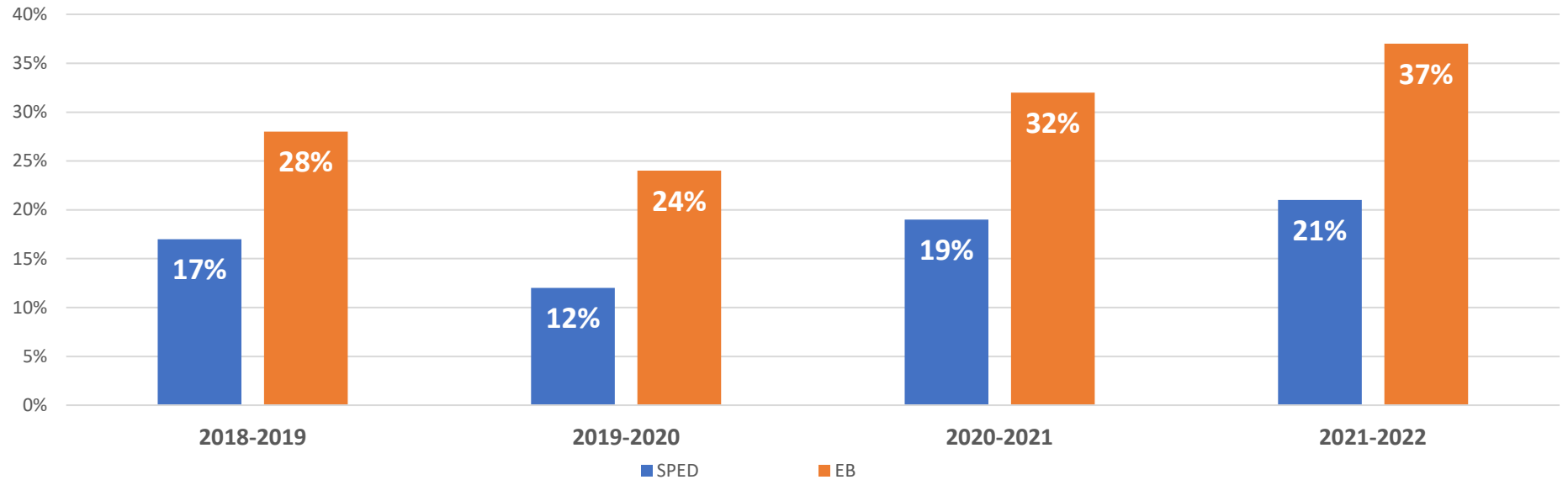

McAllen ISD CTE Accountability
Certificates/Licenses Earned
1,891
520
611
3,498
2018-2019
2019-2020
2020-2021
2021-2022





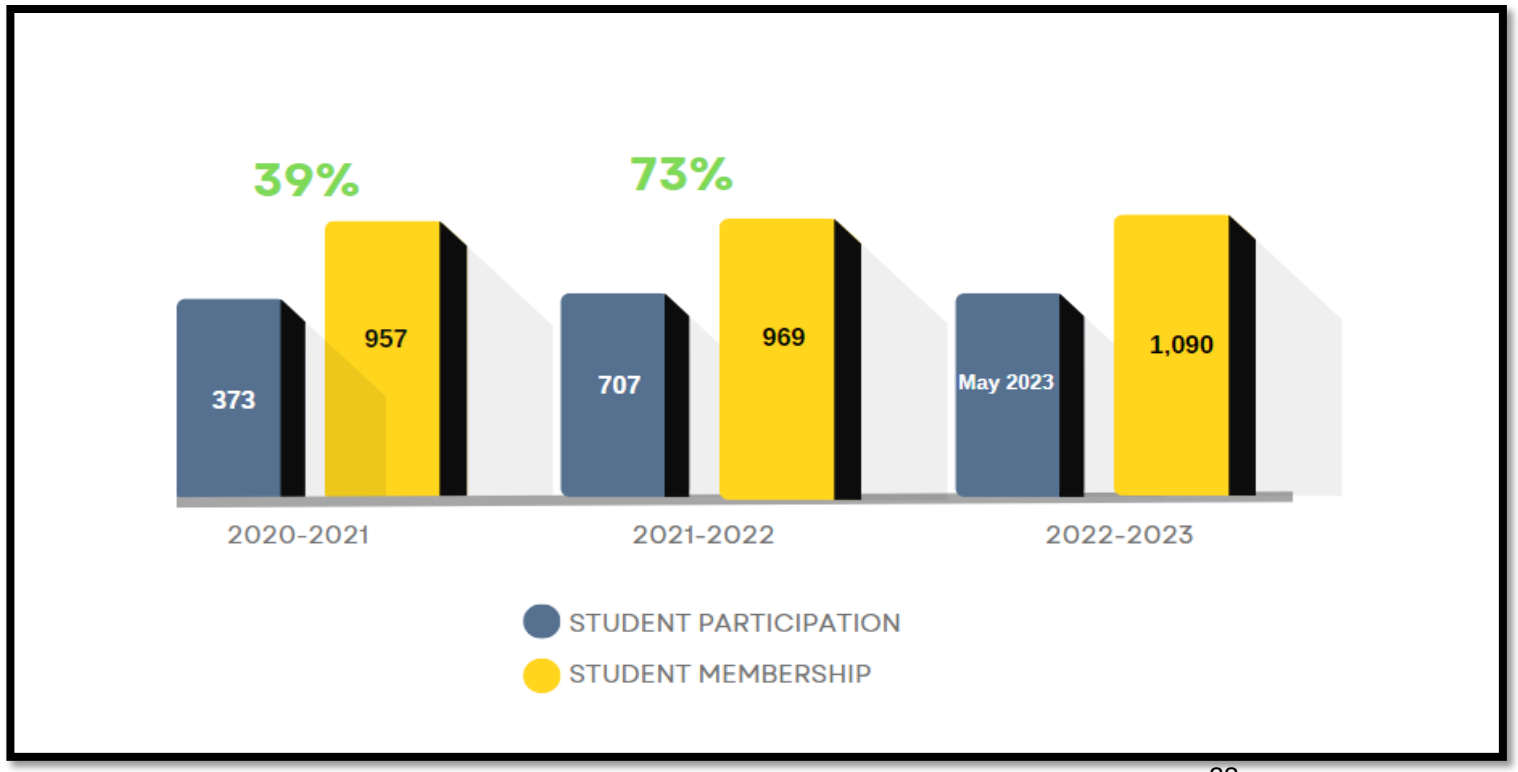


IBC'S EARNED BY SPECIAL POPULATION



	2018-2019	2019-2020	2020-2021	2021-2022
SPED	121	94	153	165
EB	1009	452	660	798

CTE GOAL 2
Membership vs. Participation CTSO's





Competition



Service Learning



Attend Meetings



Leadership

GOAL 3
Community Partnerships

Advisory Council



MS Endorsement Expo



Information Technology



INCubatore Judges



Culinary Arts

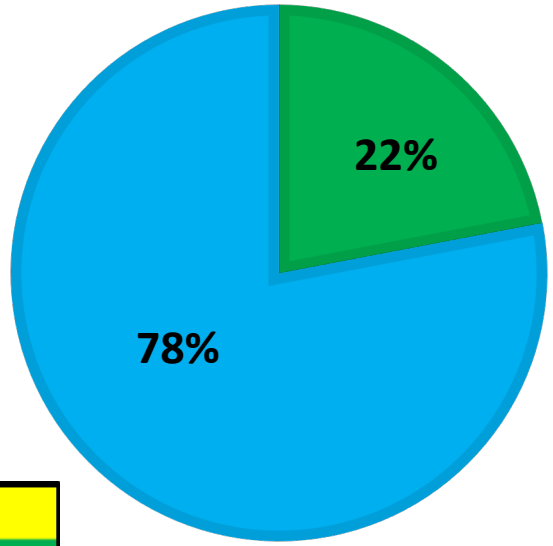


Law Enforcement



GOAL 4 CAREER AWARENESS ELEMENTARY SCHOOL

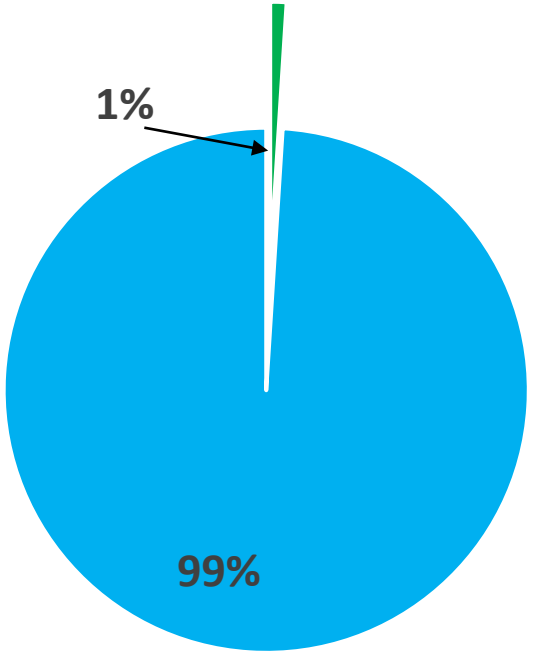
2020-2021



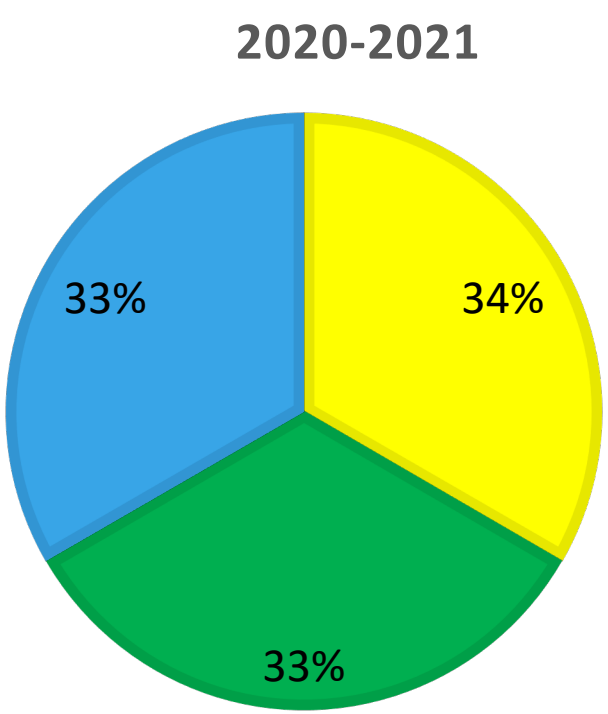
Needs Improvement
Met Standard
Exemplary

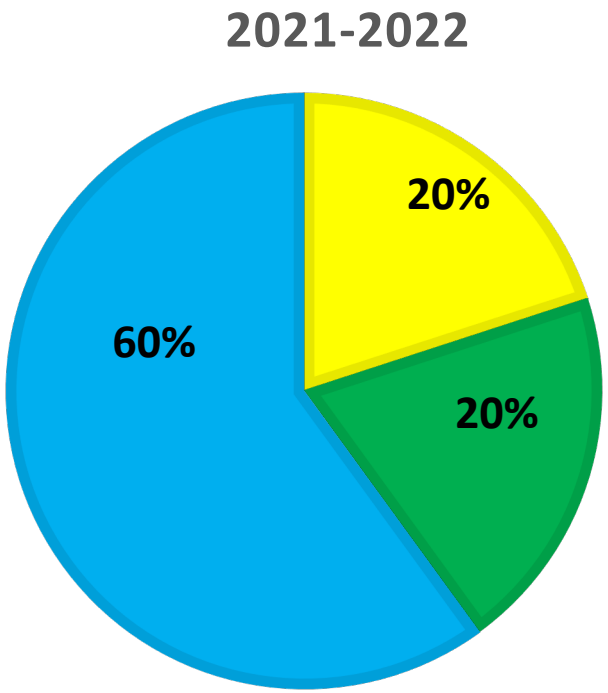


2021-2022



CTE GOAL 4: Career Exploration Middle School

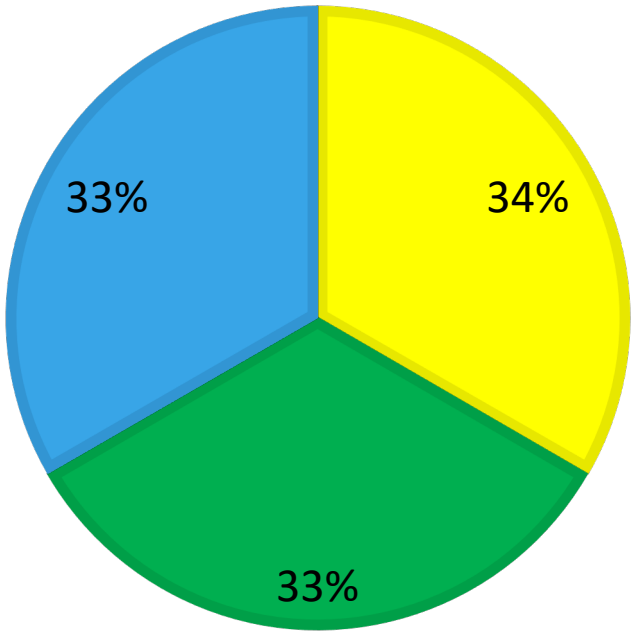




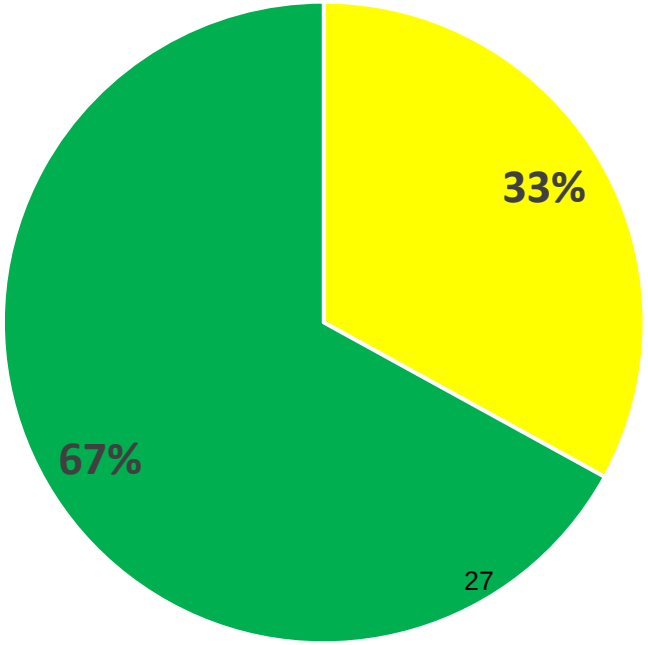


CTE GOAL 4: Career Exploration High School

2020-2021



2021-2022





Needs Improvement
Met Standard
Exemplary

CTE UPDATES

CULINARY OPEN HOUSE MARCH 1





FINAL PITCH MAY 15 (TENTATIVE)



AVIATION PINNING CEREMONY MAY 12 (TENTATIVE)



CTSO Student Leadership Academy 2022-2023



https://www.youtube.com.mcas.ms/watch?v=wl0VXt3NAK4

Questions?





BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Report Regarding the Monthly Financial and Quarterly Investment Report for December 2022

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

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

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The monthly financial reflects the following:

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

-Quarterly Investment Report

LEGAL REVIEW:

Not required.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

The Report Regarding the Monthly Financial and Quarterly Investment Report for December 2022 is submitted to the Board for information purposes only and requires no Board action.

SUBMITTED BY: _____ **SUPERVISOR:** _____

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

COMPARISON OF BUDGET TO REVENUES, EXPENDITURES AND ENCUMBRANCES
FOR THE MONTH OF DECEMBER 31, 2022

	A APPROVED BUDGET 2021-22 12/31/21	B YTD ACTUAL 07/01/21 TO 12/31/21	C APPROVED BUDGET 2022-23 12/31/22	D YTD ACTUAL 07/01/22 TO 12/31/22	E DIFFERENCE C - D	F OUTSTANDING ENCUMBRANCES 01/01/23 06/30/23	G YTD REVENUES, EXPENSES AND ENCUMBRANCES D + F	H BUDGET LESS EXPENSES AND ENCUMBRANCES C - G
REVENUES:								
LOCAL AND INTERMEDIATE SOURCES	$3,200,868	$1,229,789	$3,069,404	$2,873,193	$196,211		$2,873,193	$196,211
PROPERTY TAXES	84,787,994	43,166,700	84,847,227	38,616,337	46,230,890		38,616,337	46,230,890
STATE PROGRAM REVENUES	133,393,577	63,309,922	122,772,887	68,649,185	54,123,702		68,649,185	54,123,702
FEDERAL PROGRAM REVENUES	28,271,720	12,384,585	24,798,911	10,729,507	14,069,404		10,729,507	14,069,404
OTHER RESOURCES/NON-OPERATING REVENUES	26,115	193,341	63,232	145,247	(82,015)		145,247	(82,015)
SUB TOTAL	$249,680,274	$120,284,336	$235,551,661	$121,013,469	$114,538,192		$121,013,469	$114,538,192
EXPENDITURES:								
11 INSTRUCTION	$127,025,468	$20,747,262	$116,413,489	$48,113,495	$68,299,994	$69,364,448	$117,477,943	($1,064,454)
12 INST. RES. & MEDIA SERVICES	3,451,808	1,238,319	3,513,162	1,373,726	2,139,436	1,801,082	3,174,808	338,354
13 CURRICULUM DEV. & INST. STAFF DEV.	4,778,962	1,779,928	4,699,877	2,007,261	2,692,616	1,509,665	3,516,927	1,182,950
21 INST. LEADERSHIP	3,336,977	1,283,189	3,511,356	1,515,066	1,996,290	1,299,666	2,814,732	696,624
23 SCHOOL LEADERSHIP	13,361,364	5,611,987	13,483,896	6,182,371	7,301,525	6,670,230	12,852,601	631,295
31 GUID., COUNSELING & EVAL. SER.	9,938,658	3,501,331	10,099,373	4,094,177	6,005,196	5,419,204	9,513,381	585,992
32 SOCIAL WORK SERVICES	2,056,745	797,595	2,052,209	899,674	1,152,535	1,096,592	1,996,266	55,943
33 HEALTH SERVICES	2,811,584	981,570	3,117,827	1,138,767	1,979,060	1,677,315	2,816,082	301,745
34 STUDENT (PUPIL) TRANS.	4,139,344	2,183,926	5,151,532	2,659,733	2,491,799	1,057,591	3,717,324	1,434,208
35 FOOD SERVICES	19,111,655	6,776,618	21,355,623	9,345,376	12,010,247	7,802,354	17,147,729	4,207,894
36 CURRICULAR/EXTRACURRICULAR ACT.	9,900,467	3,549,196	12,227,950	4,131,041	8,096,909	3,591,204	7,722,246	4,505,704
41 GENERAL ADMINISTRATION	8,602,198	3,876,844	8,584,173	4,329,460	4,254,713	3,028,718	7,358,178	1,225,995
51 PLANT MAINT. & OPERATIONS	26,475,821	10,390,140	22,741,970	10,515,387	12,226,583	5,856,672	16,372,059	6,369,911
52 SECURITY AND MONITORING SERV.	5,454,083	2,285,769	7,767,459	2,710,355	5,057,104	2,717,233	5,427,588	2,339,871
53 DATA PROCESSING SERVICES	6,109,062	2,799,613	6,170,596	2,791,863	3,378,733	2,860,060	5,651,923	518,673
61 COMMUNITY SERVICES	76,122	13,636	149,073	59,104	89,969	44,447	103,552	45,521
71 DEBT SERVICE	9,236,496	5,978,755	5,008,074	964,172	4,043,902	0	964,172	4,043,902
81 FAC. ACQUISITION & CONST.	3,481,419	315,974	27,411,587	4,147,527	23,264,060	5,630,420	9,777,947	17,633,640
95 PMT. TO JUV. JUSTICE ALT. ED. PRG.	40,000	20,000	40,000	40,000	0	0	40,000	0
99 OTHER INTERGOVERNMENTAL CHARGES	939,270	461,903	965,919	472,508	493,411	482,686	955,194	10,725
00 OTHER USES/NON-OPERATING EXPENSES	85,000	0	12,500,000	0	12,500,000	0	0	12,500,000
SUB TOTAL	$260,412,503	$74,593,556	$286,965,145	$107,491,063	$179,474,082	$121,909,588	$229,400,651	$57,564,494
REVENUES OVER (UNDER) EXPENDITURES		$45,690,781		$13,522,406				
BEGINNING FUND BALANCE		107,594,997		149,933,573				
PRELIMINARY ENDING FUND BALANCE		$153,285,778		$163,455,979				
OPTIMUM FUND BALANCE FOR UNFORESEEN EVENTS		$104,077,381		$143,823,106				



QUARTERLY INVESTMENT REPORT

McAllen ISD

DECEMBER 31, 2022

MEEDER

PUBLIC FUNDS

PATTERSON GROUP

Preparing for Recovery

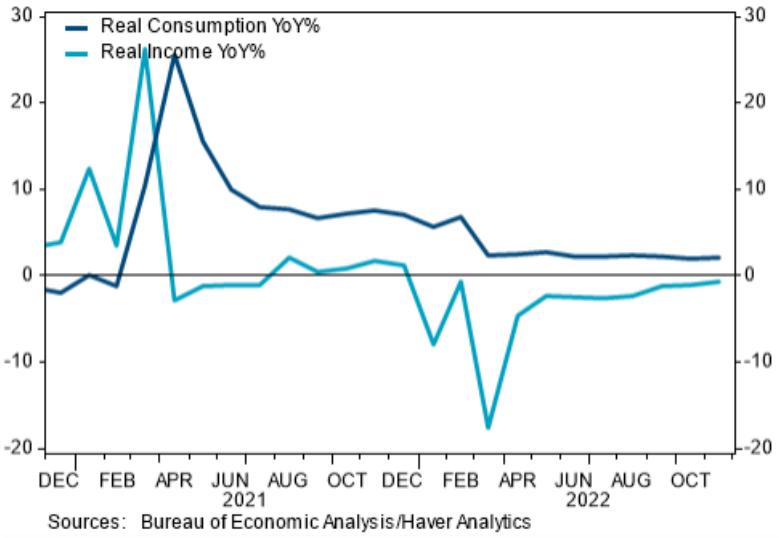
If 2022 was all about inflation, then 2023 may be all about recovering and preparing for recovery. With the monthly irregularities in data, and the uncertainty in the economic outlook and legislative policy, we are left with unanswered questions for the new year. Investors and consumers alike continue to wonder is the U.S. in recession? How deep and prolonged might a downturn be? Has inflation peaked, and if so, will price pressures continue to retreat from here?

For the consumer, high borrowing costs and prices, a surprisingly low level of labor participation and depleted savings should increasingly lower spending activity. And, as shoppers reduce or shift spending, businesses may continue a growing trend of investment, particularly in technology to replace high-cost labor and grow productivity; a missing component of activity for over a decade. Excessive post-Covid consumer demand led to inflated retail inventories which now weigh down on prices and business.

Consumer activity peaked in the 3rd quarter, but the lingering pain of inflation increasingly took its toll by year-end. The reality of a reduced wealth cushion, is causing a shift or reduction in spending habits. For some, this means curtailing purchases. For others, this means downgrading the quality or brand of their purchases. And for others –notably the younger generation – this has resulted in binge spending (where consumers pull back as much as possible one month to purchase more expensive items the next). Regardless of the form, it is increasingly evident that consumers are dramatically shifting the goods and services in their basket - a reflection of growing unease for household financials.

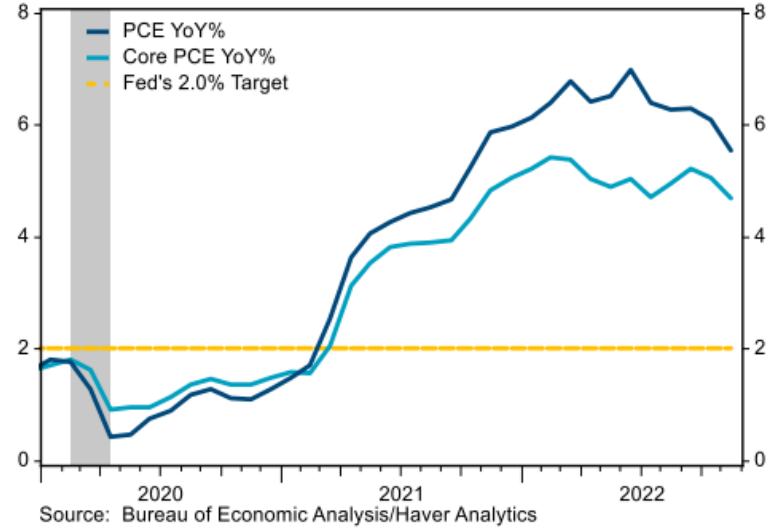
As the consumer modifies her spending, the Fed has also modified the plan for fighting inflation. With inflation pressures easing the Fed has reduced its march to higher rates with its limited 0.50% increase in overnight rates in December.

Is the consumer worn out?



Sources: Bureau of Economic Analysis/Haver Analytics

Inflation easing



Source: Bureau of Economic Analysis/Haver Analytics

A Painful Progress

In 2023 the continuing near-term pain to the consumer and to business will undoubtedly forestall a much larger and longer-term struggle if inflation were to remain unchecked domestically and globally. Global uncertainty caused by political tensions, outright threats and war, along with lingering supply chain snags will continue to exacerbate markets unease causing substantial volatility and even threatening economic dysfunction.

Throughout 2022 central banks have recognized and coordinated rate increases to fight inflation. Even the historically conservative Bank of Japan has allowed its ten-year bond rate to rise from 0.00% to 0.50%! The US leads the inflation battle at an inflation rate of 5.5% year-over-year versus a rate still near 10% in Europe.

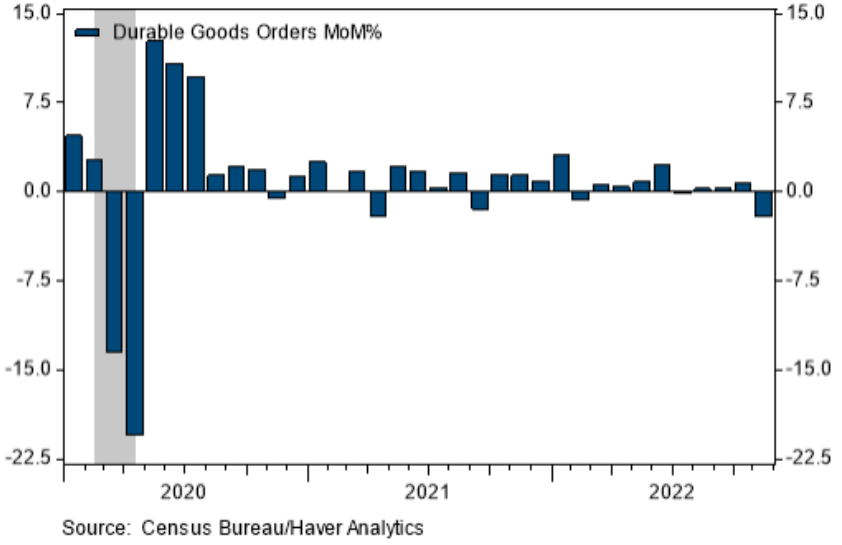
The easing of inflation has given the central banks some breathing space. If slowing demand and discounting prices because of elevated inventories along with declining house prices extends globally, we may see all central banks pausing to wait for an anticipated turn. That interplay of inflation and central bank intervention will ultimately shape 2023.

GDP has unexpectedly risen at year-end after two quarters of decline. The factors continue to vary perhaps too greatly to make predictions: personal consumption especially on services was up whereas goods consumption was down and business investment remains sluggish.

All that said, the painfully slow pace of retreat continues to underscore the fact that there is still work to be done, as Chairman Powell said at the December FOMC meeting.

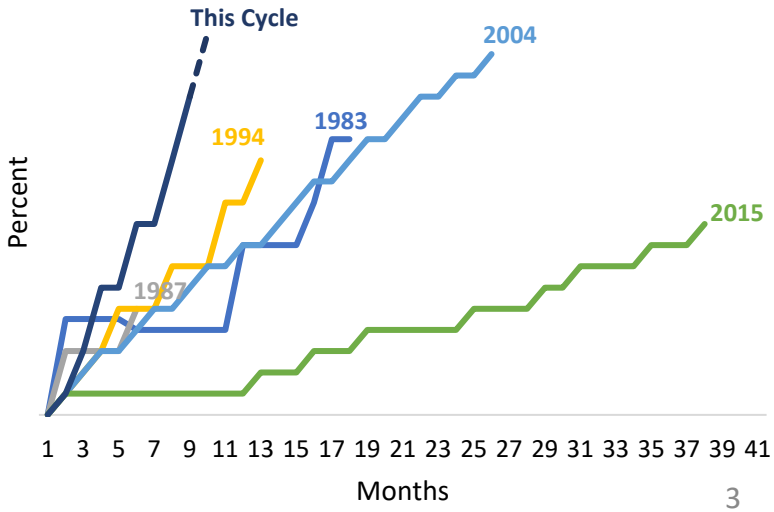
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Big item orders drop



Source: Census Bureau/Haver Analytics

Fastest Rate Hiking Cycle



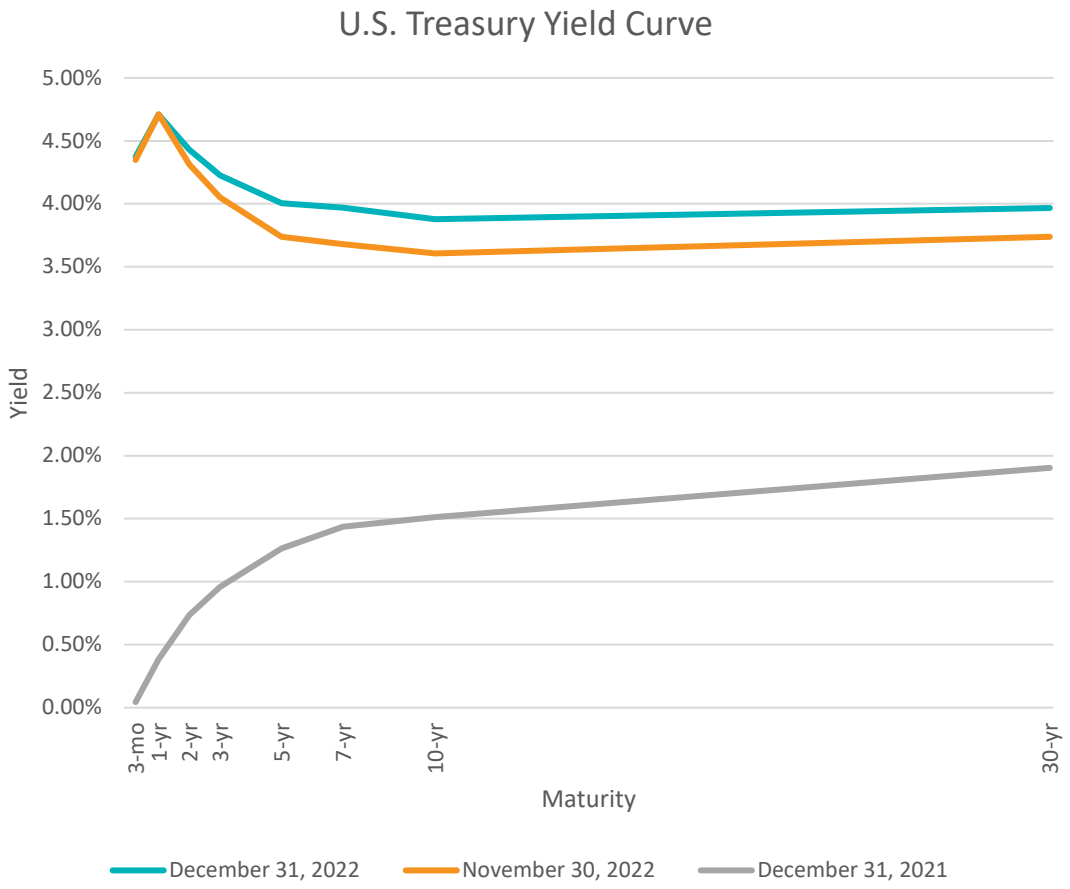
Expectations Drive Rates

The Fed has moderated from the 0.75% hike paces and gave us only a 0.50% hike in December.

The Fed fully concedes that higher rates will slow growth but is willing to take these actions to tame inflation through lessening demand.

The expected increase in GDP has changed the recession discussion somewhat with the market even beginning to think a soft landing may be possible.

There are signs of slightly slowing inflation such as lower rents and a reduced need for workers. The continuously changing environment has even the Fed debating how much more tightening is needed.



SOURCE: BLOOMBERG

McAllen Independent School District
Quarterly Investment Report
October 1, 2022 – December 31, 2022

Portfolio Summary Management Report

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

Portfolio as of 09/30/22:		**Portfolio as of 12/31/22:**	
Beginning Book Value	$ 167,002,605	Ending Book Value	$ 171,406,437
Beginning Market Value	$ 165,615,960	Ending Market Value	$ 170,255,458
		Investment Income for quarter	$ 1,304,731
		Unrealized Gain/Loss	$ (1,150,979)
WAM at Beginning Period Date[1]	107 days	WAM at Ending Period Date[1]	86 days
(Increase in market value is due to seasonal cash inflows)		Change in Market Value[2]	$ 4,639,498

Average Yield to Maturity for period	**2.819%**
Average Yield 1-Year Treasury Bill for period	**4.600%**
Average Yield 2-Year Treasury Note for period	**4.380%**

Iris Luna, Chief Financial Officer
McAllen ISD

Adelita Felix, Asst. Superintendent of Business Operations
McAllen ISD

Dyanira Diaz

Dyanira Diaz, Director of Accounting
McAllen ISD

Vanessa Arrezola

Vanessa Arrezola, Coordinator for Accounting
McAllen ISD

Linda T. Patterson, President
Patterson & Associates

1 WAM – weighted average maturity

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

Your Portfolio

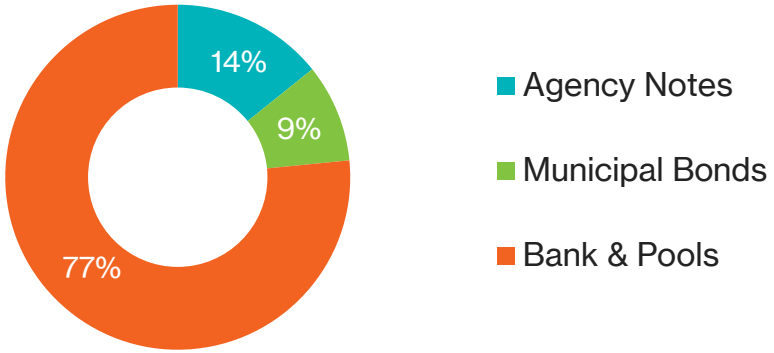
As of December 31, 2022

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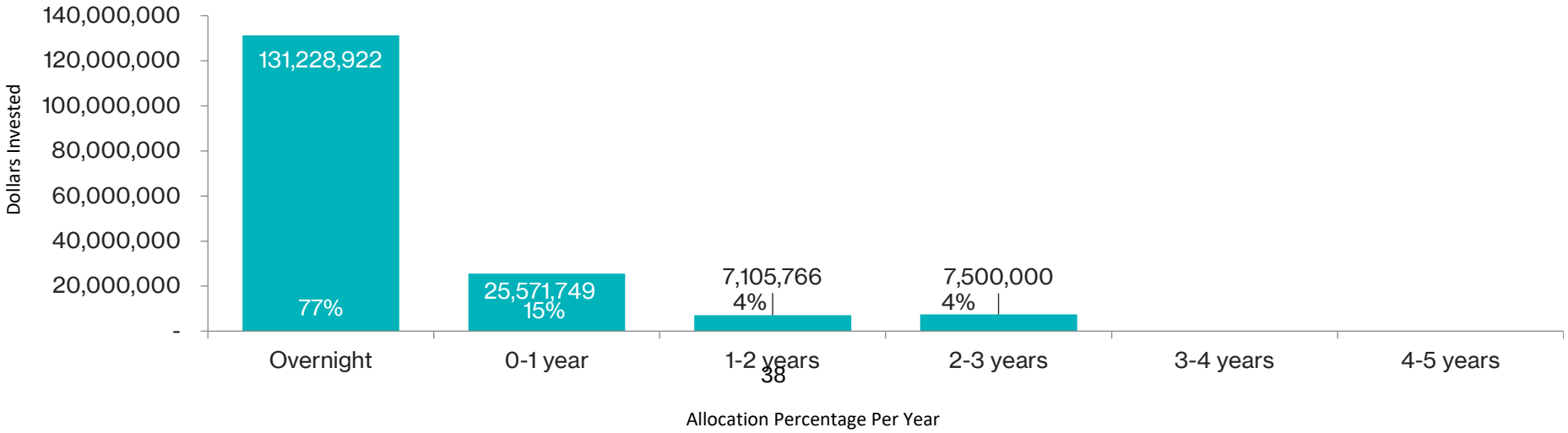
Your Portfolio Statistics

Weighted Average Maturity	0.24 years
Weighted Average Yield (All Funds)	3.14%

Your Asset Allocation



Your Maturity Distribution



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PUBLIC FUNDS | PATTERSON GROUP

McAllen ISD
Portfolio Management
Portfolio Summary
December 31, 2022

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

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 365 Equiv.
BNY Mellon	37,457.46	37,457.46	37,457.46	0.02	1	1	0.000
Frost Bank	16,455,017.63	16,455,017.63	16,455,017.63	9.60	1	1	0.110
Federal Agency Coupon Securities	24,400,000.00	23,520,798.59	24,399,226.42	14.23	793	475	1.678
Municipal Bonds	15,735,000.00	15,505,737.30	15,778,288.97	9.21	598	191	0.752
Texpool/Texpool Prime	21,526,721.85	21,526,721.85	21,526,721.85	12.56	1	1	4.133
Lone Star	93,209,724.85	93,209,724.85	93,209,724.85	54.38	1	1	4.230
Investments	**171,363,921.79**	**170,255,457.68**	**171,406,437.18**	**100.00%**	**169**	**86**	**3.138**
Cash and Accrued Interest							
Accrued Interest at Purchase		8,296.95	8,296.95				
Subtotal		8,296.95	8,296.95				
Total Cash and Investments	**171,363,921.79**	**170,263,754.63**	**171,414,734.13**		**169**	**86**	**3.138**

Total Earnings	December 31 Month Ending	Fiscal Year To Date
Current Year	587,531.17	1,982,141.14

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

Feb 2, 2023

Adelita Felix, Asst Sup't of Business Oper

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

McAllen ISD
Summary by Type
December 31, 2022
Grouped by Fund

Security Type	Number of Investments	Par Value	Book Value	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Activity Fund						
Frost Bank	1	2,376,025.07	2,376,025.07	1.39	0.110	1
Subtotal	**1**	**2,376,025.07**	**2,376,025.07**	**1.39**	**0.110**	**1**
Fund: Clearing Fund						
Frost Bank	1	4,359,121.50	4,359,121.50	2.54	0.110	1
Subtotal	**1**	**4,359,121.50**	**4,359,121.50**	**2.54**	**0.110**	**1**
Fund: Capital Projects Fund						
Frost Bank	2	244,253.69	244,253.69	0.14	0.110	1
Lone Star	4	11,843,515.26	11,843,515.26	6.91	4.197	1
Subtotal	**6**	**12,087,768.95**	**12,087,768.95**	**7.05**	**4.114**	**1**
Fund: Debt Service Fund						
Frost Bank	1	88,858.24	88,858.24	0.05	0.110	1
Lone Star	2	4,862,096.42	4,862,096.42	2.84	4.265	1
Subtotal	**3**	**4,950,954.66**	**4,950,954.66**	**2.89**	**4.190**	**1**
Fund: General Fund						
Frost Bank	1	7,281,310.19	7,281,310.19	4.25	0.110	1
Federal Agency Coupon Securities	6	19,400,000.00	19,399,226.42	11.32	1.884	456
Lone Star	3	69,770,558.18	69,770,558.18	40.70	4.236	1
Municipal Bonds	6	8,385,000.00	8,409,784.72	4.91	0.580	138
Texpool/Texpool Prime	2	21,526,721.85	21,526,721.85	12.56	4.133	1
Subtotal	**18**	**126,363,590.22**	**126,387,601.36**	**73.74**	**3.376**	**80**
Fund: Plan 457 Fund						
Frost Bank	1	0.00	0.00	0.00	0.000	0
Subtotal	**1**	**0.00**	**0.00**	**0.00**	**0.000**	**0**

McAllen ISD
Summary by Type
December 31, 2022
Grouped by Fund

Security Type	Number of Investments	Par Value	Book Value	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Proprietary Fund						
Frost Bank	1	2,105,448.94	2,105,448.94	1.23	0.110	1
Lone Star	2	6,733,554.99	6,733,554.99	3.93	4.205	1
Subtotal	**3**	**8,839,003.93**	**8,839,003.93**	**5.16**	**3.230**	**1**
Fund: QSCB - Reserve Fund						
BNY Mellon	1	37,457.46	37,457.46	0.02	0.000	1
Federal Agency Coupon Securities	2	5,000,000.00	5,000,000.00	2.92	0.877	546
Municipal Bonds	4	7,350,000.00	7,368,504.25	4.30	0.948	253
Subtotal	**7**	**12,387,457.46**	**12,405,961.71**	**7.24**	**0.916**	**370**
Fund: QSCB - Debt Service						
BNY Mellon	1	0.00	0.00	0.00	0.000	0
Subtotal	**1**	**0.00**	**0.00**	**0.00**	**0.000**	**0**
Total and Average	**41**	**171,363,921.79**	**171,406,437.18**	**100.00**	**3.138**	**86**

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PUBLIC FUNDS | PATTERSON GROUP

McAllen ISD
Fund ACT - Activity Fund
Investments by Fund
December 31, 2022

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

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999915	10020	Frost Bank Public Checking	07/01/2022	2,376,025.07	2,376,025.07	2,376,025.07	0.110	0.108	0.110	1
		Subtotal and Average		**2,376,025.07**	**2,376,025.07**	**2,376,025.07**		**0.108**	**0.110**	**1**
		Total Investments and Average		**2,376,025.07**	**2,376,025.07**	**2,376,025.07**		**0.108**	**0.110**	**1**

Fund CLEAR - Clearing Fund
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999914	10019	Frost Bank Public Checking	07/01/2022	4,359,121.50	4,359,121.50	4,359,121.50	0.110	0.108	0.110	1
		Subtotal and Average		**4,359,121.50**	**4,359,121.50**	**4,359,121.50**		**0.108**	**0.110**	**1**
		Total Investments and Average		**4,359,121.50**	**4,359,121.50**	**4,359,121.50**		**0.108**	**0.110**	**1**

Fund CP - Capital Projects Fund
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999922	10103	Frost Bank Public Checking	07/01/2022	83,401.24	83,401.24	83,401.24	0.110	0.108	0.110	1
SYS10109	10109	Frost Bank Public Checking	07/01/2022	160,852.45	160,852.45	160,852.45	0.110	0.108	0.110	1
		Subtotal and Average		**244,253.69**	**244,253.69**	**244,253.69**		**0.108**	**0.110**	**1**
Lone Star										
108906G	10101	Lone Star Corporate Overnight	12/18/2019	789,201.55	789,201.55	789,201.55	4.330	4.270	4.330	1
108906I	10108	Lone Star Corporate Overnight	02/21/2020	4,736,213.47	4,736,213.47	4,736,213.47	4.330	4.270	4.330	1
108906H	10102	Lone Star Government ON	12/18/2019	1,236,971.19	1,236,971.19	1,236,971.19	4.080	4.024	4.080	1
108906J	10113	Lone Star Government ON	03/12/2020	5,081,129.05	5,081,129.05	5,081,129.05	4.080	4.024	4.080	1
		Subtotal and Average		**11,843,515.26**	**11,843,515.26**	**11,843,515.26**		**4.139**	**4.197**	**1**
		Total Investments and Average		**12,087,768.95**	**12,087,768.95**	**12,087,768.95**		**4.058**	**4.114**	**1**

Fund DS - Debt Service Fund
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999918	10023	Frost Bank Public Checking	07/01/2022	88,858.24	88,858.24	88,858.24	0.110	0.108	0.110	1
		Subtotal and Average		**88,858.24**	**88,858.24**	**88,858.24**		**0.108**	**0.110**	**1**
Lone Star										
108906B	10032	Lone Star Corporate Overnight	10/22/2015	3,596,430.69	3,596,430.69	3,596,430.69	4.330	4.270	4.330	1
108906C	10089	Lone Star Government ON	08/05/2019	1,265,665.73	1,265,665.73	1,265,665.73	4.080	4.024	4.080	1
		Subtotal and Average		**4,862,096.42**	**4,862,096.42**	**4,862,096.42**		**4.206**	**4.265**	**1**
		Total Investments and Average		**4,950,954.66**	**4,950,954.66**	**4,950,954.66**		**4.133**	**4.190**	**1**

Fund GEN - General Fund
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Date	Days To Maturity
Frost Bank											
999917	10022	Frost Bank Public Checking	07/01/2022	7,281,310.19	7,281,310.19	7,281,310.19	0.110	0.108	0.110		1
		Subtotal and Average		**7,281,310.19**	**7,281,310.19**	**7,281,310.19**		**0.108**	**0.110**		**1**
Federal Agency Coupon Securities											
3133ENV98	10162	FFCB Call Note	10/31/2022	4,999,226.42	5,000,000.00	4,996,015.85	4.670	4.641	4.706	07/26/2023	206
3130ANDP2	10143	FHLB Call Note	08/18/2021	2,400,000.00	2,400,000.00	2,333,075.62	0.250	0.246	0.250	08/18/2023	229
3130APQM0	10150	FHLB Call Note	11/18/2021	3,000,000.00	3,000,000.00	2,796,835.35	1.000	0.986	1.000	11/18/2024	687
3130APQU2	10151	FHLB Call Note	11/22/2021	2,000,000.00	2,000,000.00	1,922,808.00	0.650	0.641	0.650	11/22/2023	325
3130AQLR2	10153	FHLB Call Note	02/07/2022	2,500,000.00	2,500,000.00	2,397,785.10	1.000	0.986	1.000	02/07/2024	402
3130AQYM9	10156	FHLB Step Note	02/28/2022	4,500,000.00	4,500,000.00	4,342,735.76	1.250	1.232	1.250	02/28/2025	789
		Subtotal and Average		**19,399,226.42**	**19,400,000.00**	**18,789,255.68**		**1.858**	**1.884**		**455**
Municipal Bonds											
476637AR4	10158	Jersey City NJ Redev Agy	03/16/2022	2,203,167.08	2,200,000.00	2,187,482.00	2.000	1.282	1.300	03/16/2023	74
678720KM4	10145	Oklahoma County OK ISD	09/23/2021	1,101,459.94	1,100,000.00	1,071,598.00	0.500	0.234	0.238	09/01/2023	243
678553AP3	10147	Oklahoma City Econ Dev Trust	09/27/2021	1,004,910.89	1,000,000.00	997,600.00	3.204	0.246	0.250	03/01/2023	59
73358W4V3	10148	Port Authority of NY & NJ	10/15/2021	1,509,987.02	1,505,000.00	1,478,271.20	1.086	0.414	0.420	07/01/2023	181
8717027U4	10141	Syracuse NY	06/30/2021	1,590,259.79	1,580,000.00	1,571,578.60	2.000	0.246	0.249	05/15/2023	134
953107AB5	10142	West Hartford CT	07/08/2021	1,000,000.00	1,000,000.00	980,200.00	0.466	0.459	0.465	07/01/2023	181
		Subtotal and Average		**8,409,784.72**	**8,385,000.00**	**8,286,729.80**		**0.572**	**0.580**		**137**
Texpool/Texpool Prime											
999921	10092	Texpool	08/05/2019	10,729,397.09	10,729,397.09	10,729,397.09	3.980	3.925	3.979		1
999920	10034	Texpool Prime	11/03/2015	10,797,324.76	10,797,324.76	10,797,324.76	4.285	4.226	4.284		1
		Subtotal and Average		**21,526,721.85**	**21,526,721.85**	**21,526,721.85**		**4.076**	**4.133**		**1**
Lone Star											
108906F	10099	Lone Star Corporate Overnight+	11/18/2019	0.00	0.00	0.00					1
108906	10003	Lone Star Corporate Overnight	11/01/2014	43,488,922.60	43,488,922.60	43,488,922.60	4.330	4.270	4.330		1
108906D	10090	Lone Star Government ON	08/05/2019	26,281,635.58	26,281,635.58	26,281,635.58	4.080	4.024	4.080		1
		Subtotal and Average		**69,770,558.18**	**69,770,558.18**	**69,770,558.18**		**4.178**	**4.236**		**1**
		Total Investments and Average		**126,387,601.36**	**126,363,590.22**	**125,654,575.70**		**3.330**	**3.376**		**79**

Fund PLAN457 - Plan 457 Fund
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999916	10021	Frost Bank Public Checking	07/01/2022	0.00	0.00	0.00				1
			Subtotal and Average	**0.00**	**0.00**	**0.00**		**0.000**	**0.000**	**0**
			Total Investments and Average	**0.00**	**0.00**	**0.00**		**0.000**	**0.000**	**0**

Fund PROP - Proprietary Fund
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999919	10024	Frost Bank Public Checking	07/01/2022	2,105,448.94	2,105,448.94	2,105,448.94	0.110	0.108	0.110	1
		Subtotal and Average		**2,105,448.94**	**2,105,448.94**	**2,105,448.94**		**0.108**	**0.110**	**1**
Lone Star										
108906A	10025	Lone Star Corporate Overnight	08/05/2015	3,368,937.94	3,368,937.94	3,368,937.94	4.330	4.270	4.330	1
108906E	10091	Lone Star Government ON	08/05/2019	3,364,617.05	3,364,617.05	3,364,617.05	4.080	4.024	4.080	1
		Subtotal and Average		**6,733,554.99**	**6,733,554.99**	**6,733,554.99**		**4.147**	**4.205**	**1**
		Total Investments and Average		**8,839,003.93**	**8,839,003.93**	**8,839,003.93**		**3.185**	**3.230**	**1**

Fund QSCB - QSCB - Reserve Fund
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Date	Days To Maturity
BNY Mellon											
882521	10014	BNY Mellon - Cash	07/01/2022	37,457.46	37,457.46	37,457.46					1
		Subtotal and Average		**37,457.46**	**37,457.46**	**37,457.46**		**0.000**	**0.000**		**1**
Federal Agency Coupon Securities											
3130ANDP2	10144	FHLB Call Note	08/18/2021	2,000,000.00	2,000,000.00	1,944,229.68	0.250	0.246	0.250	08/18/2023	229
3130AQJM6	10152	FHLB Call Note	01/28/2022	3,000,000.00	3,000,000.00	2,787,313.23	1.250	1.276	1.294	01/28/2025	758
		Subtotal and Average		**5,000,000.00**	**5,000,000.00**	**4,731,542.91**		**0.865**	**0.877**		**546**
Municipal Bonds											
476637AR4	10159	Jersey City NJ Redev Agy	03/16/2022	1,251,799.48	1,250,000.00	1,242,887.50	2.000	1.282	1.300	03/16/2023	74
578060EQ4	10161	Mayes County OK ISD	06/29/2022	1,605,766.24	1,600,000.00	1,572,160.00	3.300	2.351	2.384	06/01/2024	517
678720KM4	10146	Oklahoma County OK ISD	09/23/2021	2,002,654.44	2,000,000.00	1,948,360.00	0.500	0.234	0.238	09/01/2023	243
73358W4V3	10149	Port Authority of NY & NJ	10/15/2021	2,508,284.09	2,500,000.00	2,455,600.00	1.086	0.414	0.420	07/01/2023	181
		Subtotal and Average		**7,368,504.25**	**7,350,000.00**	**7,219,007.50**		**0.935**	**0.948**		**252**
		Total Investments and Average		**12,405,961.71**	**12,387,457.46**	**11,988,007.87**		**0.904**	**0.916**		**370**

Fund QSCBDS - QSCB - Debt Service
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
BNY Mellon										
882520	10040	BNY Mellon - Cash	07/01/2022	0.00	0.00	0.00				1
			Subtotal and Average	**0.00**	**0.00**	**0.00**		**0.000**	**0.000**	**0**
			Total Investments and Average	**0.00**	**0.00**	**0.00**		**0.000**	**0.000**	**0**

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McAllen ISD
Cash Reconciliation Report
For the Period October 1, 2022 - December 31, 2022
Grouped by Fund

Trans. Date	Investment #	Fund	Trans. Type	Security ID	Par Value	Security Description	Maturity Date	Purchases	Interest	Redemptions	Cash
General Fund											
10/13/2022	10154	GEN	Interest	116083WW2	5,000,000.00	BROWNS 5.0M 1.75% Mat.	02/01/2023	0.00	57,294.52	0.00	57,294.52
10/13/2022	10154	GEN	Call	116083WW2	5,000,000.00	0.0M 1.75%	02/01/2023	0.00	0.00	5,000,000.00	5,000,000.00
10/31/2022	10162	GEN	Purchase	3133ENV98	5,000,000.00	FFCBC 5.0M 4.67% Mat. 07/26/2023	07/26/2023	-4,999,000.00	-3,243.06	0.00	-5,002,243.06
11/15/2022	10141	GEN	Interest	8717027U4	1,580,000.00	SYRANY 1.6M 2.00% Mat.	05/15/2023	0.00	15,800.00	0.00	15,800.00
11/18/2022	10150	GEN	Interest	3130APQM0	3,000,000.00	FHLBC 3.0M 1.00% Mat. 11/18/2024	11/18/2024	0.00	15,000.00	0.00	15,000.00
11/22/2022	10151	GEN	Interest	3130APQU2	2,000,000.00	FHLBC 2.0M 0.65% Mat. 11/22/2023	11/22/2023	0.00	6,500.00	0.00	6,500.00
11/25/2022	10160	GEN	Maturity	22533ULR2	2,500,000.00	CRAGCP 2.5M 0.00% Mat.	11/25/2022	0.00	0.00	2,500,000.00	2,500,000.00
12/06/2022	10157	GEN	Maturity	63873KM61	3,000,000.00	NATINY 3.0M 0.00% Mat.	12/06/2022	0.00	0.00	3,000,000.00	3,000,000.00
							Subtotal	**-4,999,000.00**	**91,351.46**	**10,500,000.00**	**5,592,351.46**
							Total	**-4,999,000.00**	**91,351.46**	**10,500,000.00**	**5,592,351.46**

MEEDER
PUBLIC FUNDS | PATTERSON GROUP

McAllen ISD
Purchases Report
Sorted by Fund - Fund
October 1, 2022 - December 31, 2022

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CUSIP	Investment #	Fund	Sec. Type	Issuer	Original Par Value	Purchase Date	Payment Periods	Principal Purchased	Accrued Interest at Purchase	Rate at Purchase	Maturity Date	YTM	Ending Book Value
General Fund													
3133ENV98	10162	GEN	FAC	FFCBC	5,000,000.00	10/31/2022	01/26 - 07/26	4,999,000.00	3,243.06	4.670	07/26/2023	4.706	4,999,226.42
				Subtotal	**5,000,000.00**			**4,999,000.00**	**3,243.06**				**4,999,226.42**
				Total Purchases	**5,000,000.00**			**4,999,000.00**	**3,243.06**				**4,999,226.42**

MEEDER
PUBLIC FUNDS | PATTERSON GROUP

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McAllen ISD
Maturity Report
Sorted by Maturity Date
Receipts during October 1, 2022 - December 31, 2022

CUSIP	Investment #	Fund	Sec. Type	Issuer	Par Value	Maturity Date	Purchase Date	Rate at Maturity	Book Value at Maturity	Interest	Maturity Proceeds	Net Income
22533ULR2	10160	GEN	ACP	CRAGCP	2,500,000.00	11/25/2022	05/26/2022		2,500,000.00	0.00	2,500,000.00	0.00
63873KM61	10157	GEN	ACP	NATINY	3,000,000.00	12/06/2022	03/14/2022		3,000,000.00	0.00	3,000,000.00	0.00
			Total Maturities		**5,500,000.00**				**5,500,000.00**	**0.00**	**5,500,000.00**	**0.00**

MEEDER
PUBLIC FUNDS | PATTERSON GROUP

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McAllen ISD
Sales/Call Report
Sorted by Fund - Fund
October 1, 2022 - December 31, 2022

CUSIP	Investment #	Fund	Issuer / Sec. Type	Purchase Date	Redem. Date / Matur. Date	Par Value	Rate at Redem.	Book Value at Redem.	Redemption Principal	Redemption Interest	Total Amount	Net Income
General Fund												
116083WW2	10154	GEN	BROWNS MC2	02/16/2022	10/13/2022 02/01/2023	5,000,000.00	1.750	5,000,000.00	5,000,000.00	57,294.52	5,057,294.52 Call	57,294.52
					Subtotal	**5,000,000.00**		**5,000,000.00**	**5,000,000.00**	**57,294.52**	**5,057,294.52**	**57,294.52**
					Total Sales	**5,000,000.00**		**5,000,000.00**	**5,000,000.00**	**57,294.52**	**5,057,294.52**	**57,294.52**

MEEDER
PUBLIC FUNDS | PATTERSON GROUP

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McAllen ISD
Interest Earnings
Sorted by Fund - Fund
October 1, 2022 - December 31, 2022
Period Yield on Beginning Book Value

CUSIP	Investment #	Fund	Security Type	Ending Par Value	Beginning Book Value	Ending Book Value	Maturity Date	Current Rate	Yield This Period	Adjusted Interest Earnings: Interest Earned	Adjusted Interest Earnings: Amortization/ Accretion	Adjusted Interest Earnings: Adjusted Interest Earnings
Fund: Activity Fund												
999915	10020	ACT	LA2	2,376,025.07	2,074,972.56	2,376,025.07		0.110	5.320	27,823.39	0.00	27,823.39
			Subtotal	**2,376,025.07**	**2,074,972.56**	**2,376,025.07**			**1.341**	**27,823.39**	**0.00**	**27,823.39**
Fund: Clearing Fund												
999914	10019	CLEAR	LA2	4,359,121.50	3,772,997.68	4,359,121.50		0.110	5.923	56,325.31	0.00	56,325.31
			Subtotal	**4,359,121.50**	**3,772,997.68**	**4,359,121.50**			**1.493**	**56,325.31**	**0.00**	**56,325.31**
Fund: Capital Projects Fund												
108906G	10101	CP	RR2	789,201.55	928,057.83	789,201.55		4.330	5.619	13,143.72	0.00	13,143.72
108906I	10108	CP	RR2	4,736,213.47	6,226,957.29	4,736,213.47		4.330	3.393	53,256.18	0.00	53,256.18
SYS10109	10109	CP	LA2	160,852.45	244,166.21	160,852.45		0.110	6.207	3,820.22	0.00	3,820.22
999922	10103	CP	LA2	83,401.24	1,478,645.06	83,401.24		0.110	3.127	11,653.22	0.00	11,653.22
108906J	10113	CP	RR2	5,081,129.05	5,034,932.17	5,081,129.05		4.080	3.640	46,196.88	0.00	46,196.88
108906H	10102	CP	RR2	1,236,971.19	526,529.63	1,236,971.19		4.080	6.361	8,441.56	0.00	8,441.56
			Subtotal	**12,087,768.95**	**14,439,288.19**	**12,087,768.95**			**0.945**	**136,511.78**	**0.00**	**136,511.78**
Fund: Debt Service Fund												
108906B	10032	DS	RR2	3,596,430.69	868,013.60	3,596,430.69		4.330	6.774	14,820.12	0.00	14,820.12
999918	10023	DS	LA2	88,858.24	86,773.88	88,858.24		0.110	4.379	957.85	0.00	957.85
108906C	10089	DS	RR2	1,265,665.73	1,608,736.11	1,265,665.73		4.080	3.189	12,929.62	0.00	12,929.62
			Subtotal	**4,950,954.66**	**2,563,523.59**	**4,950,954.66**			**1.120**	**28,707.59**	**0.00**	**28,707.59**
Fund: General Fund												
999921	10092	GEN	RRP	10,729,397.09	10,635,111.67	10,729,397.09		3.980	3.517	94,285.42	0.00	94,285.42
108906	10003	GEN	RR2	43,488,922.60	46,023,863.15	43,488,922.60		4.330	3.350	388,629.20	0.00	388,629.20
999917	10022	GEN	LA2	7,281,310.19	7,911,099.80	7,281,310.19		0.110	5.164	102,967.73	0.00	102,967.73
999920	10034	GEN	RRP	10,797,324.76	10,694,490.95	10,797,324.76		4.285	3.815	102,833.81	0.00	102,833.81
3130APQM0	10150	GEN	FAC	3,000,000.00	3,000,000.00	3,000,000.00	11/18/2024	1.000	0.992	7,500.00	0.00	7,500.00
3130APQU2	10151	GEN	FAC	2,000,000.00	2,000,000.00	2,000,000.00	11/22/2023	0.650	0.645	3,250.00	0.00	3,250.00

CUSIP	Investment #	Fund	Security Type	Ending Par Value	Beginning Book Value	Ending Book Value	Maturity Date	Current Rate	Yield This Period	Adjusted Interest Earnings: Interest Earned	Adjusted Interest Earnings: Amortization/ Accretion	Adjusted Interest Earnings: Adjusted Interest Earnings
Fund: General Fund												
3130AQLR2	10153	GEN	FAC	2,500,000.00	2,500,000.00	2,500,000.00	02/07/2024	1.000	0.992	6,250.00	0.00	6,250.00
3130ANDP2	10143	GEN	FAC	2,400,000.00	2,400,000.00	2,400,000.00	08/18/2023	0.250	0.248	1,500.00	0.00	1,500.00
63873KM61	10157	GEN	ACP	0.00	2,991,970.00	0.00	12/06/2022		1.484	0.00	8,030.00	8,030.00
3133ENV98	10162	GEN	FAC	5,000,000.00	0.00	4,999,226.42	07/26/2023	4.670	4.610	38,916.66	226.42	39,143.08
108906D	10090	GEN	RR2	26,281,635.58	13,733,970.60	26,281,635.58		4.080	4.006	138,664.98	0.00	138,664.98
116083WW2	10154	GEN	MC2	0.00	5,000,000.00	0.00	02/01/2023	1.750	1.750	2,876.71	0.00	2,876.71
476637AR4	10158	GEN	MC2	2,200,000.00	2,206,967.58	2,203,167.08	03/16/2023	2.000	1.294	11,000.00	-3,800.50	7,199.50
8717027U4	10141	GEN	MC2	1,580,000.00	1,597,150.70	1,590,259.79	05/15/2023	2.000	0.251	7,900.00	-6,890.91	1,009.09
953107AB5	10142	GEN	MC2	1,000,000.00	1,000,000.00	1,000,000.00	07/01/2023	0.466	0.462	1,165.00	0.00	1,165.00
678720KM4	10145	GEN	MC2	1,100,000.00	1,102,007.42	1,101,459.94	09/01/2023	0.500	0.298	1,375.00	-547.48	827.52
678553AP3	10147	GEN	MC2	1,000,000.00	1,012,277.24	1,004,910.89	03/01/2023	3.204	0.252	8,010.00	-7,366.35	643.65
73358W4V3	10148	GEN	MC2	1,505,000.00	1,512,480.53	1,509,987.02	07/01/2023	1.086	0.418	4,086.07	-2,493.51	1,592.56
3130AQYM9	10156	GEN	FAC	4,500,000.00	4,500,000.00	4,500,000.00	02/28/2025	1.250	1.240	14,062.50	0.00	14,062.50
22533ULR2	10160	GEN	ACP	0.00	2,492,017.36	0.00	11/25/2022		2.126	0.00	7,982.64	7,982.64
			Subtotal	**126,363,590.22**	**122,313,407.00**	**126,387,601.36**			**0.779**	**935,273.08**	**-4,859.69**	**930,413.39**
Fund: Proprietary Fund												
108906A	10025	PROP	RR2	3,368,937.94	4,391,809.33	3,368,937.94		4.330	3.264	36,128.61	0.00	36,128.61
999919	10024	PROP	LA2	2,105,448.94	2,255,070.38	2,105,448.94		0.110	5.175	29,415.95	0.00	29,415.95
108906E	10091	PROP	RR2	3,364,617.05	2,777,259.89	3,364,617.05		4.080	4.051	28,357.16	0.00	28,357.16
			Subtotal	**8,839,003.93**	**9,424,139.60**	**8,839,003.93**			**0.996**	**93,901.72**	**0.00**	**93,901.72**
Fund: QSCB - Reserve Fund												
882521	10014	QSCB	LA1	37,457.46	37,457.46	37,457.46				0.00	0.00	0.00
3130ANDP2	10144	QSCB	FAC	2,000,000.00	2,000,000.00	2,000,000.00	08/18/2023	0.250	0.248	1,250.00	0.00	1,250.00
3130AQJM6	10152	QSCB	FAC	3,000,000.00	3,000,000.00	3,000,000.00	01/28/2025	1.250	1.240	9,375.00	0.00	9,375.00
476637AR4	10159	QSCB	MC2	1,250,000.00	1,253,958.85	1,251,799.48	03/16/2023	2.000	1.294	6,250.00	-2,159.37	4,090.63
678720KM4	10146	QSCB	MC2	2,000,000.00	2,003,649.86	2,002,654.44	09/01/2023	0.500	0.298	2,500.00	-995.42	1,504.58
73358W4V3	10149	QSCB	MC2	2,500,000.00	2,512,426.14	2,508,284.09	07/01/2023	1.086	0.418	6,787.50	-4,142.05	2,645.45
578060EQ4	10161	QSCB	MC2	1,600,000.00	1,606,783.82	1,605,766.24	06/01/2024	3.300	3.008	13,200.00	-1,017.58	12,182.42
			Subtotal	**12,387,457.46**	**12,414,276.13**	**12,405,961.71**			**0.250**	**39,362.50**	**-8,314.42**	**31,048.08**
			Total	**171,363,921.79**	**167,002,604.75**	**171,406,437.18**			**0.795**	**1,317,905.37**	**-13,174.11**	**1,304,731.26**

Patterson & Associates
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Austin, TX 78746
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McAllen ISD
Amortization Schedule
October 1, 2022 - December 31, 2022
Sorted By Fund - Fund

Investment # / Issuer	Fund	Maturity Date / Amort. Date	Beginning Par Value / Current Rate	Purchase Principal	Original Premium or Discount	Ending Book Value	Amounts Amortized And Unamortized As of 10/01/2022	Amount Amortized This Period	Amt Amortized Through 12/31/2022	Amount Unamortized Through 12/31/2022
General Fund										
10154 Brownsburg IN 1999 School Bldg	GEN	02/01/2023 09/01/2022	5,000,000.00 1.750	5,033,600.00	33,600.00	0.00	-33,600.00 0.00	0.00	-33,600.00	0.00
10160 Credit Agricole CP	GEN	11/25/2022	2,500,000.00	2,473,439.58	-26,560.42	0.00	18,577.78 -7,982.64	7,982.64	26,560.42	0.00
10162 FFCB Call Note	GEN	07/26/2023	5,000,000.00 4.670	4,999,000.00	-1,000.00	4,999,226.42	0.00 -1,000.00	226.42	226.42	-773.58
10158 Jersey City NJ Redev Agy	GEN	03/16/2023	2,200,000.00 2.000	2,215,202.00	15,202.00	2,203,167.08	-8,234.42 6,967.58	-3,800.50	-12,034.92	3,167.08
10157 Natixis NY CP	GEN	12/06/2022	3,000,000.00	2,967,515.00	-32,485.00	0.00	24,455.00 -8,030.00	8,030.00	32,485.00	0.00
10145 Oklahoma County OK ISD	GEN	09/01/2023	1,100,000.00 0.500	1,104,246.00	4,246.00	1,101,459.94	-2,238.58 2,007.42	-547.48	-2,786.06	1,459.94
10147 Oklahoma City Econ Dev Trust	GEN	03/01/2023	1,000,000.00 3.204	1,042,070.00	42,070.00	1,004,910.89	-29,792.76 12,277.24	-7,366.35	-37,159.11	4,910.89
10148 Port Authority of NY & NJ	GEN	07/01/2023	1,505,000.00 1.086	1,522,066.70	17,066.70	1,509,987.02	-9,586.17 7,480.53	-2,493.51	-12,079.68	4,987.02
10141 Syracuse NY	GEN	05/15/2023	1,580,000.00 2.000	1,631,681.80	51,681.80	1,590,259.79	-34,531.10 17,150.70	-6,890.91	-41,422.01	10,259.79
			Subtotal	**22,988,821.08**	**103,821.08**	**12,409,011.14**	**-74,950.25** **28,870.83**	**-4,859.69**	**-79,809.94**	**24,011.14**
QSCB - Reserve Fund										
10152 FHLB Call Note	QSCB	01/28/2025 04/28/2022	3,000,000.00 1.250	2,996,100.00	-3,900.00	3,000,000.00	3,900.00 0.00	0.00	3,900.00	0.00
10159 Jersey City NJ Redev Agy	QSCB	03/16/2023	1,250,000.00 2.000	1,258,637.50	8,637.50	1,251,799.48	-4,678.65 3,958.85	-2,159.37	-6,838.02	1,799.48
10161 Mayes County OK ISD	QSCB	06/01/2024	1,600,000.00 3.300	1,607,824.00	7,824.00	1,605,766.24	-1,040.18 6,783.82	-1,017.58	-2,057.76	5,766.24
10146 Oklahoma County OK ISD	QSCB	09/01/2023	2,000,000.00 0.500	2,007,720.00	7,720.00	2,002,654.44	-4,070.14 3,649.86	-995.42	-5,065.56	2,654.44
10149 Port Authority of NY & NJ	QSCB	07/01/2023	2,500,000.00 1.086	2,528,350.00	28,350.00	2,508,284.09	-15,923.86 12,426.14	-4,142.05	-20,065.91	8,284.09
			Subtotal	**10,398,631.50**	**48,631.50**	**10,368,504.25**	**-21,812.83** **26,818.67**	**-8,314.42**	**-30,127.25**	**18,504.25**

Investment # / Issuer	Fund	Maturity Date / Amort. Date	Beginning Par Value / Current Rate	Purchase Principal	Original Premium or Discount	Ending Book Value	Amounts Amortized And Unamortized As of 10/01/2022	Amount Amortized This Period	Amt Amortized Through 12/31/2022	Amount Unamortized Through 12/31/2022
			Total	33,387,452.58	152,452.58	22,777,515.39	-96,763.08 55,689.50	-13,174.11	-109,937.19	42,515.39

McAllen ISD
Projected Cashflow Report
Sorted by Monthly
For the Period January 1, 2023 - July 31, 2023

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
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Projected Trans. Date	Investment #	Fund	Security ID	Transaction Type	Issuer	Par Value	Original Cost	Principal	Interest	Total
January 2023										
01/01/2023	10142	GEN	953107AB5	Interest	West Hartford CT	0.00	0.00	0.00	2,330.00	2,330.00
01/01/2023	10148	GEN	73358W4V3	Interest	Port Authority of NY & NJ	0.00	0.00	0.00	8,172.15	8,172.15
01/01/2023	10149	QSCB	73358W4V3	Interest	Port Authority of NY & NJ	0.00	0.00	0.00	13,575.00	13,575.00
01/07/2023	10153	GEN	3130AQLR2	Call	FHLB Call Note	2,500,000.00	2,500,000.00	2,500,000.00	0.00	2,500,000.00
01/26/2023	10162	GEN	3133ENV98	Interest	FFCB Call Note	0.00	0.00	0.00	58,375.00	58,375.00
01/26/2023	10162	GEN	3133ENV98	Call	FFCB Call Note	5,000,000.00	4,999,000.00	5,000,000.00	0.00	5,000,000.00
01/28/2023	10152	QSCB	3130AQJM6	Interest	FHLB Call Note	0.00	0.00	0.00	18,750.00	18,750.00
01/28/2023	10152	QSCB	3130AQJM6	Call	FHLB Call Note	3,000,000.00	2,996,100.00	3,000,000.00	0.00	3,000,000.00
					Total for January 2023	**10,500,000.00**	**10,495,100.00**	**10,500,000.00**	**101,202.15**	**10,601,202.15**
February 2023										
02/07/2023	10153	GEN	3130AQLR2	Interest	FHLB Call Note	0.00	0.00	0.00	12,500.00	12,500.00
02/18/2023	10143	GEN	3130ANDP2	Interest	FHLB Call Note	0.00	0.00	0.00	3,000.00	3,000.00
02/18/2023	10143	GEN	3130ANDP2	Call	FHLB Call Note	2,400,000.00	2,400,000.00	2,400,000.00	0.00	2,400,000.00
02/18/2023	10144	QSCB	3130ANDP2	Interest	FHLB Call Note	0.00	0.00	0.00	2,500.00	2,500.00
02/18/2023	10144	QSCB	3130ANDP2	Call	FHLB Call Note	2,000,000.00	2,000,000.00	2,000,000.00	0.00	2,000,000.00
02/18/2023	10150	GEN	3130APQM0	Call	FHLB Call Note	3,000,000.00	3,000,000.00	3,000,000.00	0.00	3,000,000.00
02/22/2023	10151	GEN	3130APQU2	Call	FHLB Call Note	2,000,000.00	2,000,000.00	2,000,000.00	0.00	2,000,000.00
02/28/2023	10156	GEN	3130AQYM9	Interest	FHLB Step Note	0.00	0.00	0.00	28,125.00	28,125.00
02/28/2023	10156	GEN	3130AQYM9	Call	FHLB Step Note	4,500,000.00	4,500,000.00	4,500,000.00	0.00	4,500,000.00
					Total for February 2023	**13,900,000.00**	**13,900,000.00**	**13,900,000.00**	**46,125.00**	**13,946,125.00**
March 2023										
03/01/2023	10145	GEN	678720KM4	Interest	Oklahoma County OK ISD	0.00	0.00	0.00	8,250.00	8,250.00
03/01/2023	10146	QSCB	678720KM4	Interest	Oklahoma County OK ISD	0.00	0.00	0.00	15,000.00	15,000.00
03/01/2023	10147	GEN	678553AP3	Maturity	Oklahoma City Econ Dev Trust	1,000,000.00	1,042,070.00	1,000,000.00	16,020.00	1,016,020.00
03/16/2023	10158	GEN	476637AR4	Maturity	Jersey City NJ Redev Agy	2,200,000.00	2,215,202.00	2,200,000.00	44,000.00	2,244,000.00
03/16/2023	10159	QSCB	476637AR4	Maturity	Jersey City NJ Redev Agy	1,250,000.00	1,258,637.50	1,250,000.00	25,000.00	1,275,000.00
					Total for March 2023	**4,450,000.00**	**4,515,909.50**	**4,450,000.00**	**108,270.00**	**4,558,270.00**
May 2023										
05/15/2023	10141	GEN	8717027U4	Maturity	Syracuse NY	1,580,000.00	1,631,681.80	1,580,000.00	15,800.00	1,595,800.00
05/18/2023	10150	GEN	3130APQM0	Interest	FHLB Call Note	0.00	0.00	0.00	15,000.00	15,000.00

Projected Trans. Date	Investment #	Fund	Security ID	Transaction Type	Issuer	Par Value	Original Cost	Principal	Interest	Total
May 2023										
05/22/2023	10151	GEN	3130APQU2	Interest	FHLB Call Note	0.00	0.00	0.00	6,500.00	6,500.00
					Total for May 2023	**1,580,000.00**	**1,631,681.80**	**1,580,000.00**	**37,300.00**	**1,617,300.00**
June 2023										
06/01/2023	10161	QSCB	578060EQ4	Interest	Mayes County OK ISD	0.00	0.00	0.00	52,800.00	52,800.00
					Total for June 2023	**0.00**	**0.00**	**0.00**	**52,800.00**	**52,800.00**
July 2023										
07/01/2023	10142	GEN	953107AB5	Maturity	West Hartford CT	1,000,000.00	1,000,000.00	1,000,000.00	2,330.00	1,002,330.00
07/01/2023	10148	GEN	73358W4V3	Maturity	Port Authority of NY & NJ	1,505,000.00	1,522,066.70	1,505,000.00	8,172.15	1,513,172.15
07/01/2023	10149	QSCB	73358W4V3	Maturity	Port Authority of NY & NJ	2,500,000.00	2,528,350.00	2,500,000.00	13,575.00	2,513,575.00
07/26/2023	10162	GEN	3133ENV98	Maturity	FFCB Call Note	5,000,000.00	4,999,000.00	5,000,000.00	116,750.00	5,116,750.00
07/28/2023	10152	QSCB	3130AQJM6	Interest	FHLB Call Note	0.00	0.00	0.00	18,750.00	18,750.00
					Total for July 2023	**10,005,000.00**	**10,049,416.70**	**10,005,000.00**	**159,577.15**	**10,164,577.15**
					GRAND TOTALS:	**40,435,000.00**	**40,592,108.00**	**40,435,000.00**	**505,274.30**	**40,940,274.30**

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McAllen ISD
Texas Compliance Change in Val Report
Sorted by Fund
October 1, 2022 - December 31, 2022

Inv # / Cusip	Issuer / Par Value	Fund / YTM	Purch Date / Mat Date	Interest Accrual / Interest Received	Beginning Book Value / Beginning Market Value	Purchases/ Additions	Redemptions	Change in Value	Ending Book Value / Ending Market Value
Fund: Activity Fund									
10020	FBPC	ACT	07/01/2022	27,823.39	2,074,972.56	791,636.79	490,584.28	301,052.51	2,376,025.07
999915	2,376,025.07	0.110	/ /	5,933.10	2,074,972.56	791,636.79	490,584.28	301,052.51	2,376,025.07
	Sub Totals For: Fund: Activity Fund			27,823.39	2,074,972.56	791,636.79	490,584.28	301,052.51	2,376,025.07
				5,933.10	2,074,972.56	791,636.79	490,584.28	301,052.51	2,376,025.07
Fund: Clearing Fund									
10019	FBPC	CLEAR	07/01/2022	56,325.31	3,772,997.68	78,952,478.09	78,366,354.27	586,123.82	4,359,121.50
999914	4,359,121.50	0.110	/ /	10,553.87	3,772,997.68	78,952,478.09	78,366,354.27	586,123.82	4,359,121.50
	Sub Totals For: Fund: Clearing Fund			56,325.31	3,772,997.68	78,952,478.09	78,366,354.27	586,123.82	4,359,121.50
				10,553.87	3,772,997.68	78,952,478.09	78,366,354.27	586,123.82	4,359,121.50
Fund: Capital Projects Fun									
10101	LSCORP	CP	12/18/2019	13,143.72	928,057.83	1,013,143.72	1,152,000.00	-138,856.28	789,201.55
108906G	789,201.55	4.330	/ /	13,143.72	928,057.83	1,013,143.72	1,152,000.00	-138,856.28	789,201.55
10102	LSGOVT	CP	12/18/2019	8,441.56	526,529.63	710,441.56	0.00	710,441.56	1,236,971.19
108906H	1,236,971.19	4.080	/ /	8,441.56	526,529.63	710,441.56	0.00	710,441.56	1,236,971.19
10103	FBPC	CP	07/01/2022	11,653.22	1,478,645.06	462,481.97	1,857,725.79	-1,395,243.82	83,401.24
999922	83,401.24	0.110	/ /	828.75	1,478,645.06	462,481.97	1,857,725.79	-1,395,243.82	83,401.24
10108	LSCORP	CP	02/21/2020	53,256.18	6,226,957.29	53,256.18	1,544,000.00	-1,490,743.82	4,736,213.47
108906I	4,736,213.47	4.330	/ /	53,256.18	6,226,957.29	53,256.18	1,544,000.00	-1,490,743.82	4,736,213.47
10109	FBPC	CP	07/01/2022	3,820.22	244,166.21	1,549,377.86	1,631,133.98	-83,313.76	160,852.45
SYS10109	160,852.45	0.110	/ /	1,557.64	244,166.21	1,549,377.86	1,631,133.98	-83,313.76	160,852.45
10113	LSGOVT	CP	03/12/2020	46,196.88	5,034,932.17	46,196.88	0.00	46,196.88	5,081,129.05
108906J	5,081,129.05	4.080	/ /	46,196.88	5,034,932.17	46,196.88	0.00	46,196.88	5,081,129.05

Inv # / Cusip	Issuer / Par Value	Fund / YTM	Purch Date / Mat Date	Interest Accrual / Interest Received	Beginning Book Value / Beginning Market Value	Purchases/ Additions	Redemptions	Change in Value	Ending Book Value / Ending Market Value
	Sub Totals For: Fund: Capital Projects Fun			136,511.78	14,439,288.19	3,834,898.17	6,184,859.77	-2,351,519.24	12,087,768.95
				123,424.73	14,439,288.19	3,834,898.17	6,184,859.77	-2,351,519.24	12,087,768.95
Fund: Debt Service Fund									
10023	FBPC	DS	07/01/2022	957.85	86,773.88	2,298.93	214.57	2,084.36	88,858.24
999918	88,858.24	0.110	/ /	214.57	86,773.88	2,298.93	214.57	2,084.36	88,858.24
10032	LSCORP	DS	10/22/2015	14,820.12	868,013.60	3,416,436.56	688,019.47	2,728,417.09	3,596,430.69
108906B	3,596,430.69	4.330	/ /	14,820.12	868,013.60	3,416,436.56	688,019.47	2,728,417.09	3,596,430.69
10089	LSGOVT	DS	08/05/2019	12,929.62	1,608,736.11	12,929.62	356,000.00	-343,070.38	1,265,665.73
108906C	1,265,665.73	4.080	/ /	12,929.62	1,608,736.11	12,929.62	356,000.00	-343,070.38	1,265,665.73
	Sub Totals For: Fund: Debt Service Fund			28,707.59	2,563,523.59	3,431,665.11	1,044,234.04	2,387,431.07	4,950,954.66
				27,964.31	2,563,523.59	3,431,665.11	1,044,234.04	2,387,431.07	4,950,954.66
Fund: General Fund									
10003	LSCORP	GEN	11/01/2014	388,629.20	46,023,863.15	81,800,829.20	84,335,769.75	-2,534,940.55	43,488,922.60
108906	43,488,922.60	4.330	/ /	388,629.20	46,023,863.15	81,800,829.20	84,335,769.75	-2,534,940.55	43,488,922.60
10022	FBPC	GEN	07/01/2022	102,967.73	7,911,099.80	102,973,825.59	103,603,615.20	-629,789.61	7,281,310.19
999917	7,281,310.19	0.110	/ /	26,510.37	7,911,099.80	102,973,825.59	103,603,615.20	-629,789.61	7,281,310.19
10034	TXPPRM	GEN	11/03/2015	102,833.81	10,694,490.95	102,833.81	0.00	102,833.81	10,797,324.76
999920	10,797,324.76	4.284	/ /	102,833.81	10,694,490.95	102,833.81	0.00	102,833.81	10,797,324.76
10090	LSGOVT	GEN	08/05/2019	138,664.98	13,733,970.60	28,547,664.98	16,000,000.00	12,547,664.98	26,281,635.58
108906D	26,281,635.58	4.080	/ /	138,664.98	13,733,970.60	28,547,664.98	16,000,000.00	12,547,664.98	26,281,635.58
10092	TXPOOL	GEN	08/05/2019	94,285.42	10,635,111.67	94,285.42	0.00	94,285.42	10,729,397.09
999921	10,729,397.09	3.979	/ /	94,285.42	10,635,111.67	94,285.42	0.00	94,285.42	10,729,397.09
10099	LSCO+	GEN	11/18/2019	0.00	0.00	0.00	0.00	0.00	0.00
108906F	0.00	0.000	/ /	0.00	0.00	0.00	0.00	0.00	0.00
10141	SYRANY	GEN	06/30/2021	7,900.00	1,597,150.70	0.00	0.00	-6,890.91	1,590,259.79
8717027U4	1,580,000.00	0.249	05/15/2023	15,800.00	1,564,152.60	0.00	0.00	7,426.00	1,571,578.60

Inv #	Issuer	Fund	Purch Date	Interest Accrual	Beginning Book Value				Ending Book Value
Cusip	Par Value	YTM	Mat Date	Interest Received	Beginning Market Value	Purchases/ Additions	Redemptions	Change in Value	Ending Market Value
10142	WESTHT	GEN	07/08/2021	1,165.00	1,000,000.00	0.00	0.00	0.00	1,000,000.00
953107AB5	1,000,000.00	0.465	07/01/2023	0.00	972,700.00	0.00	0.00	7,500.00	980,200.00
10143	FHLBC	GEN	08/18/2021	1,500.00	2,400,000.00	0.00	0.00	0.00	2,400,000.00
3130ANDP2	2,400,000.00	0.250	08/18/2023	0.00	2,310,894.67	0.00	0.00	22,180.95	2,333,075.62
10145	OKCOSD	GEN	09/23/2021	1,375.00	1,102,007.42	0.00	0.00	-547.48	1,101,459.94
678720KM4	1,100,000.00	0.238	09/01/2023	0.00	1,064,525.00	0.00	0.00	7,073.00	1,071,598.00
10147	OKECON	GEN	09/27/2021	8,010.00	1,012,277.24	0.00	0.00	-7,366.35	1,004,910.89
678553AP3	1,000,000.00	0.250	03/01/2023	0.00	997,360.00	0.00	0.00	240.00	997,600.00
10148	PORTNW	GEN	10/15/2021	4,086.07	1,512,480.53	0.00	0.00	-2,493.51	1,509,987.02
73358W4V3	1,505,000.00	0.420	07/01/2023	0.00	1,467,134.20	0.00	0.00	11,137.00	1,478,271.20
10150	FHLBC	GEN	11/18/2021	7,500.00	3,000,000.00	0.00	0.00	0.00	3,000,000.00
3130APQM0	3,000,000.00	1.000	11/18/2024	15,000.00	2,784,461.88	0.00	0.00	12,373.47	2,796,835.35
10151	FHLBC	GEN	11/22/2021	3,250.00	2,000,000.00	0.00	0.00	0.00	2,000,000.00
3130APQU2	2,000,000.00	0.650	11/22/2023	6,500.00	1,912,692.50	0.00	0.00	10,115.50	1,922,808.00
10153	FHLBC	GEN	02/07/2022	6,250.00	2,500,000.00	0.00	0.00	0.00	2,500,000.00
3130AQLR2	2,500,000.00	1.000	02/07/2024	0.00	2,382,975.20	0.00	0.00	14,809.90	2,397,785.10
10154	BROWNS	GEN	02/16/2022	2,876.71	5,000,000.00	0.00	5,000,000.00	-5,000,000.00	0.00
116083WW2	0.00	0.000	02/01/2023	57,294.52	4,998,250.00	0.00	5,000,000.00	-4,998,250.00	0.00
10156	FHLBS	GEN	02/28/2022	14,062.50	4,500,000.00	0.00	0.00	0.00	4,500,000.00
3130AQYM9	4,500,000.00	1.250	02/28/2025	0.00	4,322,610.05	0.00	0.00	20,125.71	4,342,735.76
10157	NATINY	GEN	03/14/2022	0.00	2,991,970.00	0.00	3,000,000.00	-2,991,970.00	0.00
63873KM61	0.00	0.000	12/06/2022	0.00	2,981,388.00	0.00	3,000,000.00	-2,981,388.00	0.00
10158	JERSEY	GEN	03/16/2022	11,000.00	2,206,967.58	0.00	0.00	-3,800.50	2,203,167.08
476637AR4	2,200,000.00	1.300	03/16/2023	0.00	2,175,954.00	0.00	0.00	11,528.00	2,187,482.00
10160	CRAGCP	GEN	05/26/2022	0.00	2,492,017.36	0.00	2,500,000.00	-2,492,017.36	0.00
22533ULR2	0.00	0.000	11/25/2022	0.00	2,487,375.00	0.00	2,500,000.00	-2,487,375.00	0.00

Inv # / Cusip	Issuer / Par Value	Fund / YTM	Purch Date / Mat Date	Interest Accrual / Interest Received	Beginning Book Value / Beginning Market Value	Purchases/ Additions	Redemptions	Change in Value	Ending Book Value / Ending Market Value
10162	FFCBC	GEN	10/31/2022	38,916.66	0.00	4,999,000.00	0.00	4,999,226.42	4,999,226.42
3133ENV98	5,000,000.00	4.706	07/26/2023	0.00	0.00	4,999,000.00	0.00	4,996,015.85	4,996,015.85
	Sub Totals For: Fund: General Fund			935,273.08	122,313,407.00	218,518,439.00	214,439,384.95	4,074,194.36	126,387,601.36
				845,518.30	121,421,009.27	218,518,439.00	214,439,384.95	4,233,566.43	125,654,575.70
Fund: Plan 457 Fund									
10021	FBPC	PLAN457	07/01/2022	0.00	0.00	0.00	0.00	0.00	0.00
999916	0.00	0.000	/ /	0.00	0.00	0.00	0.00	0.00	0.00
	Sub Totals For: Fund: Plan 457 Fund			0.00	0.00	0.00	0.00	0.00	0.00
				0.00	0.00	0.00	0.00	0.00	0.00
Fund: Proprietary Fund									
10024	FBPC	PROP	07/01/2022	29,415.95	2,255,070.38	7,476,301.25	7,625,922.69	-149,621.44	2,105,448.94
999919	2,105,448.94	0.110	/ /	7,953.82	2,255,070.38	7,476,301.25	7,625,922.69	-149,621.44	2,105,448.94
10025	LSCORP	PROP	08/05/2015	36,128.61	4,391,809.33	36,128.61	1,059,000.00	-1,022,871.39	3,368,937.94
108906A	3,368,937.94	4.330	/ /	36,128.61	4,391,809.33	36,128.61	1,059,000.00	-1,022,871.39	3,368,937.94
10091	LSGOVT	PROP	08/05/2019	28,357.16	2,777,259.89	587,357.16	0.00	587,357.16	3,364,617.05
108906E	3,364,617.05	4.080	/ /	28,357.16	2,777,259.89	587,357.16	0.00	587,357.16	3,364,617.05
	Sub Totals For: Fund: Proprietary Fund			93,901.72	9,424,139.60	8,099,787.02	8,684,922.69	-585,135.67	8,839,003.93
				72,439.59	9,424,139.60	8,099,787.02	8,684,922.69	-585,135.67	8,839,003.93
Fund: QSCB - Reserve Fund									
10014	BNYC	QSCB	07/01/2022	0.00	37,457.46	0.00	0.00	0.00	37,457.46
882521	37,457.46	0.000	/ /	0.00	37,457.46	0.00	0.00	0.00	37,457.46
10144	FHLBC	QSCB	08/18/2021	1,250.00	2,000,000.00	0.00	0.00	0.00	2,000,000.00
3130ANDP2	2,000,000.00	0.250	08/18/2023	0.00	1,925,745.56	0.00	0.00	18,484.12	1,944,229.68
10146	OKCOSD	QSCB	09/23/2021	2,500.00	2,003,649.86	0.00	0.00	-995.42	2,002,654.44
678720KM4	2,000,000.00	0.238	09/01/2023	0.00	1,935,500.00	0.00	0.00	12,860.00	1,948,360.00

Inv # / Cusip	Issuer / Par Value	Fund / YTM	Purch Date / Mat Date	Interest Accrual / Interest Received	Beginning Book Value / Beginning Market Value	Purchases/ Additions	Redemptions	Change in Value	Ending Book Value / Ending Market Value
10149	PORTNW	QSCB	10/15/2021	6,787.50	2,512,426.14	0.00	0.00	-4,142.05	2,508,284.09
73358W4V3	2,500,000.00	0.420	07/01/2023	0.00	2,437,100.00	0.00	0.00	18,500.00	2,455,600.00
10152	FHLBC	QSCB	01/28/2022	9,375.00	3,000,000.00	0.00	0.00	0.00	3,000,000.00
3130AQJM6	3,000,000.00	1.294	01/28/2025	0.00	2,775,408.63	0.00	0.00	11,904.60	2,787,313.23
10159	JERSEY	QSCB	03/16/2022	6,250.00	1,253,958.85	0.00	0.00	-2,159.37	1,251,799.48
476637AR4	1,250,000.00	1.300	03/16/2023	0.00	1,236,337.50	0.00	0.00	6,550.00	1,242,887.50
10161	MAYES	QSCB	06/29/2022	13,200.00	1,606,783.82	0.00	0.00	-1,017.58	1,605,766.24
578060EQ4	1,600,000.00	2.384	06/01/2024	0.00	1,572,480.00	0.00	0.00	-320.00	1,572,160.00
Sub Totals For: Fund: QSCB - Reserve Fund				39,362.50	12,414,276.13	0.00	0.00	-8,314.42	12,405,961.71
				0.00	11,920,029.15	0.00	0.00	67,978.72	11,988,007.87
Fund: QSCB - Debt Service									
10040	BNYC	QSCBDS	07/01/2022	0.00	0.00	0.00	0.00	0.00	0.00
882520	0.00	0.000	/ /	0.00	0.00	0.00	0.00	0.00	0.00
Sub Totals For: Fund: QSCB - Debt Service				0.00	0.00	0.00	0.00	0.00	0.00
				0.00	0.00	0.00	0.00	0.00	0.00
Report Grand Totals:				1,317,905.37	167,002,604.75	313,628,904.18	309,210,340.00	4,403,832.43	171,406,437.18
				1,085,833.90	165,615,960.04	313,628,904.18	309,210,340.00	4,639,497.64	170,255,457.68

Disclosures

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Investing involves risk. Past performance is no guarantee of future results. Debt and fixed income securities are subject to credit and interest rate risk. The investment return and principal value of an investment will fluctuate so that an investors shares, when redeemed, may be worth more or less than their original cost. Current performance may be lower or higher than the performance data quoted.

Investment advisory services are provided through Meeder Public Funds, Inc. Please contact us if you would like to receive a copy of our current ADV disclosure brochure or privacy policy.

Meeder Public Funds
Patterson Group

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MONTHLY INVESTMENT REPORT

McAllen ISD

DECEMBER 31, 2022

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Preparing for Recovery

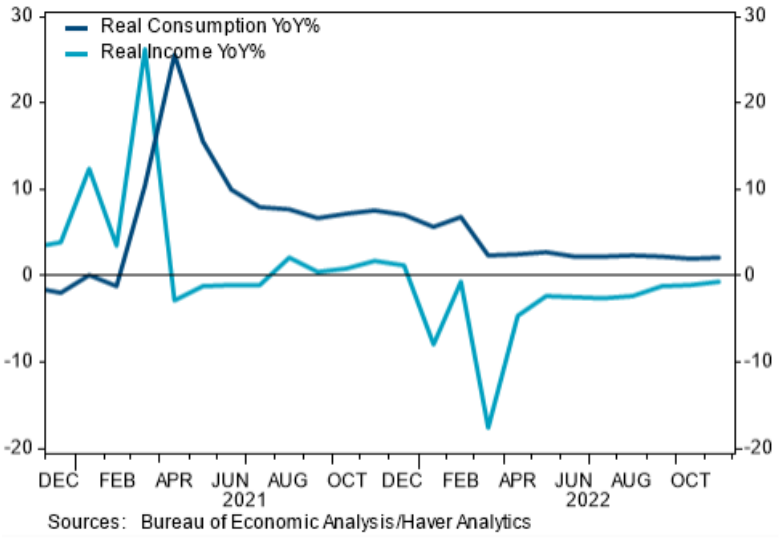
If 2022 was all about inflation, then 2023 may be all about recovering and preparing for recovery. With the monthly irregularities in data, and the uncertainty in the economic outlook and legislative policy, we are left with unanswered questions for the new year. Investors and consumers alike continue to wonder is the U.S. in recession? How deep and prolonged might a downturn be? Has inflation peaked, and if so, will price pressures continue to retreat from here?

For the consumer, high borrowing costs and prices, a surprisingly low level of labor participation and depleted savings should increasingly lower spending activity. And, as shoppers reduce or shift spending, businesses may continue a growing trend of investment, particularly in technology to replace high-cost labor and grow productivity; a missing component of activity for over a decade. Excessive post-Covid consumer demand led to inflated retail inventories which now weigh down on prices and business.

Consumer activity peaked in the 3rd quarter, but the lingering pain of inflation increasingly took its toll by year-end. The reality of a reduced wealth cushion, is causing a shift or reduction in spending habits. For some, this means curtailing purchases. For others, this means downgrading the quality or brand of their purchases. And for others –notably the younger generation – this has resulted in binge spending (where consumers pull back as much as possible one month to purchase more expensive items the next). Regardless of the form, it is increasingly evident that consumers are dramatically shifting the goods and services in their basket - a reflection of growing unease for household financials.

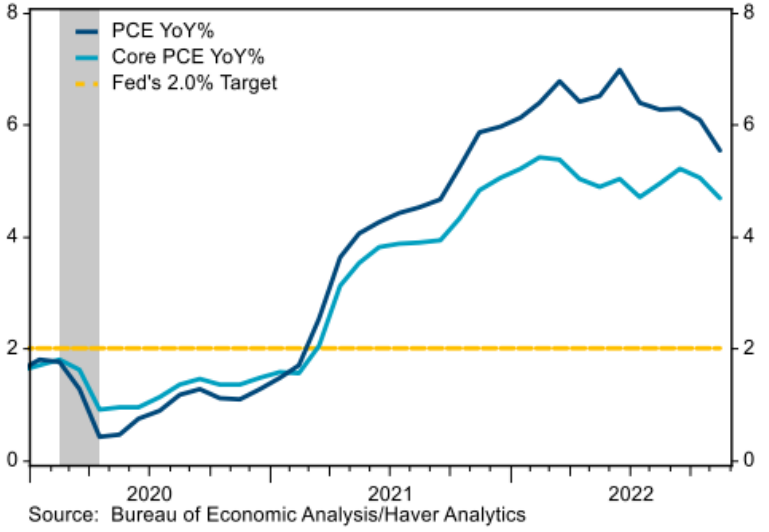
As the consumer modifies her spending, the Fed has also modified the plan for fighting inflation. With inflation pressures easing the Fed has reduced its march to higher rates with its limited 0.50% increase in overnight rates in December.

Is the consumer worn out?



Sources: Bureau of Economic Analysis/Haver Analytics

Inflation easing



Source: Bureau of Economic Analysis/Haver Analytics

A Painful Progress

In 2023 the continuing near-term pain to the consumer and to business will undoubtedly forestall a much larger and longer-term struggle if inflation were to remain unchecked domestically and globally. Global uncertainty caused by political tensions, outright threats and war, along with lingering supply chain snags will continue to exacerbate markets unease causing substantial volatility and even threatening economic dysfunction.

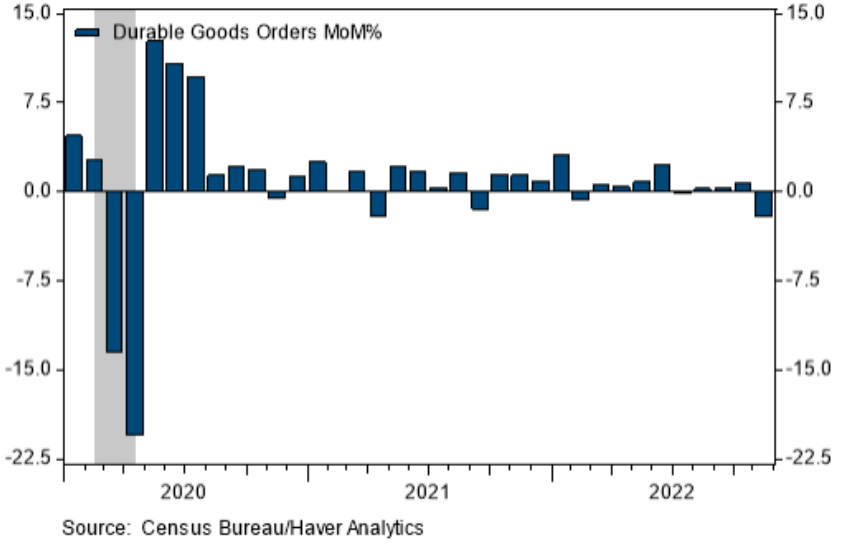
Throughout 2022 central banks have recognized and coordinated rate increases to fight inflation. Even the historically conservative Bank of Japan has allowed its ten-year bond rate to rise from 0.00% to 0.50%! The US leads the inflation battle at an inflation rate of 5.5% year-over-year versus a rate still near 10% in Europe.

The easing of inflation has given the central banks some breathing space. If slowing demand and discounting prices because of elevated inventories along with declining house prices extends globally, we may see all central banks pausing to wait for an anticipated turn. That interplay of inflation and central bank intervention will ultimately shape 2023.

GDP has unexpectedly risen at year-end after two quarters of decline. The factors continue to vary perhaps too greatly to make predictions: personal consumption especially on services was up whereas goods consumption was down and business investment remains sluggish.

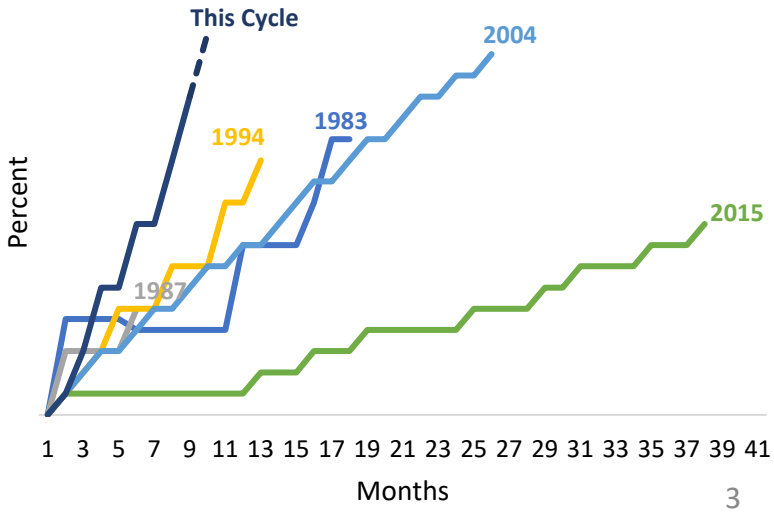
All that said, the painfully slow pace of retreat continues to underscore the fact that there is still work to be done, as Chairman Powell said at the December FOMC meeting.

Big item orders drop



Source: Census Bureau/Haver Analytics

Fastest Rate Hiking Cycle



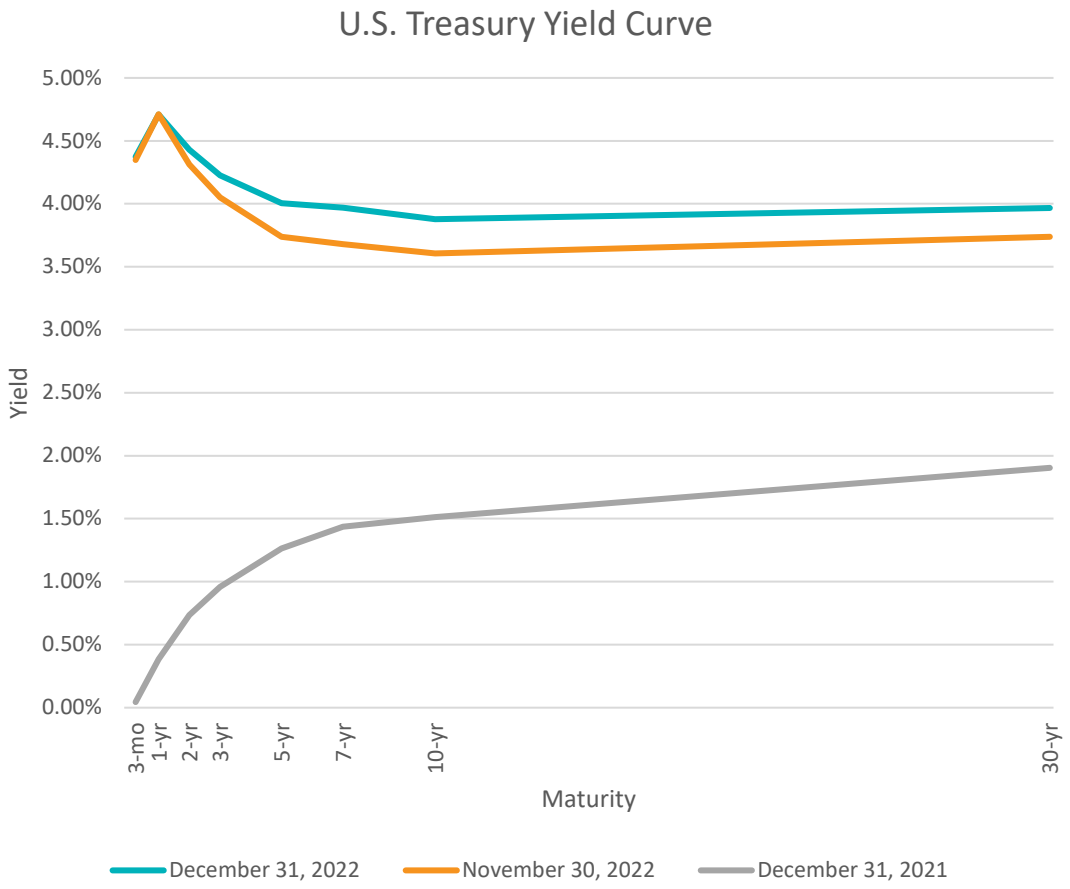
Expectations Drive Rates

The Fed has moderated from the 0.75% hike paces and gave us only a 0.50% hike in December.

The Fed fully concedes that higher rates will slow growth but is willing to take these actions to tame inflation through lessening demand.

The expected increase in GDP has changed the recession discussion somewhat with the market even beginning to think a soft landing may be possible.

There are signs of slightly slowing inflation such as lower rents and a reduced need for workers. The continuously changing environment has even the Fed debating how much more tightening is needed.



SOURCE: BLOOMBERG

McAllen Independent School District
Monthly Investment Report
December 1, 2022 – December 31, 2022

Portfolio Summary Management Report

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

Portfolio as of 11/30/22:		**Portfolio as of 12/31/22:**	
Beginning Book Value	$ 165,997,836	Ending Book Value	$ 171,406,437
Beginning Market Value	$ 164,722,205	Ending Market Value	$ 170,255,458
		Unrealized Gain/Loss	$ (1,150,979)
WAM at Beginning Period Date[1]	96 days	WAM at Ending Period Date[1]	86 days
(Increase in market value is due to seasonal cash inflows)		Change in Market Value[2]	$ 5,533,253

Average Yield to Maturity for period	**3.138%**
Average Yield 1-year Treasury Bill for period	**4.680%**
Average Yield 2-year Treasury Note for period	**4.290%**

Iris Luna, Chief Financial Officer
McAllen ISD

Adelita Felix, Asst. Superintendent of Business Operations
McAllen ISD

Dyanira Diaz, Director of Accounting
McAllen ISD

Vanessa Arrezola, Coordinator for Accounting
McAllen ISD

1 WAM – weighted average maturity

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

Your Portfolio

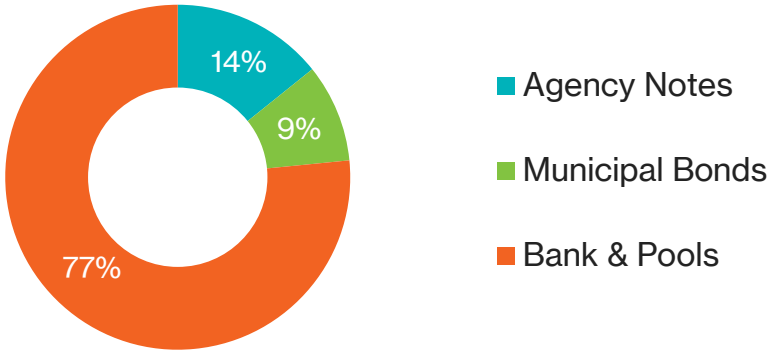
As of December 31, 2022

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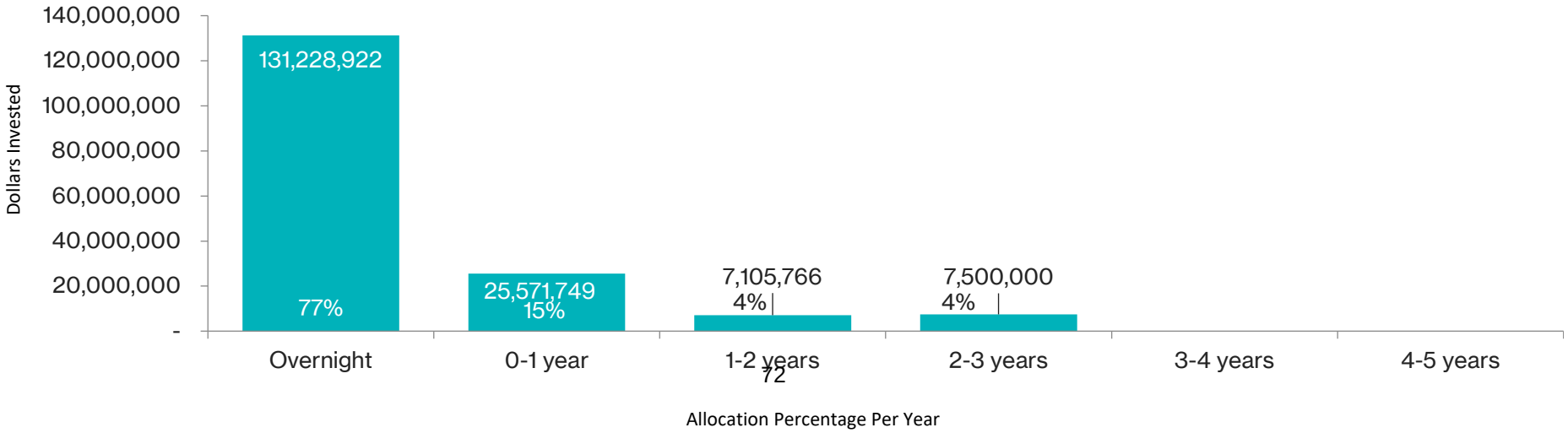
Your Portfolio Statistics

Weighted Average Maturity	0.24 years
Weighted Average Yield (All Funds)	3.14%

Your Asset Allocation



Your Maturity Distribution



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McAllen ISD
Portfolio Management
Portfolio Summary
December 31, 2022

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

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 365 Equiv.
BNY Mellon	37,457.46	37,457.46	37,457.46	0.02	1	1	0.000
Frost Bank	16,455,017.63	16,455,017.63	16,455,017.63	9.60	1	1	0.110
Federal Agency Coupon Securities	24,400,000.00	23,520,798.59	24,399,226.42	14.23	793	475	1.678
Municipal Bonds	15,735,000.00	15,505,737.30	15,778,288.97	9.21	598	191	0.752
Texpool/Texpool Prime	21,526,721.85	21,526,721.85	21,526,721.85	12.56	1	1	4.133
Lone Star	93,209,724.85	93,209,724.85	93,209,724.85	54.38	1	1	4.230
Investments	**171,363,921.79**	**170,255,457.68**	**171,406,437.18**	**100.00%**	**169**	**86**	**3.138**
Cash and Accrued Interest							
Accrued Interest at Purchase		8,296.95	8,296.95				
Subtotal		8,296.95	8,296.95				
Total Cash and Investments	**171,363,921.79**	**170,263,754.63**	**171,414,734.13**		**169**	**86**	**3.138**

Total Earnings	December 31 Month Ending	Fiscal Year To Date
Current Year	587,531.17	1,982,141.14

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

Feb 2, 2023

Adelita Felix, Asst Sup't of Business Oper

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

McAllen ISD
Summary by Type
December 31, 2022
Grouped by Fund

Security Type	Number of Investments	Par Value	Book Value	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Activity Fund						
Frost Bank	1	2,376,025.07	2,376,025.07	1.39	0.110	1
Subtotal	**1**	**2,376,025.07**	**2,376,025.07**	**1.39**	**0.110**	**1**
Fund: Clearing Fund						
Frost Bank	1	4,359,121.50	4,359,121.50	2.54	0.110	1
Subtotal	**1**	**4,359,121.50**	**4,359,121.50**	**2.54**	**0.110**	**1**
Fund: Capital Projects Fund						
Frost Bank	2	244,253.69	244,253.69	0.14	0.110	1
Lone Star	4	11,843,515.26	11,843,515.26	6.91	4.197	1
Subtotal	**6**	**12,087,768.95**	**12,087,768.95**	**7.05**	**4.114**	**1**
Fund: Debt Service Fund						
Frost Bank	1	88,858.24	88,858.24	0.05	0.110	1
Lone Star	2	4,862,096.42	4,862,096.42	2.84	4.265	1
Subtotal	**3**	**4,950,954.66**	**4,950,954.66**	**2.89**	**4.190**	**1**
Fund: General Fund						
Frost Bank	1	7,281,310.19	7,281,310.19	4.25	0.110	1
Federal Agency Coupon Securities	6	19,400,000.00	19,399,226.42	11.32	1.884	456
Lone Star	3	69,770,558.18	69,770,558.18	40.70	4.236	1
Municipal Bonds	6	8,385,000.00	8,409,784.72	4.91	0.580	138
Texpool/Texpool Prime	2	21,526,721.85	21,526,721.85	12.56	4.133	1
Subtotal	**18**	**126,363,590.22**	**126,387,601.36**	**73.74**	**3.376**	**80**
Fund: Plan 457 Fund						
Frost Bank	1	0.00	0.00	0.00	0.000	0
Subtotal	**1**	**0.00**	**0.00**	**0.00**	**0.000**	**0**

McAllen ISD
Summary by Type
December 31, 2022
Grouped by Fund

Security Type	Number of Investments	Par Value	Book Value	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Proprietary Fund						
Frost Bank	1	2,105,448.94	2,105,448.94	1.23	0.110	1
Lone Star	2	6,733,554.99	6,733,554.99	3.93	4.205	1
Subtotal	**3**	**8,839,003.93**	**8,839,003.93**	**5.16**	**3.230**	**1**
Fund: QSCB - Reserve Fund						
BNY Mellon	1	37,457.46	37,457.46	0.02	0.000	1
Federal Agency Coupon Securities	2	5,000,000.00	5,000,000.00	2.92	0.877	546
Municipal Bonds	4	7,350,000.00	7,368,504.25	4.30	0.948	253
Subtotal	**7**	**12,387,457.46**	**12,405,961.71**	**7.24**	**0.916**	**370**
Fund: QSCB - Debt Service						
BNY Mellon	1	0.00	0.00	0.00	0.000	0
Subtotal	**1**	**0.00**	**0.00**	**0.00**	**0.000**	**0**
Total and Average	**41**	**171,363,921.79**	**171,406,437.18**	**100.00**	**3.138**	**86**

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McAllen ISD
Fund ACT - Activity Fund
Investments by Fund
December 31, 2022

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
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CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999915	10020	Frost Bank Public Checking	07/01/2022	2,376,025.07	2,376,025.07	2,376,025.07	0.110	0.108	0.110	1
		Subtotal and Average		**2,376,025.07**	**2,376,025.07**	**2,376,025.07**		**0.108**	**0.110**	**1**
		Total Investments and Average		**2,376,025.07**	**2,376,025.07**	**2,376,025.07**		**0.108**	**0.110**	**1**

Fund CLEAR - Clearing Fund
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999914	10019	Frost Bank Public Checking	07/01/2022	4,359,121.50	4,359,121.50	4,359,121.50	0.110	0.108	0.110	1
		Subtotal and Average		**4,359,121.50**	**4,359,121.50**	**4,359,121.50**		**0.108**	**0.110**	**1**
		Total Investments and Average		**4,359,121.50**	**4,359,121.50**	**4,359,121.50**		**0.108**	**0.110**	**1**

Fund CP - Capital Projects Fund
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999922	10103	Frost Bank Public Checking	07/01/2022	83,401.24	83,401.24	83,401.24	0.110	0.108	0.110	1
SYS10109	10109	Frost Bank Public Checking	07/01/2022	160,852.45	160,852.45	160,852.45	0.110	0.108	0.110	1
		Subtotal and Average		**244,253.69**	**244,253.69**	**244,253.69**		**0.108**	**0.110**	**1**
Lone Star										
108906G	10101	Lone Star Corporate Overnight	12/18/2019	789,201.55	789,201.55	789,201.55	4.330	4.270	4.330	1
108906I	10108	Lone Star Corporate Overnight	02/21/2020	4,736,213.47	4,736,213.47	4,736,213.47	4.330	4.270	4.330	1
108906H	10102	Lone Star Government ON	12/18/2019	1,236,971.19	1,236,971.19	1,236,971.19	4.080	4.024	4.080	1
108906J	10113	Lone Star Government ON	03/12/2020	5,081,129.05	5,081,129.05	5,081,129.05	4.080	4.024	4.080	1
		Subtotal and Average		**11,843,515.26**	**11,843,515.26**	**11,843,515.26**		**4.139**	**4.197**	**1**
		Total Investments and Average		**12,087,768.95**	**12,087,768.95**	**12,087,768.95**		**4.058**	**4.114**	**1**

Fund DS - Debt Service Fund
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999918	10023	Frost Bank Public Checking	07/01/2022	88,858.24	88,858.24	88,858.24	0.110	0.108	0.110	1
		Subtotal and Average		**88,858.24**	**88,858.24**	**88,858.24**		**0.108**	**0.110**	**1**
Lone Star										
108906B	10032	Lone Star Corporate Overnight	10/22/2015	3,596,430.69	3,596,430.69	3,596,430.69	4.330	4.270	4.330	1
108906C	10089	Lone Star Government ON	08/05/2019	1,265,665.73	1,265,665.73	1,265,665.73	4.080	4.024	4.080	1
		Subtotal and Average		**4,862,096.42**	**4,862,096.42**	**4,862,096.42**		**4.206**	**4.265**	**1**
		Total Investments and Average		**4,950,954.66**	**4,950,954.66**	**4,950,954.66**		**4.133**	**4.190**	**1**

Fund GEN - General Fund
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Date	Days To Maturity
Frost Bank											
999917	10022	Frost Bank Public Checking	07/01/2022	7,281,310.19	7,281,310.19	7,281,310.19	0.110	0.108	0.110		1
		Subtotal and Average		**7,281,310.19**	**7,281,310.19**	**7,281,310.19**		**0.108**	**0.110**		**1**
Federal Agency Coupon Securities											
3133ENV98	10162	FFCB Call Note	10/31/2022	4,999,226.42	5,000,000.00	4,996,015.85	4.670	4.641	4.706	07/26/2023	206
3130ANDP2	10143	FHLB Call Note	08/18/2021	2,400,000.00	2,400,000.00	2,333,075.62	0.250	0.246	0.250	08/18/2023	229
3130APQM0	10150	FHLB Call Note	11/18/2021	3,000,000.00	3,000,000.00	2,796,835.35	1.000	0.986	1.000	11/18/2024	687
3130APQU2	10151	FHLB Call Note	11/22/2021	2,000,000.00	2,000,000.00	1,922,808.00	0.650	0.641	0.650	11/22/2023	325
3130AQLR2	10153	FHLB Call Note	02/07/2022	2,500,000.00	2,500,000.00	2,397,785.10	1.000	0.986	1.000	02/07/2024	402
3130AQYM9	10156	FHLB Step Note	02/28/2022	4,500,000.00	4,500,000.00	4,342,735.76	1.250	1.232	1.250	02/28/2025	789
		Subtotal and Average		**19,399,226.42**	**19,400,000.00**	**18,789,255.68**		**1.858**	**1.884**		**455**
Municipal Bonds											
476637AR4	10158	Jersey City NJ Redev Agy	03/16/2022	2,203,167.08	2,200,000.00	2,187,482.00	2.000	1.282	1.300	03/16/2023	74
678720KM4	10145	Oklahoma County OK ISD	09/23/2021	1,101,459.94	1,100,000.00	1,071,598.00	0.500	0.234	0.238	09/01/2023	243
678553AP3	10147	Oklahoma City Econ Dev Trust	09/27/2021	1,004,910.89	1,000,000.00	997,600.00	3.204	0.246	0.250	03/01/2023	59
73358W4V3	10148	Port Authority of NY & NJ	10/15/2021	1,509,987.02	1,505,000.00	1,478,271.20	1.086	0.414	0.420	07/01/2023	181
8717027U4	10141	Syracuse NY	06/30/2021	1,590,259.79	1,580,000.00	1,571,578.60	2.000	0.246	0.249	05/15/2023	134
953107AB5	10142	West Hartford CT	07/08/2021	1,000,000.00	1,000,000.00	980,200.00	0.466	0.459	0.465	07/01/2023	181
		Subtotal and Average		**8,409,784.72**	**8,385,000.00**	**8,286,729.80**		**0.572**	**0.580**		**137**
Texpool/Texpool Prime											
999921	10092	Texpool	08/05/2019	10,729,397.09	10,729,397.09	10,729,397.09	3.980	3.925	3.979		1
999920	10034	Texpool Prime	11/03/2015	10,797,324.76	10,797,324.76	10,797,324.76	4.285	4.226	4.284		1
		Subtotal and Average		**21,526,721.85**	**21,526,721.85**	**21,526,721.85**		**4.076**	**4.133**		**1**
Lone Star											
108906F	10099	Lone Star Corporate Overnight+	11/18/2019	0.00	0.00	0.00					1
108906	10003	Lone Star Corporate Overnight	11/01/2014	43,488,922.60	43,488,922.60	43,488,922.60	4.330	4.270	4.330		1
108906D	10090	Lone Star Government ON	08/05/2019	26,281,635.58	26,281,635.58	26,281,635.58	4.080	4.024	4.080		1
		Subtotal and Average		**69,770,558.18**	**69,770,558.18**	**69,770,558.18**		**4.178**	**4.236**		**1**
		Total Investments and Average		**126,387,601.36**	**126,363,590.22**	**125,654,575.70**		**3.330**	**3.376**		**79**

Fund PLAN457 - Plan 457 Fund
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999916	10021	Frost Bank Public Checking	07/01/2022	0.00	0.00	0.00				1
			Subtotal and Average	**0.00**	**0.00**	**0.00**		**0.000**	**0.000**	**0**
			Total Investments and Average	**0.00**	**0.00**	**0.00**		**0.000**	**0.000**	**0**

Fund PROP - Proprietary Fund
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999919	10024	Frost Bank Public Checking	07/01/2022	2,105,448.94	2,105,448.94	2,105,448.94	0.110	0.108	0.110	1
		Subtotal and Average		**2,105,448.94**	**2,105,448.94**	**2,105,448.94**		**0.108**	**0.110**	**1**
Lone Star										
108906A	10025	Lone Star Corporate Overnight	08/05/2015	3,368,937.94	3,368,937.94	3,368,937.94	4.330	4.270	4.330	1
108906E	10091	Lone Star Government ON	08/05/2019	3,364,617.05	3,364,617.05	3,364,617.05	4.080	4.024	4.080	1
		Subtotal and Average		**6,733,554.99**	**6,733,554.99**	**6,733,554.99**		**4.147**	**4.205**	**1**
		Total Investments and Average		**8,839,003.93**	**8,839,003.93**	**8,839,003.93**		**3.185**	**3.230**	**1**

Fund QSCB - QSCB - Reserve Fund
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Date	Days To Maturity
BNY Mellon											
882521	10014	BNY Mellon - Cash	07/01/2022	37,457.46	37,457.46	37,457.46					1
		Subtotal and Average		**37,457.46**	**37,457.46**	**37,457.46**		**0.000**	**0.000**		**1**
Federal Agency Coupon Securities											
3130ANDP2	10144	FHLB Call Note	08/18/2021	2,000,000.00	2,000,000.00	1,944,229.68	0.250	0.246	0.250	08/18/2023	229
3130AQJM6	10152	FHLB Call Note	01/28/2022	3,000,000.00	3,000,000.00	2,787,313.23	1.250	1.276	1.294	01/28/2025	758
		Subtotal and Average		**5,000,000.00**	**5,000,000.00**	**4,731,542.91**		**0.865**	**0.877**		**546**
Municipal Bonds											
476637AR4	10159	Jersey City NJ Redev Agy	03/16/2022	1,251,799.48	1,250,000.00	1,242,887.50	2.000	1.282	1.300	03/16/2023	74
578060EQ4	10161	Mayes County OK ISD	06/29/2022	1,605,766.24	1,600,000.00	1,572,160.00	3.300	2.351	2.384	06/01/2024	517
678720KM4	10146	Oklahoma County OK ISD	09/23/2021	2,002,654.44	2,000,000.00	1,948,360.00	0.500	0.234	0.238	09/01/2023	243
73358W4V3	10149	Port Authority of NY & NJ	10/15/2021	2,508,284.09	2,500,000.00	2,455,600.00	1.086	0.414	0.420	07/01/2023	181
		Subtotal and Average		**7,368,504.25**	**7,350,000.00**	**7,219,007.50**		**0.935**	**0.948**		**252**
		Total Investments and Average		**12,405,961.71**	**12,387,457.46**	**11,988,007.87**		**0.904**	**0.916**		**370**

Fund QSCBDS - QSCB - Debt Service
Investments by Fund
December 31, 2022

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
BNY Mellon										
882520	10040	BNY Mellon - Cash	07/01/2022	0.00	0.00	0.00				1
			Subtotal and Average	**0.00**	**0.00**	**0.00**		**0.000**	**0.000**	**0**
			Total Investments and Average	**0.00**	**0.00**	**0.00**		**0.000**	**0.000**	**0**

MEEDER
PUBLIC FUNDS | PATTERSON GROUP

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

McAllen ISD
Cash Reconciliation Report
For the Period December 1, 2022 - December 31, 2022
Grouped by Fund

Trans. Date	Investment #	Fund	Trans. Type	Security ID	Par Value	Security Description	Maturity Date	Purchases	Interest	Redemptions	Cash
General Fund											
12/06/2022	10157	GEN	Maturity	63873KM61	3,000,000.00	NATINY 3.0M 0.00% Mat.	12/06/2022	0.00	0.00	3,000,000.00	3,000,000.00
							Subtotal	**0.00**	**0.00**	**3,000,000.00**	**3,000,000.00**
							Total	**0.00**	**0.00**	**3,000,000.00**	**3,000,000.00**

MEEDER
PUBLIC FUNDS | PATTERSON GROUP

McAllen ISD
Maturity Report
Sorted by Maturity Date
Receipts during December 1, 2022 - December 31, 2022

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

CUSIP	Investment #	Fund	Sec. Type	Issuer	Par Value	Maturity Date	Purchase Date	Rate at Maturity	Book Value at Maturity	Interest	Maturity Proceeds	Net Income
63873KM61	10157	GEN	ACP	NATINY	3,000,000.00	12/06/2022	03/14/2022		3,000,000.00	0.00	3,000,000.00	0.00
			Total Maturities		**3,000,000.00**				**3,000,000.00**	**0.00**	**3,000,000.00**	**0.00**

MEEDER
PUBLIC FUNDS | PATTERSON GROUP

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

McAllen ISD
Interest Earnings
Sorted by Fund - Fund
December 1, 2022 - December 31, 2022
Period Yield on Beginning Book Value

CUSIP	Investment #	Fund	Security Type	Ending Par Value	Beginning Book Value	Ending Book Value	Maturity Date	Current Rate	Yield This Period	Adjusted Interest Earnings: Interest Earned	Adjusted Interest Earnings: Amortization/ Accretion	Adjusted Interest Earnings: Adjusted Interest Earnings
Fund: Activity Fund												
999915	10020	ACT	LA2	2,376,025.07	2,422,343.79	2,376,025.07		0.110	3.355	6,903.16	0.00	6,903.16
			Subtotal	**2,376,025.07**	**2,422,343.79**	**2,376,025.07**			**0.285**	**6,903.16**	**0.00**	**6,903.16**
Fund: Clearing Fund												
999914	10019	CLEAR	LA2	4,359,121.50	3,447,845.85	4,359,121.50		0.110	4.643	13,595.84	0.00	13,595.84
			Subtotal	**4,359,121.50**	**3,447,845.85**	**4,359,121.50**			**0.394**	**13,595.84**	**0.00**	**13,595.84**
Fund: Capital Projects Fund												
108906G	10101	CP	RR2	789,201.55	1,235,273.90	789,201.55		4.330	3.744	3,927.65	0.00	3,927.65
108906I	10108	CP	RR2	4,736,213.47	5,367,368.97	4,736,213.47		4.330	4.134	18,844.50	0.00	18,844.50
SYS10109	10109	CP	LA2	160,852.45	611,401.98	160,852.45		0.110	1.241	644.63	0.00	644.63
999922	10103	CP	LA2	83,401.24	331,137.14	83,401.24		0.110	1.142	321.28	0.00	321.28
108906J	10113	CP	RR2	5,081,129.05	5,063,589.53	5,081,129.05		4.080	4.078	17,539.52	0.00	17,539.52
108906H	10102	CP	RR2	1,236,971.19	1,232,701.30	1,236,971.19		4.080	4.078	4,269.89	0.00	4,269.89
			Subtotal	**12,087,768.95**	**13,841,472.82**	**12,087,768.95**			**0.329**	**45,547.47**	**0.00**	**45,547.47**
Fund: Debt Service Fund												
108906B	10032	DS	RR2	3,596,430.69	1,617,173.68	3,596,430.69		4.330	5.867	8,058.23	0.00	8,058.23
999918	10023	DS	LA2	88,858.24	88,005.85	88,858.24		0.110	3.434	256.64	0.00	256.64
108906C	10089	DS	RR2	1,265,665.73	1,261,296.79	1,265,665.73		4.080	4.078	4,368.94	0.00	4,368.94
			Subtotal	**4,950,954.66**	**2,966,476.32**	**4,950,954.66**			**0.428**	**12,683.81**	**0.00**	**12,683.81**
Fund: General Fund												
999921	10092	GEN	RRP	10,729,397.09	10,693,252.20	10,729,397.09		3.980	3.980	36,144.89	0.00	36,144.89
108906	10003	GEN	RR2	43,488,922.60	45,640,216.60	43,488,922.60		4.330	3.746	145,212.43	0.00	145,212.43
999917	10022	GEN	LA2	7,281,310.19	10,502,328.74	7,281,310.19		0.110	2.250	20,073.05	0.00	20,073.05
999920	10034	GEN	RRP	10,797,324.76	10,758,174.83	10,797,324.76		4.285	4.285	39,149.93	0.00	39,149.93
3130APQM0	10150	GEN	FAC	3,000,000.00	3,000,000.00	3,000,000.00	11/18/2024	1.000	0.981	2,500.00	0.00	2,500.00
3130APQU2	10151	GEN	FAC	2,000,000.00	2,000,000.00	2,000,000.00	11/22/2023	0.650	0.638	1,083.33	0.00	1,083.33

CUSIP	Investment #	Fund	Security Type	Ending Par Value	Beginning Book Value	Ending Book Value	Maturity Date	Current Rate	Yield This Period	Adjusted Interest Earnings: Interest Earned	Adjusted Interest Earnings: Amortization/ Accretion	Adjusted Interest Earnings: Adjusted Interest Earnings
Fund: General Fund												
3130AQLR2	10153	GEN	FAC	2,500,000.00	2,500,000.00	2,500,000.00	02/07/2024	1.000	0.981	2,083.33	0.00	2,083.33
3130ANDP2	10143	GEN	FAC	2,400,000.00	2,400,000.00	2,400,000.00	08/18/2023	0.250	0.245	500.00	0.00	500.00
63873KM61	10157	GEN	ACP	0.00	2,999,391.67	0.00	12/06/2022		1.481	0.00	608.33	608.33
3133ENV98	10162	GEN	FAC	5,000,000.00	4,999,113.21	4,999,226.42	07/26/2023	4.670	4.610	19,458.33	113.21	19,571.54
108906D	10090	GEN	RR2	26,281,635.58	12,520,635.83	26,281,635.58		4.080	5.736	60,999.75	0.00	60,999.75
476637AR4	10158	GEN	MC2	2,200,000.00	2,204,433.92	2,203,167.08	03/16/2023	2.000	1.282	3,666.66	-1,266.84	2,399.82
8717027U4	10141	GEN	MC2	1,580,000.00	1,592,556.76	1,590,259.79	05/15/2023	2.000	0.249	2,633.34	-2,296.97	336.37
953107AB5	10142	GEN	MC2	1,000,000.00	1,000,000.00	1,000,000.00	07/01/2023	0.466	0.457	388.33	0.00	388.33
678720KM4	10145	GEN	MC2	1,100,000.00	1,101,642.44	1,101,459.94	09/01/2023	0.500	0.295	458.33	-182.50	275.83
678553AP3	10147	GEN	MC2	1,000,000.00	1,007,366.34	1,004,910.89	03/01/2023	3.204	0.251	2,670.00	-2,455.45	214.55
73358W4V3	10148	GEN	MC2	1,505,000.00	1,510,818.19	1,509,987.02	07/01/2023	1.086	0.414	1,362.02	-831.17	530.85
3130AQYM9	10156	GEN	FAC	4,500,000.00	4,500,000.00	4,500,000.00	02/28/2025	1.250	1.226	4,687.50	0.00	4,687.50
			Subtotal	**126,363,590.22**	**120,929,930.73**	**126,387,601.36**			**0.284**	**343,071.22**	**-6,311.39**	**336,759.83**
Fund: Proprietary Fund												
108906A	10025	PROP	RR2	3,368,937.94	3,356,599.26	3,368,937.94		4.330	4.328	12,338.68	0.00	12,338.68
999919	10024	PROP	LA2	2,105,448.94	3,271,431.29	2,105,448.94		0.110	2.474	6,873.06	0.00	6,873.06
108906E	10091	PROP	RR2	3,364,617.05	3,353,002.75	3,364,617.05		4.080	4.078	11,614.30	0.00	11,614.30
			Subtotal	**8,839,003.93**	**9,981,033.30**	**8,839,003.93**			**0.309**	**30,826.04**	**0.00**	**30,826.04**
Fund: QSCB - Reserve Fund												
882521	10014	QSCB	LA1	37,457.46	37,457.46	37,457.46				0.00	0.00	0.00
3130ANDP2	10144	QSCB	FAC	2,000,000.00	2,000,000.00	2,000,000.00	08/18/2023	0.250	0.245	416.66	0.00	416.66
3130AQJM6	10152	QSCB	FAC	3,000,000.00	3,000,000.00	3,000,000.00	01/28/2025	1.250	1.226	3,125.00	0.00	3,125.00
476637AR4	10159	QSCB	MC2	1,250,000.00	1,252,519.27	1,251,799.48	03/16/2023	2.000	1.282	2,083.34	-719.79	1,363.55
678720KM4	10146	QSCB	MC2	2,000,000.00	2,002,986.25	2,002,654.44	09/01/2023	0.500	0.295	833.33	-331.81	501.52
73358W4V3	10149	QSCB	MC2	2,500,000.00	2,509,664.77	2,508,284.09	07/01/2023	1.086	0.414	2,262.50	-1,380.68	881.82
578060EQ4	10161	QSCB	MC2	1,600,000.00	1,606,105.43	1,605,766.24	06/01/2024	3.300	2.977	4,400.00	-339.19	4,060.81
			Subtotal	**12,387,457.46**	**12,408,733.18**	**12,405,961.71**			**0.083**	**13,120.83**	**-2,771.47**	**10,349.36**
			Total	**171,363,921.79**	**165,997,835.99**	**171,406,437.18**			**0.279**	**465,748.37**	**-9,082.86**	**456,665.51**

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

McAllen ISD
Amortization Schedule
December 1, 2022 - December 31, 2022
Sorted By Fund - Fund

Investment # / Issuer	Fund	Maturity Date / Amort. Date	Beginning Par Value / Current Rate	Purchase Principal	Original Premium or Discount	Ending Book Value	Amounts Amortized And Unamortized As of 12/01/2022	Amount Amortized This Period	Amt Amortized Through 12/31/2022	Amount Unamortized Through 12/31/2022
General Fund										
10162 FFCB Call Note	GEN	07/26/2023	5,000,000.00 4.670	4,999,000.00	-1,000.00	4,999,226.42	113.21 -886.79	113.21	226.42	-773.58
10158 Jersey City NJ Redev Agy	GEN	03/16/2023	2,200,000.00 2.000	2,215,202.00	15,202.00	2,203,167.08	-10,768.08 4,433.92	-1,266.84	-12,034.92	3,167.08
10157 Natixis NY CP	GEN	12/06/2022	3,000,000.00	2,967,515.00	-32,485.00	0.00	31,876.67 -608.33	608.33	32,485.00	0.00
10145 Oklahoma County OK ISD	GEN	09/01/2023	1,100,000.00 0.500	1,104,246.00	4,246.00	1,101,459.94	-2,603.56 1,642.44	-182.50	-2,786.06	1,459.94
10147 Oklahoma City Econ Dev Trust	GEN	03/01/2023	1,000,000.00 3.204	1,042,070.00	42,070.00	1,004,910.89	-34,703.66 7,366.34	-2,455.45	-37,159.11	4,910.89
10148 Port Authority of NY & NJ	GEN	07/01/2023	1,505,000.00 1.086	1,522,066.70	17,066.70	1,509,987.02	-11,248.51 5,818.19	-831.17	-12,079.68	4,987.02
10141 Syracuse NY	GEN	05/15/2023	1,580,000.00 2.000	1,631,681.80	51,681.80	1,590,259.79	-39,125.04 12,556.76	-2,296.97	-41,422.01	10,259.79
			Subtotal	**15,481,781.50**	**96,781.50**	**12,409,011.14**	**-66,458.97 30,322.53**	**-6,311.39**	**-72,770.36**	**24,011.14**
QSCB - Reserve Fund										
10152 FHLB Call Note	QSCB	01/28/2025 04/28/2022	3,000,000.00 1.250	2,996,100.00	-3,900.00	3,000,000.00	3,900.00 0.00	0.00	3,900.00	0.00
10159 Jersey City NJ Redev Agy	QSCB	03/16/2023	1,250,000.00 2.000	1,258,637.50	8,637.50	1,251,799.48	-6,118.23 2,519.27	-719.79	-6,838.02	1,799.48
10161 Mayes County OK ISD	QSCB	06/01/2024	1,600,000.00 3.300	1,607,824.00	7,824.00	1,605,766.24	-1,718.57 6,105.43	-339.19	-2,057.76	5,766.24
10146 Oklahoma County OK ISD	QSCB	09/01/2023	2,000,000.00 0.500	2,007,720.00	7,720.00	2,002,654.44	-4,733.75 2,986.25	-331.81	-5,065.56	2,654.44
10149 Port Authority of NY & NJ	QSCB	07/01/2023	2,500,000.00 1.086	2,528,350.00	28,350.00	2,508,284.09	-18,685.23 9,664.77	-1,380.68	-20,065.91	8,284.09
			Subtotal	**10,398,631.50**	**48,631.50**	**10,368,504.25**	**-27,355.78 21,275.72**	**-2,771.47**	**-30,127.25**	**18,504.25**
			Total	**25,880,413.00**	**145,413.00**	**22,777,515.39**	**-93,814.75 51,598.25**	**-9,082.86**	**-102,897.61**	**42,515.39**

McAllen ISD
Projected Cashflow Report
Sorted by Monthly
For the Period January 1, 2023 - July 31, 2023

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

Projected Trans. Date	Investment #	Fund	Security ID	Transaction Type	Issuer	Par Value	Original Cost	Principal	Interest	Total
January 2023										
01/01/2023	10142	GEN	953107AB5	Interest	West Hartford CT	0.00	0.00	0.00	2,330.00	2,330.00
01/01/2023	10148	GEN	73358W4V3	Interest	Port Authority of NY & NJ	0.00	0.00	0.00	8,172.15	8,172.15
01/01/2023	10149	QSCB	73358W4V3	Interest	Port Authority of NY & NJ	0.00	0.00	0.00	13,575.00	13,575.00
01/07/2023	10153	GEN	3130AQLR2	Call	FHLB Call Note	2,500,000.00	2,500,000.00	2,500,000.00	0.00	2,500,000.00
01/26/2023	10162	GEN	3133ENV98	Interest	FFCB Call Note	0.00	0.00	0.00	58,375.00	58,375.00
01/26/2023	10162	GEN	3133ENV98	Call	FFCB Call Note	5,000,000.00	4,999,000.00	5,000,000.00	0.00	5,000,000.00
01/28/2023	10152	QSCB	3130AQJM6	Interest	FHLB Call Note	0.00	0.00	0.00	18,750.00	18,750.00
01/28/2023	10152	QSCB	3130AQJM6	Call	FHLB Call Note	3,000,000.00	2,996,100.00	3,000,000.00	0.00	3,000,000.00
					Total for January 2023	**10,500,000.00**	**10,495,100.00**	**10,500,000.00**	**101,202.15**	**10,601,202.15**
February 2023										
02/07/2023	10153	GEN	3130AQLR2	Interest	FHLB Call Note	0.00	0.00	0.00	12,500.00	12,500.00
02/18/2023	10143	GEN	3130ANDP2	Interest	FHLB Call Note	0.00	0.00	0.00	3,000.00	3,000.00
02/18/2023	10143	GEN	3130ANDP2	Call	FHLB Call Note	2,400,000.00	2,400,000.00	2,400,000.00	0.00	2,400,000.00
02/18/2023	10144	QSCB	3130ANDP2	Interest	FHLB Call Note	0.00	0.00	0.00	2,500.00	2,500.00
02/18/2023	10144	QSCB	3130ANDP2	Call	FHLB Call Note	2,000,000.00	2,000,000.00	2,000,000.00	0.00	2,000,000.00
02/18/2023	10150	GEN	3130APQM0	Call	FHLB Call Note	3,000,000.00	3,000,000.00	3,000,000.00	0.00	3,000,000.00
02/22/2023	10151	GEN	3130APQU2	Call	FHLB Call Note	2,000,000.00	2,000,000.00	2,000,000.00	0.00	2,000,000.00
02/28/2023	10156	GEN	3130AQYM9	Interest	FHLB Step Note	0.00	0.00	0.00	28,125.00	28,125.00
02/28/2023	10156	GEN	3130AQYM9	Call	FHLB Step Note	4,500,000.00	4,500,000.00	4,500,000.00	0.00	4,500,000.00
					Total for February 2023	**13,900,000.00**	**13,900,000.00**	**13,900,000.00**	**46,125.00**	**13,946,125.00**
March 2023										
03/01/2023	10145	GEN	678720KM4	Interest	Oklahoma County OK ISD	0.00	0.00	0.00	8,250.00	8,250.00
03/01/2023	10146	QSCB	678720KM4	Interest	Oklahoma County OK ISD	0.00	0.00	0.00	15,000.00	15,000.00
03/01/2023	10147	GEN	678553AP3	Maturity	Oklahoma City Econ Dev Trust	1,000,000.00	1,042,070.00	1,000,000.00	16,020.00	1,016,020.00
03/16/2023	10158	GEN	476637AR4	Maturity	Jersey City NJ Redev Agy	2,200,000.00	2,215,202.00	2,200,000.00	44,000.00	2,244,000.00
03/16/2023	10159	QSCB	476637AR4	Maturity	Jersey City NJ Redev Agy	1,250,000.00	1,258,637.50	1,250,000.00	25,000.00	1,275,000.00
					Total for March 2023	**4,450,000.00**	**4,515,909.50**	**4,450,000.00**	**108,270.00**	**4,558,270.00**
May 2023										
05/15/2023	10141	GEN	8717027U4	Maturity	Syracuse NY	1,580,000.00	1,631,681.80	1,580,000.00	15,800.00	1,595,800.00
05/18/2023	10150	GEN	3130APQM0	Interest	FHLB Call Note	0.00	0.00	0.00	15,000.00	15,000.00

Projected Trans. Date	Investment #	Fund	Security ID	Transaction Type	Issuer	Par Value	Original Cost	Principal	Interest	Total
May 2023										
05/22/2023	10151	GEN	3130APQU2	Interest	FHLB Call Note	0.00	0.00	0.00	6,500.00	6,500.00
					Total for May 2023	**1,580,000.00**	**1,631,681.80**	**1,580,000.00**	**37,300.00**	**1,617,300.00**
June 2023										
06/01/2023	10161	QSCB	578060EQ4	Interest	Mayes County OK ISD	0.00	0.00	0.00	52,800.00	52,800.00
					Total for June 2023	**0.00**	**0.00**	**0.00**	**52,800.00**	**52,800.00**
July 2023										
07/01/2023	10142	GEN	953107AB5	Maturity	West Hartford CT	1,000,000.00	1,000,000.00	1,000,000.00	2,330.00	1,002,330.00
07/01/2023	10148	GEN	73358W4V3	Maturity	Port Authority of NY & NJ	1,505,000.00	1,522,066.70	1,505,000.00	8,172.15	1,513,172.15
07/01/2023	10149	QSCB	73358W4V3	Maturity	Port Authority of NY & NJ	2,500,000.00	2,528,350.00	2,500,000.00	13,575.00	2,513,575.00
07/26/2023	10162	GEN	3133ENV98	Maturity	FFCB Call Note	5,000,000.00	4,999,000.00	5,000,000.00	116,750.00	5,116,750.00
07/28/2023	10152	QSCB	3130AQJM6	Interest	FHLB Call Note	0.00	0.00	0.00	18,750.00	18,750.00
					Total for July 2023	**10,005,000.00**	**10,049,416.70**	**10,005,000.00**	**159,577.15**	**10,164,577.15**
					GRAND TOTALS:	**40,435,000.00**	**40,592,108.00**	**40,435,000.00**	**505,274.30**	**40,940,274.30**

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Meeder Public Funds
Patterson Group

Barton Oaks Plaza II
901 S. MoPac Expy
Suite 195
Austin, Texas
78746

800.817.2442

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Report Regarding Intention to Apply for the 2023-2024 Community Development Block Grant (CDBG) for an All-Inclusive Playground at Juan Seguin Elementary and Dorothea Brown Middle School Community Track Lighting Project

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Through the Housing and Community Development Act of 1974, local governments with populations of 50,000 or more become eligible for funds from the U.S. Department of Housing and Urban Development (HUD) to implement a wide range of programs and projects dealing with neighborhood improvements and city services. In order to receive the funds from HUD's Community Development Block Grant (CDBG) Program and Home Investment Partnership Program, the City must file an application that contains the plan for the use of the funds.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

McAllen ISD intends to apply for the Community Development Block Grant (CDBG) grant to construct an all-inclusive playground at Juan Seguin Elementary located at 2209 North 29th Street, McAllen, TX, and a Community Track Lighting Project at Dorothea Brown Middle School located at 2700 South Ware Road, McAllen, TX.

LEGAL REVIEW:

N/A

BUDGETARY CONSIDERATIONS:

Community Development Block Grant (CBDG) funding request of $740,000.00 for an all-inclusive playground at Juan Seguin Elementary and a community track lighting project at Dorothea Brown Middle School.

RECOMMENDED BOARD ACTION:

This item is for information purposes only.

SUBMITTED BY: Laura Williams (Feb 3, 2023 08:57 CST)

SUPERVISOR:

For further information contact:
Name: Laura Williams, Director Special Funding
Office: (956) 657-6011
eMail: laura.williams@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

Report Regarding Intention to Apply for the 2023-2024 Community Development Block Grant (CDBG) for an All-Inclusive Playground at Juan Seguin Elementary and Dorothea Brown Middle School Community Track Lighting Project

Laura Williams, Director for Special Funding
February 13, 2023

Highlights of the FY 23-24 Community Development Block Grant (CDBG)

Through the Housing and Community Development Act of 1974, local governments with populations of 50,000 or more become eligible for funds from the U.S. Department of Housing and Urban Development (HUD) to implement a wide range of programs and projects dealing with neighborhood improvements and city services.

- Submitted application on February 10, 2023
- Requested $740,000.00
- Tour of all construction projects with CDBG Board pending
- Presentation of construction applications to the CDBG Board pending

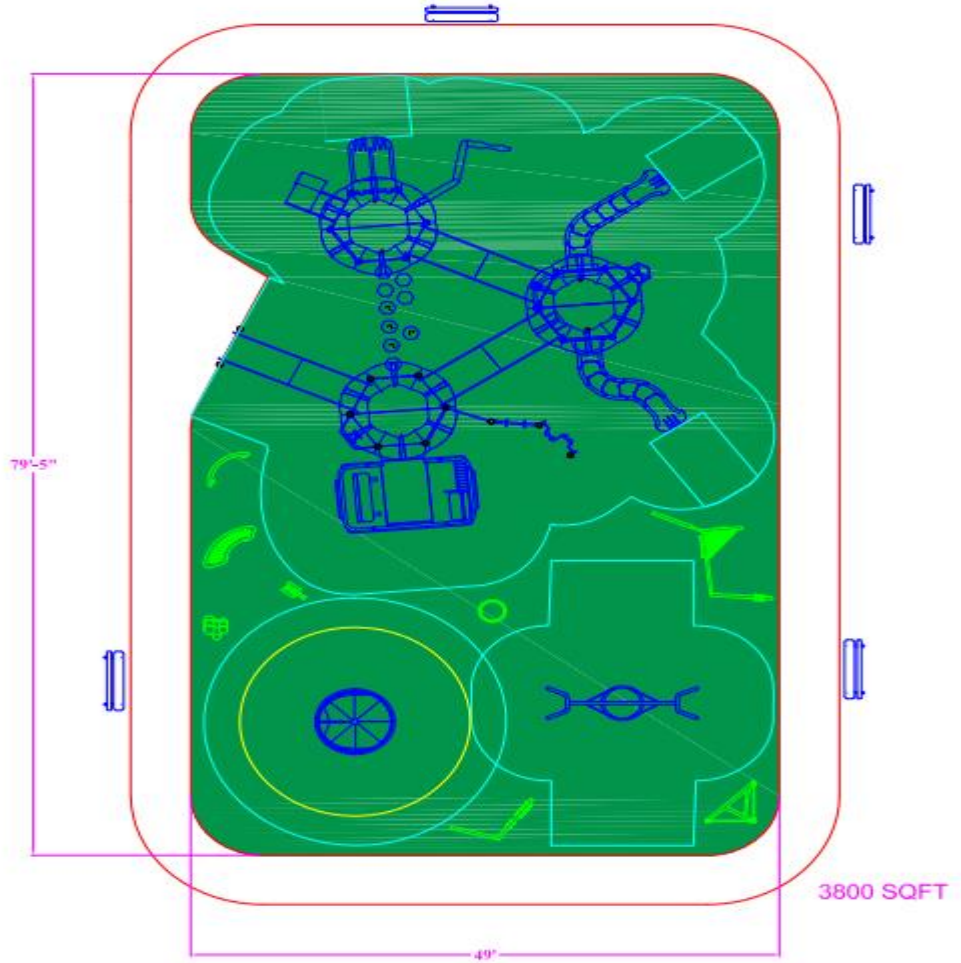
Highlights of the Community Development Block Grant – CDBG-

All Inclusive Playground at Juan Seguin Elementary

Requesting $390,000



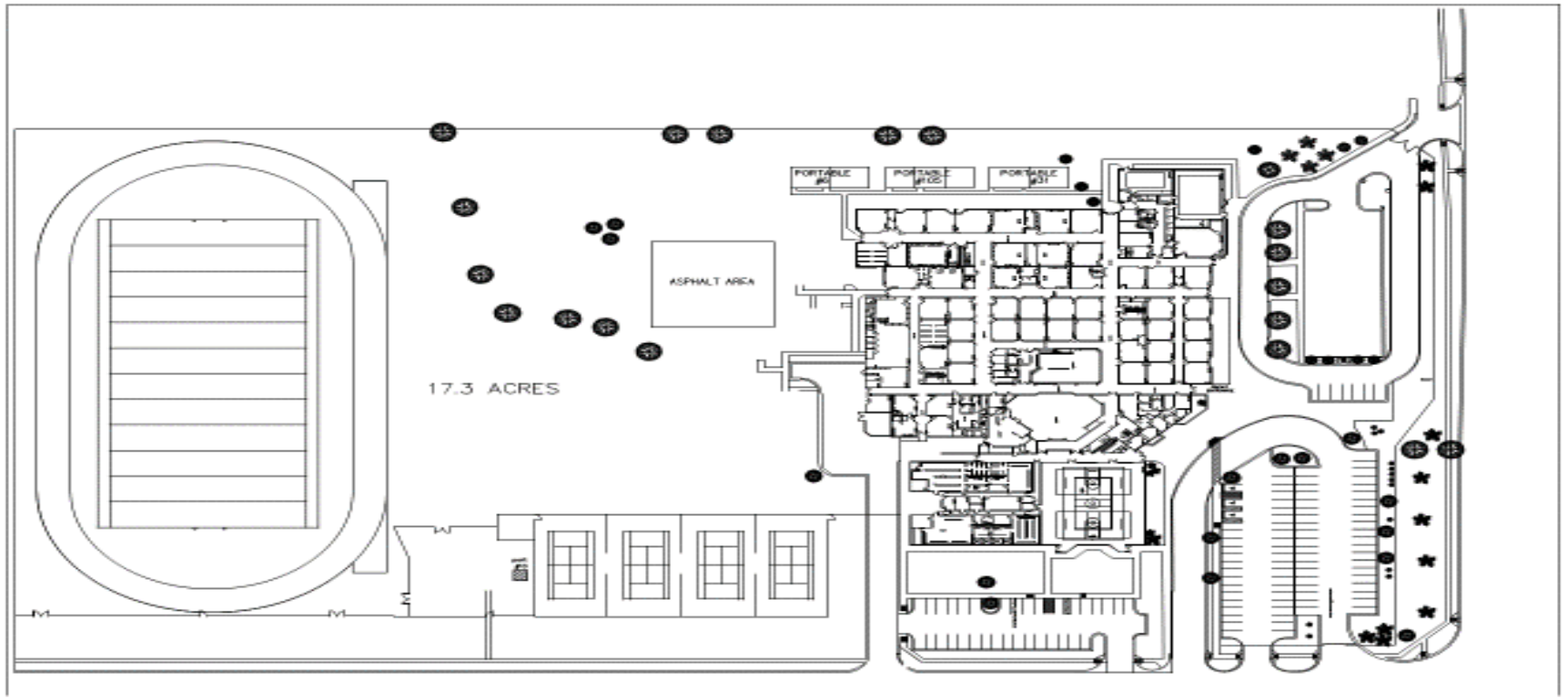




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Highlights of the Community Development Block Grant – CDBG – Dorothea Brown Middle School Community Track Lighting Project

Requesting $350,000



99

Thank you.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Possible Action on Request for Maximum Class Size Waiver Application for 2022-2023

REFERENCE: Goal 1: Student Achievement/Student Focus

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
Texas Education Code (TEC) 25.112 requires that enrollment in Grades PK-4 not exceed the 22:1 ratio. School districts in Texas are required to conduct a class size enrollment survey for Pre-Kindergarten through Grade 4 no later than the 30th day of school. As of Thursday, February 2nd the district had 15 campuses that were exceeding the 22:1 ratio in one grade level or more in Grades PK-4. If we do not apply for the waiver, students who exceed the ratio in any classroom would need to be bussed to campuses out of their neighborhood.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
In considering whether to grant an exception under TEC 25.112(d), the commissioner will consider such things as: availability of teachers, availability of facilities, unanticipated growth, or financial hardship.

LEGAL REVIEW: None required.

BUDGETARY CONSIDERATIONS:
Busing students to other campuses would incur additional transportation costs to the district.

RECOMMENDED BOARD ACTION:
That the Board of Trustees approve the Request for Maximum Class Size Waiver Application for 2022-2023.

SUBMITTED BY: _____ **SUPERVISOR:** Rosalba De Hoyos

For further information contact:
Name: Dr. Rosalba De Hoyos
Office: 956.618.6048
eMail: rosalba.dehoyos@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools Feb 8, 2023

Enrollment as of February 2, 2023

McAllen Independent School District
STUDENT/TEACHER RATIOS
2/2/2023
MEMBERSHIP RECORDS
2022-2023

CAMPUS		GRADE LEVELS/CLASS SECTIONS OVER RATIOS					
GRADE LEVELS	**PRE-K**	**KINDER**	**FIRST**	**SECOND**	**THIRD**	**FOURTH**	**TOTAL SECTIONS**
101-ALVAREZ ELEMENTARY				1	1		**2**
106-HOUSTON ELEMENTARY	1	2					**3**
107-JACKSON ELEMENTARY		2	1	1	1	2	**7**
111-MILAM ELEMENTARY				2		1	**3**
112-WILSON ELEMENTARY							**0**
114-FIELDS ELEMENTARY							**0**
116-SEGUIN ELEMENTARY							**0**
119-ESCANDON ELEMENTARY				1		1	**2**
120-RAYBURN ELEMENTARY	1						**1**
121-ROOSEVELT ELEMENTARY	1				1		**2**
122-GARZA ELEMENTARY				1	1	1	**3**
123-MCAULIFFE ELEMENTARY		1				2	**3**
124-GONZALEZ ELEMENTARY				5			**5**
126-CASTANEDA ELEMENTARY		3					**3**
127-BLANCA E SANCHEZ ELEMENTARY				2	2	2	**6**
128-DR PABLO PEREZ ELEMENTARY		3			1	1	**5**
129-LUCILE M. HENDRICKS ELEMENTARY					1		**1**
130-THIGPEN / ZAVALA ELEMENTARY			1				**1**
TOTAL SECTIONS OVER	**3**	**11**	**2**	**13**	**8**	**10**	**47**
TOTAL SECTIONS IN DISTRICT	37	60	67	66	67	68	**365**
PERCENT OVER	8.11%	18.33%	2.99%	19.70%	11.94%	14.71%	12.88%
SECTIONS AT OR UNDER	**34**	**49**	**65**	**53**	**59**	**58**	**318**

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Discussion of the Texas Association of School Board (TASB) Localized Policy Manual Update 120 (First Reading)

REFERENCE: Goal 1: Student Achievement/Student Focus, Strategy 4: Rigorous/World Class Standards to Customize for Every Learner

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
In order to maintain an up-to-date policy manual and inform local decision makers, TASB Localized Manual Update 120 consists of legal and local referenced policies.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
The LEGAL policy contained in TASB Localized Manual Update 120 reflect the ever-changing legal context for governance and management of the District. TASB provides LEGAL policies to inform local decision making. Central Administration has reviewed the Legal policies to ensure our practices and systems remain in compliance.

LOCAL policies contained in TASB Localized Manual Update 120 reflect changes necessary for consistency with LEGAL policies. These LOCAL policies have been reviewed by central administration, as presented in accompanying table.

LEGAL REVIEW:
None.

BUDGETARY CONSIDERATIONS:
On-going contract with TASB policy services.

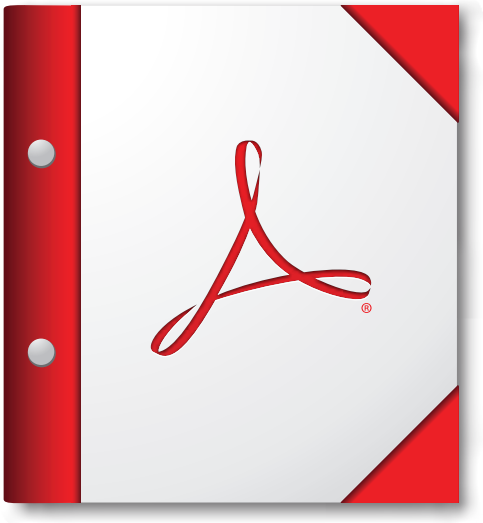
RECOMMENDED BOARD ACTION:
This item is for information only; no action is required.

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 Jan 31, 2023



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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Discussion of Updates to Board Policy DEC (LOCAL) - Compensation and Benefits, Leaves and Absences (First Reading)

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

BACKGROUND INFORMATION / REASON FOR BOARD CONSIDERATION:
Administration is recommending two (2) revisions of DEC Local:
1. Removal of the additional five paid local leave days that were awarded in the 2021-2022 school year.
2. DEC Local is being revised to align with DECA Legal to reflect our current practice of using a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

ADMINISTRATIVE CONSIDERATIONS / FACTS AND ANALYSIS:
DECA Legal allows four options for determining the 12-month period for FMLA leave entitlement. As this change is only to align Local Policy with current practice, there is no impact to eligibility for employees currently on FMLA leave.

LEGAL REVIEW:
These proposed revisions have been reviewed and discussed with TASB HR Policy Services.

BUDGETARY CONSIDERATIONS:
None

RECOMMENDED BOARD ACTION:
This item is for information only. No action is required.

SUBMITTED BY: Andres Silva

SUPERVISOR:

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

Approved for presentation to the Board of Education:

Superintendent of Schools Feb 8, 2023

PROPOSED REVISIONS (pages 3 and 5)

Leave Administration

The Superintendent shall develop administrative regulations addressing employee leaves and absences to implement the provisions of this policy.

Definitions

The term “immediate family” is defined as:

Immediate Family

1. Spouse.
2. Son or daughter, including a biological, adopted, or foster child, a son- or daughter-in-law, a stepchild, a legal ward, or a child for whom the employee stands *in loco parentis*.
3. Parent, stepparent, parent-in-law, or other individual who stands *in loco parentis* to the employee.
4. Sibling, stepsibling, and sibling-in-law.
5. Grandparent and grandchild.
6. Any person residing in the employee’s household at the time of illness or death.

For purposes of the Family and Medical Leave Act (FMLA), the definitions of spouse, parent, son or daughter, and next of kin are found in DECA(LEGAL).

Family Emergency

The term “family emergency” shall be limited to disasters and life-threatening situations involving the employee or a member of the employee’s immediate family.

Leave Day

A “leave day” for purposes of earning, using, or recording leave shall mean the number of hours per day equivalent to the employee’s usual assignment, whether full-time or part-time.

School Year

A “school year” for purposes of earning, using, or recording leave shall mean the term of the employee’s annual employment as set by the District for the employee’s usual assignment, whether full-time or part-time.

Catastrophic Illness or Injury

A catastrophic illness or injury is a severe condition or combination of conditions affecting the mental or physical health of the employee or a member of the employee’s immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose compensation from the District. Such conditions typically require prolonged hospitalization or recovery or are expected to result in disability or death. Conditions relating to pregnancy or childbirth shall be considered catastrophic if they meet the requirements of this paragraph.

Note: For District contribution to employee insurance during leave, see CRD(LOCAL).

Availability

The District shall make state personal leave and local leave for the current year available for use at the beginning of the school year.

State Leave Proration

If an employee separates from employment with the District before his or her last duty day of the school year or begins employment after the first duty day of the school year, state personal leave shall be prorated based on the actual time employed.

If an employee separates from employment before the last duty day of the school year, the employee's final paycheck shall be reduced for state personal leave the employee used beyond his or her pro rata entitlement for the school year.

Medical Certification

An employee shall submit medical certification of the need for leave if:

1. The employee is absent more than three consecutive workdays because of personal illness or illness in the immediate family;
2. The District requires medical certification due to a questionable pattern of absences or when deemed necessary by the supervisor or Superintendent; or
3. The employee requests FMLA leave for the employee's serious health condition; a serious health condition of the employee's spouse, parent, or child; or for military caregiver leave.

In each case, medical certification shall be made by a health-care provider as defined by the FMLA. [See DECA(LEGAL)]

State Personal Leave

The Board requires employees to differentiate the manner in which state personal leave is used.

Nondiscretionary Use

Nondiscretionary use of leave shall be for the same reasons and in the same manner as state sick leave accumulated before May 30, 1995. [See DEC(LEGAL)]

Nondiscretionary use includes leave related to the birth or placement of a child and taken within the first year after the child's birth, adoption, or foster placement.

Discretionary Use

Discretionary use of leave is at the individual employee's discretion, subject to limitations set out below.

Request for Leave

In deciding whether to approve or deny a request for discretionary use of state personal leave, the supervisor shall not seek or consider the reasons for which an employee requests to use leave. The supervisor shall, however, consider the duration of the requested absence in conjunction with the effect of the employee's absence on the educational program and District operations, as well as the availability of substitutes.

Local Leave

Each employee shall earn five paid local leave days per school year in accordance with administrative regulations. ~~For the 2021–22 school year only, each employee shall earn an additional five paid local leave days in accordance with administrative regulations.~~

Local leave shall accumulate without limit.

Local leave shall be used according to the terms and conditions of state personal leave. [See State Personal Leave, above]

Extended Sick Leave

After all available paid leave days and any applicable compensatory time have been exhausted, a full-time employee shall be granted in a school year a maximum of 30 leave days of extended sick leave to be used on consecutive workdays and only for the employee's own personal illness or injury, including pregnancy-related illness or injury.

A written request for extended sick leave must be accompanied by medical certification of the illness or injury.

Extended sick leave shall be unpaid leave.

Sick Leave Pool

An employee who has exhausted all paid leave as well as any applicable compensatory time and who suffers from a catastrophic illness or injury or is absent due to the catastrophic illness or injury of the employee's spouse, parent, or child may request the establishment of a sick leave pool, to which District employees may donate local leave for use by the eligible employee.

The pool shall cease to exist when the employee no longer needs leave for the purpose requested, uses the maximum number of days allowed under a pool, or exhausts all leave days donated to the sick leave pool.

The Superintendent shall develop regulations for the implementation of the sick leave pool that address the following:

1. Procedures to request the establishment of a sick leave pool;
2. The maximum number of days an employee may donate to a sick leave pool;

3. The maximum number of days per school year an eligible employee may receive from a sick leave pool; and

4. The return of unused days to donors.

Appeal

An employee may appeal a decision regarding the establishment or implementation of the District's sick leave pool in accordance with DGBA(LOCAL), beginning with the Superintendent or appropriate administrator.

Peace Officers

Mental Health Leave

A District peace officer who experiences a traumatic event in the scope of employment shall be granted a maximum of five days of mental health leave per traumatic event. Such leave shall be provided in accordance with administrative regulations and shall not be deducted from the employee's pay or leave balance.

The Superintendent shall develop regulations regarding mental health leave that address the following:

1. Circumstances or reasons under which a peace officer may use mental health leave;

2. Procedures for requesting mental health leave and maintaining the anonymity of the requestor;

3. The administrator authorized to approve requests for mental health leave; and

4. Other procedures deemed necessary for administering this provision.

Quarantine Leave

A District peace officer shall be granted quarantine leave when ordered by the local health authority or the peace officer's supervisor to quarantine or isolate due to possible or known exposure to a communicable disease while on duty. Such leave shall be provided in accordance with administrative regulations and shall not be deducted from the employee's pay or leave balance.

The Superintendent shall develop regulations regarding quarantine leave that address the following:

1. Continuation of all employment benefits and compensation for the duration of the leave;

2. Reimbursement for reasonable costs related to the quarantine; and

3. Other procedures deemed necessary for administering this provision.

Family and Medical Leave

FMLA leave shall run concurrently with applicable paid leave and compensatory time, as applicable.

Note: See DECA(LEGAL) for provisions addressing FMLA.

Twelve-Month Period	For purposes of an employee's entitlement to FMLA leave, the 12-month period shall **be measured backward from the date an employee uses FMLA leave.** ~~begin on the first duty day of the school year.~~
Combined Leave for Spouses	When both spouses are employed by the District, the District shall limit FMLA leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition, to a combined total of 12 weeks. The District shall limit military caregiver leave to a combined total of 26 weeks.
Intermittent or Reduced Schedule Leave	The District shall not permit use of intermittent or reduced schedule FMLA leave for the care of a newborn child or for the adoption or placement of a child with the employee.
Certification of Leave	When an employee requests leave, the employee shall provide certification, in accordance with FMLA regulations, of the need for leave.
Fitness-for-Duty Certification	In accordance with administrative regulations, when an employee takes FMLA leave due to the employee's own serious health condition, the employee shall provide, before resuming work, a fitness-for-duty certification.
Leave at the End of Semester	When a teacher takes leave near the end of the semester, the District may require the teacher to continue leave until the end of the semester.

Temporary Disability Leave

Any full-time employee whose position requires educator certification by the State Board for Educator Certification or by the District shall be eligible for temporary disability leave. The maximum length of temporary disability leave shall be 180 calendar days. [See DBB(LOCAL) for temporary disability leave placement and DEC(LEGAL) for return to active duty.]

An employee's notification of need for extended absence due to the employee's own medical condition shall be forwarded to the Superintendent as a request for temporary disability leave.

The District shall require the employee to use temporary disability leave and paid leave, including any compensatory time, concurrently with FMLA leave.

Workers' Compensation

Note: Workers' compensation is not a form of leave. The workers' compensation law does not require the continuation of the District's contribution to health insurance.

An absence due to a work-related injury or illness shall be designated as FMLA leave, temporary disability leave, and/or assault leave, as applicable.

No Paid Leave Offset

The District shall not permit the option for paid leave offset in conjunction with workers' compensation income benefits. [See CRE]

Court Appearances

Absences due to compliance with a valid subpoena or for jury duty shall be fully compensated by the District and shall not be deducted from the employee's pay or leave balance.

Payment for Accumulated Leave Upon Retirement

The following leave provisions shall apply to state and local leave accumulated beginning on the original effective date of this program.

An employee who retires from the District shall be eligible for payment for accumulated state and local leave under the following conditions:

1. The employee's retirement is voluntary, i.e., the employee is not being discharged or nonrenewed.
2. The employee provides advance written notice of intent to retire at least 14 calendar days before the intended last day of employment.
3. The employee has been employed by the District for at least the last eight consecutive years.

The employee shall receive payment for each day of accumulated state and local leave, to a maximum of 75 days, at a rate established by the Board. If the employee is reemployed with the District, days for which the employee received payment shall not be available to that employee.

The rate established by the Board shall be in effect until the Board adopts a new rate. Any changes to the rate shall apply beginning with the school year following the adoption of the rate change.

When a person who meets all eligibility criteria for this benefit dies while employed by the District, the District shall make the applicable payment to the estate of the deceased employee.

Neutral Absence Control

If an employee does not return to work after exhausting all available paid and unpaid leave, the District shall provide the employee written notice that he or she no longer has leave available for use. The District shall automatically pursue termination of an employee who has exhausted all available leave, regardless of the reason for the absence [see DF series]. The employee's eligibility for reasonable accommodations, as required by the Americans with Disabilities Act [see DAA(LEGAL)], shall be considered before termination. If terminated, the employee may apply for reemployment with the District.

Update to Board Policy DEC (Local) – Compensation and Benefits, Leaves and Absences (1st Reading)

- Administration is recommending the following two (2) revisions to Board Policy DEC (Local):
  - Under State and Personal Leave, revise "Local Leave" paragraph as follows:
    - Each employee shall earn five paid local leave days per school year in accordance with administrative regulations. ~~For the 2021-22 school year only, each employee shall earn an additional five paid local leave days in accordance with administrative regulations.~~
  - Under FMLA, revise "Twelve-Month Period" paragraph as follows:
    - For purposes of an employee's entitlement to FMLA leave, the 12-month period shall be measured backward from the date an employee uses FMLA leave. ~~begin on the first duty day of the school year.~~
    - This revision is necessary to align Policy DEC-Local with Policy DECA-Legal (Leaves and Absences, Family and Medical Leave) to reflect our current practice.
    - There is no impact to eligibility for employees currently on FMLA leave.

- Since this is the 1st reading, this item is for information only. No action is required.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Discussion and Possible Action on the Amended Resolution Ordering the Election for Trustees in McAllen Independent School District to be held on Saturday, May 6, 2023

REFERENCE: Section 3.004 of the Texas Election Code

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Presented for discussion is the McAllen Independent School District Amended Resolution calling for a Trustee Election. The election is scheduled for Saturday, May 6, 2023. The Resolution outlines positions 1, 2, 4, and 5 to be filled, the purpose of the election and polling times and places. Revisions have been made by the Hidalgo County Elections Department.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Consideration for approval of the Amended Resolution will be required at the Board of Trustees February 13, 2023 meeting.

LEGAL REVIEW:

The Resolution has been reviewed and approved by the School Attorney.

BUDGETARY CONSIDERATIONS: None.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve Amended Resolution Ordering the Election for Trustees in McAllen Independent School District to be held on Saturday, May 6, 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:

J. Hinojosa

Superintendent of Schools Feb 8, 2023

AMENDED RESOLUTION ORDERING ELECTION FOR TRUSTEES IN McALLEN INDEPENDENT SCHOOL DISTRICT TO BE HELD ON MAY 06, 2023

WHEREAS, Section 3.004 of the Texas Election Code requires the Board of Trustees of an independent school district to order all regular elections for trustees and give notice thereof as specified in such Section 4.003 of the Texas Election Code, and

WHEREAS, Section 41.001 of the Texas Election Code requires that election for trustees in independent school districts shall be held on a uniform election date as provided by law, and

WHEREAS, Saturday, May 06, 2023 is a uniform election date as provided by law and the Board of Trustees of McAllen Independent School District has previously adopted the May uniform election date as the date of the election for Trustees for McAllen Independent School District, and

WHEREAS, there are four (4) positions on the Board of Trustees of the McAllen Independent School District to be filled at such election, such position being as follows and for the terms set out after the respective positions:

Position No. 1 for four (4) years
Position No. 2 for four (4) years
Position No. 4 for four (4) years
Position No. 5 for four (4) years

WHEREAS, the McAllen Independent School District has a contract for election services with Hidalgo County, Texas entered into pursuant to Chapter 31, Texas Election Code under which the Election may be conducted; and

WHEREAS, the City of McAllen (the "City") and the McAllen Independent School District entered into that certain Interlocal Cooperation Agreement agreeing to hold joint elections.

NOW, THEREFORE, BE IT RESOLVED that the Board of Trustees of the McAllen Independent School District convened at a regular meeting held on February 13, 2023, with the following members present:

_____ _____

_____ _____

_____ _____

_____

Constituting a quorum, at which time a Resolution ordering an election for four (4) positions on the Board of Trustees was submitted to the Board. _____ made a motion for the adoption of the Resolution and the motion was seconded by _____. The motion, carrying with it the adoption of the Resolution, prevailed by the following vote:

AYES: _____

NOES: _____

The President announced that the Resolution has been adopted as follows:

1. That an election for the purpose of electing school trustees in the McAllen Independent School District is to be held on Saturday, May 06, 2023.

2. That at said election trustees shall be elected to Positions No. 1, No. 2, No. 4, and No. 5 on said Board of Trustees for the Terms as set forth below:

Position No. 1 for four (4) years
Position No. 2 for four (4) years
Position No. 4 for four (4) years
Position No. 5 for four (4) years

3. That February 17, 2023, shall be the last day for filing of candidates for said trustee positions. Applications for filing must be made on or before 5:00 p.m. on February 17, 2023, with the Secretary of the Board of Trustees, Marco Suarez or John J. Cavazos, Interim Director for Student Support Services, weekdays from 8:00 a.m. until 5:00 p.m. at 2200 Tamarack Ave. Portable Building #69, McAllen, Texas.

4. That notice of the election for trustees be given in compliance with Section 4.004 of the Texas Election Code in the method specified by Section 4.003 of the Texas Election Code.

5. That the polls shall be open from 7:00 a.m. to 7:00 p.m. on Saturday, May 06, 2023, at the locations described in Exhibit A attached hereto.

6. That the early voting for such election shall be conducted by an early voting clerk in accordance with the Texas Election Code and by contract between McAllen Independent School District and the Hidalgo County Elections Administrator shall serve as early voting clerk. The Hidalgo County Elections Administrator official mailing address is 213 S. Closner Blvd., P. O. Box 659, Edinburg, Texas 78540-0659.

7. That such early voting by personal appearance shall take place beginning on Monday, the 24th of April 2023 through Tuesday, the 2nd of May, 2023 from 8:00 a.m. to 6:00 p.m., including Saturday, the 29th of April, 2023 and on three of those days, Monday, the 24th of April, 2023, Saturday the 29th of April, 2023, and Tuesday, the 2nd of May, 2023 open from 7:00 a.m. to 7:00 p.m., Sundays and designated holidays excluded, as provided by the Texas Election Code in reference to which is made herein for all purposes. Early voting in person shall be maintained at the locations and the temporary branch locations at the times designated in Exhibit B attached hereto during the early voting period noted above. Early voting by mail shall be conducted in accordance with provisions of Chapter 86 of the Texas Election Code, which requires that application for ballots by mail must be received no later than the close of business on Tuesday, April 25, 2023, and the marked ballot must be received by the early voting clerk no later than 7:00 p.m. on Monday, May 08, 2023. Application for ballots by mail shall be mailed to Early Voting Clerk, 213 S. Closner Blvd., P. O. Box 659, Edinburg, Texas 78540-0659.

8. That this Resolution shall constitute the election order for the call of the election and the same or a substantial copy thereof shall constitute the notice of such election; and the Secretary of the Board is ordered to cause notice of the election to be given as required by law. Immediately after the election, the officers holding the election shall convey returns of the results to the Board of Trustees of the McAllen Independent School District. The Board of Trustees of the McAllen Independent School District shall canvass such returns, declare the results of such election, and issue certificates of election to the persons shown by such returns to be elected to each of the four (4) named positions.

9. That said election shall be held in accordance with the Texas Election Code, except as modified by the Texas Education Code and the Federal Voting Rights Act of 1965, as amended.

10. That it is hereby officially found and determined that notice of the meeting at which this order is adopted was given as required by the Texas Open Meetings Act, and that such meeting has been open to the public at all times when this order was discussed and acted on.

11. That in accordance with the Texas Education Code Section 11.057 the candidate receiving the highest number of votes for each respective position shall be entitled to serve as trustee. If two or more candidates for a position as a trustee at the election to be held on May 06, 2023, tie for the number of votes required to be elected, a second election to fill the office of trustee shall be held in accordance with the applicable provisions of the Texas Election Code.

12. Voting shall be conducted at common polling places for both the McAllen Independent School District and the City of McAllen however, the McAllen Independent School District and the City of McAllen, each at their own expense shall provide their own election judges and officers for the respective election and all other expenses of the joint election shall be the expense of the political subdivision incurring same as if there was no joint election. It is the intent of both the McAllen Independent School District and the City of McAllen that other than the use of common polling places, that all expenses relating to this election be the responsibility of the political subdivision incurring same as if there was no joint election.

EXECUTED AND ORDERED THIS THE _____ day of _____, 2023.

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____
President, Board of Trustees

ATTEST:

By: _____
Secretary, Board of Trustees

APPROVED AS TO FORM:

Walsh Gallegos Trevino Kyle & Robinson P.C.

By: Leandra C. Ortiz
Leandra C. Ortiz (Jan 30, 2023 16:46 CST)
Leandra Ortiz

EXHIBIT A

ELECTION DAY POLLING CENTERS

May 06, 2023

Location	Address	Date	Time
Gonzalez Elementary	201 E. Martin Ave.	Saturday, May 06, 2023	7:00 am – 7:00 pm
Lark Community Center	2604 Lark Ave.		
Achieve Early College High School At Lincoln	1601 N. 27th St.		
Palmview Community Center	3401 Jordan Rd.		
McAllen High School	2021 La Vista Ave.		
Fields Elementary	500 W. Dallas Ave.		

EXHIBIT B

Main Early Voting Polling Places, Early Voting Locations and Early Voting Dates and Times

May 06, 2023 – Election

Main Early Voting Places

Location	Address	Date	Time
Fireman's Pump House	201 N. 1st St.	Monday, April 24, 2023	7:00 am – 7:00 pm
Palmview Community Center	3401 Jordan Rd.		
Lark Community Center	2601 Lark Ave.		
Fireman's Pump House	201 N. 1st St.	Tuesday, April 25, 2023 Wednesday, April 26, 2023 Thursday, April 27, 2023 Friday, April 28, 2023	8:00 am – 6:00 pm
Palmview Community Center	3401 Jordan Rd.		
Lark Community Center	2601 Lark Ave.		
Fireman's Pump House	201 N. 1st St.	Saturday, April 29, 2023	7:00 am – 7:00 pm
Palmview Community Center	3401 Jordan Rd.		
Lark Community Center	2601 Lark Ave.		
Fireman's Pump House	201 N. 1st St.	Sunday, April 30, 2023	CLOSED
Palmview Community Center	3401 Jordan Rd.		
Lark Community Center	2601 Lark Ave.		
Fireman's Pump House	201 N. 1st St.	Monday, May 01, 2023	8:00 am – 6:00 pm
Palmview Community Center	3401 Jordan Rd.		
Lark Community Center	2601 Lark Ave.		
Fireman's Pump House	201 N. 1st St.	Tuesday, May 02, 2023	7:00 am – 7:00 pm
Palmview Community Center	3401 Jordan Rd.		
Lark Community Center	2601 Lark Ave.		

Amended Resolution Ordering the Election for Trustees in McAllen Independent School District to be held on Saturday, May 6, 2023

February 13, 2023

Early Voting Locations and Hours

- Section 85.005 has been amended to modify the required days and hours for early voting.
- The County will no longer conduct elections from 7:00 a.m. to 7:00 p.m. for all election days.

Location	Address	Date	Time
Fireman's Pump House	201 N. 1st St.	Monday, April 24, 2023	7:00 am – 7:00 pm
Palmview Community Center	3401 Jordan Rd.		
Lark Community Center	2601 Lark Ave.		
Fireman's Pump House	201 N. 1st St.	Tuesday, April 25, 2023 Wednesday, April 26, 2023 Thursday, April 27, 2023 Friday, April 28, 2023	8:00 am – 6:00 pm
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Lark Community Center	2601 Lark Ave.		
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Lark Community Center	2601 Lark Ave.		
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Palmview Community Center	3401 Jordan Rd.		
Lark Community Center	2601 Lark Ave.		
Fireman's Pump House	201 N. 1st St.	Monday, May 01, 2023	8:00 am – 6:00 pm
Palmview Community Center	3401 Jordan Rd.		
Lark Community Center	2601 Lark Ave.		
Fireman's Pump House	201 N. 1st St.	Tuesday, May 02, 2023	7:00 am – 7:00 pm
Palmview Community Center	3401 Jordan Rd.		
Lark Community Center	2601 Lark Ave.		

Election Day Locations and Hours

Election Day:

Saturday, May 6, 2023 — 7:00 am – 7:00 pm

Election Day Polling Locations

Leonelo H. Gonzalez Elementary	201 East Martin Avenue
McAllen High School	2021 La Vista Avenue
Victor Fields Elementary	500 West Dallas Avenue
Achieve Early College High School at Lincoln	1601 N 27th Street
Lark Community Center	2601 Lark Avenue
Palm View Community Center	3401 Jordan Road

ANY QUESTIONS?



BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Discussion and Possible Action on Contract No. 2023-160 Noble Texas Builders LLC through RFCQ 2023-1024 Kitchen Renovations for Theodore Roosevelt Elementary, Sam Rayburn Elementary, Reynaldo G. Garza Elementary, and Woodrow Wilson Elementary

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 Theodore Roosevelt Elementary, Sam Rayburn Elementary, Reynaldo G. Garza Elementary, and Woodrow Wilson 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:

Twenty (20) contractors were invited to submit a cooperative quote, and one (1) contractor responded. Ruben Treviño, Executive Director of Facilities, Maintenance, and Operations; Melissa Ortiz, Project Manager for Facilities, Maintenance, and Operations; and Alexandra Molina, Executive Director of Child Nutrition and Purchasing Services, evaluated the quotes and are recommending that the Board of Trustees award this contract to Noble Texas Builders LLC from La Feria, TX, through the Texas Association of School Board (TASB) BuyBoard Contract 581-19.

LEGAL REVIEW:

The Contract has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

The negotiated contract price, after receiving the Best and Final Offer, is $6,349,435.00. 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. 2023-160 Noble Texas Builders LLC through RFCQ 2023-1024 Kitchen Renovations for Theodore Roosevelt Elementary, Sam Rayburn Elementary, Reynaldo G. Garza Elementary, and Woodrow Wilson Elementary.

SUBMITTED BY: Alexandra Molina (Feb 9, 2023 17:16 CST)

SUPERVISOR: Alejandra Gonzalez (Feb 9, 2023 17:22 CST)

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 A104® – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the Fourteenth day of February in the year TWO THOUSAND TWENTY-THREE
(In words, indicate day, month and year.)

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

McAllen Independent School District, a public school district and political subdivision of the State of Texas
2000 North 23rd Street
McAllen, Texas 78501
Phone:956-618-6000

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

Noble Texas Builders, LLC
108 S. Main Street
La Feria, Texas 78559
Phone:956-277-0708
E-mail:juan.delgado@nobletx.com

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

Request for Cooperative Quote 2023-1024
Kitchen Renovations for Theodore Roosevelt Elementary, Sam Rayburn Elementary, Reynaldo G. Garza Elementary, and Woodrow Wilson Elementary (Owner Contract No: 2023-160)

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

Halff Associates, Inc.
5000 West Military Highway, Suite 100
T: 956-664-0286
Email: info-McAllen@halff.com

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.

Init.
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ARTICLE 1 THE WORK OF THIS CONTRACT

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

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

[ ] The date of this Agreement.

[ ] A date set forth in a notice to proceed issued by the Owner.

[X] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

The commencement date will be the first business day after the Contractor's receipt of the written notice to proceed. The notice to proceed shall not be issued by Architect until the Agreement has been signed by the Contractor, approved by the Owner's Board of Trustees, signed by the Owner's authorized representative, and Owner and Architect have received all required payment and performance bonds and insurance.

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

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

§ 2.3 Substantial Completion

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

[X] Not later than Two Hundred Seventy-Five (275) calendar days from the date of commencement of the Work.

[ ] By the following date:

§ 2.3.2 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

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

[X] Stipulated Sum, in accordance with Section 3.2 below

[ ] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

[ ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

Init.
/
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(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be Six Million Three Hundred Forty-Nine Thousand Four Hundred Thirty-Five AND 00/100 DOLLARS ($6,349,435.00), subject to additions and deductions as provided in the Contract Documents.

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

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

Item	Units and Limitations	Price per Unit ($0.00)

§ 3.2.3 Allowances, if any, included in the stipulated sum:
(Identify each allowance.)

Item	Price
Contractor Contingency	$400,000.00

§ 3.3 Cost of the Work Plus Contractor's Fee [Paragraph Deleted.]

(Paragraphs deleted)
§ 3.4.3 Guaranteed Maximum Price
§ 3.4.3.1
(Paragraphs deleted)
[Paragraph Deleted.]

§ 3.4.3.2
(Paragraphs deleted)
[Paragraph Deleted.]

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

Item	Units and Limitations	Price per Unit ($0.00)
N/A	N/A	

§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
N/A	N/A

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

N/A

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§ 3.4.3.6 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.

§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

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

If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work: TWO HUNDRED FIFTY AND 00/100 DOLLARS ($250.00).

§ 3.5.1 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 3.5.2 In addition to Liquidated Damages, if any, the Contractor shall reimburse the Owner for any Supplemental or Additional Services of the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor or caused by Contractor's failure to achieve the applicable Contract Time requirements.

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

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 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 for undisputed amounts in the manner and within the time provided in the Contract Documents, on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. Payment shall be made by the Owner of undisputed amounts certified by the Architect not later than forty-five (45) days of its receipt of the Certificate for Payment from the Architect, if Owner's Board of Trustees normally meets once a month, or thirty (30) days of its receipt of the Certificate for Payment from the Architect if the Owner's Board of Trustees normally meets twice a month. Owner shall provide written notification to Contractor within twenty-one (21) days if Owner disputes the Contractor's Certificate for Payment, pursuant to Texas Government Code section 2251.042 et. seq., listing the specific reasons for non-payment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents or Construction Documents. 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 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 may require. This schedule shall be used as the basis for reviewing Contractor's Applications for Payment. Applications for Payment shall comply with all requirements of this Contract, including submission of the required certifications, and shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. The Contractor's Application for Payment shall be received by the Architect not later than the last day of a month in order to assure timely payment in accordance with §4.1.3 of this Article.

§ 4.1.3 The Architect shall have seven (7) business days from the date of its receipt of a properly documented Application for Payment from the Contractor to approve or reject all or any part of the Application for Payment and submit its Certificate for Payment to the Owner. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within forty-five (45) days, if Owner's Board of Trustees meets once a month, or thirty (30) days, if Owner's Board of Trustees meets twice a month, of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.
(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 For each progress payment, the Owner may withhold retainage from the payment otherwise due as follows:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

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

.1 Take 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, less retainage of five percent (5%). Pending final determination of the cost to the Owner of changes in the Work, amounts not in dispute shall be included;

.2 Add 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), less retainage of five percent (5%);

.3 Subtract the aggregate of previous payments made by the Owner;

.4 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate of Payment a provided for in this Contract; and

.5 Upon Substantial Completion of the Work, add a sum sufficient to increase the total payments to ninety-five percent (95%) of the full amount of the Contract Sum, less such amounts as the owner shall determine is necessary for incomplete work and unsettled claims.

§ 4.1.5 Undisputed payments due and unpaid under the Contract shall bear interest
(Paragraphs deleted)
in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall not be made by the Owner to the Contractor until:

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with a Guaranteed Maximum Price;

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1;

.4 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;

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.2 Final list of Subcontractors (AIA Document G705);
.3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, if required;
.4 Contractor's warranties;
.5 Maintenance and Instruction Manuals;
.6 Owner's Final Completion Certificate;

.5 Owner has received consent of surety to final payment; and
.6 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 31 days after Owner's receipt of the Architect's final Certificate for Payment, and satisfaction of all conditions set out in § 4.2.1.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 21.6 of this Agreement

[**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 in a court of competent jurisdiction.
This Agreement is 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.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 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.)

N/A

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

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§ 6.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

The Specifications are those prepared by Halff Associates, Inc. dated January 9, 2023 and which are listed in the Table of Contents attached hereto as **Exhibit E**, which are incorporated herein by reference.

Section	Title	Date	Pages

§ 6.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

The Drawings are those prepared by by Halff Associates, Inc. dated January 9, 2023 and which are listed in the Index of Drawings attached hereto as **Exhibit D**, which are incorporated herein by reference.

Number	Title	Date

§ 6.1.6 The 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 enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other Exhibits:
(Check all boxes that apply.)

[ ] Exhibit A, Determination of the Cost of the Work.

[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

[ ] The Sustainability Plan:

Title	Date	Pages

[X] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Buyboard Agreement	JOC Contract No. 581-19		

NOTE: Any Supplementary Conditions or other Conditions of this Contract listed above, the Project Manual or other terms or conditions attempted to be incorporated into this Contract, which contradict or conflict with the terms of this document shall be void and subordinate to the terms set out herein.

.2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents.)

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EXHIBIT A	**CONTRACTOR'S PROPOSAL**
EXHIBIT B	**PAYMENT AND PERFORMANCE BONDS**
EXHIBIT C	**CONTRACTOR'S INSURANCE CERTIFICATES**
EXHIBIT D	**DRAWINGS**
EXHIBIT E	**SPECIFICATIONS**

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

§ 7.1.1 The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, Project Manual and the Bid or Proposal Documents prepared and submitted by the Owner and the Contractor's Bid or Proposal submitted by the Contractor, to the extent they do not conflict with the terms of this Agreement, and other documents listed in this Agreement and Modifications issued after execution of this Agreement. 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. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.1.2 Precedence Of The Contract Documents. The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

- **.1** Contract Modifications signed by Contractor and Owner.
- **.2** Addenda, with those of later date having precedence over those of earlier date.
- **.3** The Standard Abbreviated Form of Agreement Between Owner and Contractor – AIA Document A104-2017.
- **.4** Specifications and Drawings – to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of work indicated.
- **.5** Bid/Proposal Documents including the Project Manual, Contractor's Bid or Proposal Documents (to the extent such Bid or Proposal submitted by the Contractor is part of the Contract Documents and is not inconsistent with other portions of the Contract Documents)

§ 7.1.3 Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Owner.

§ 7.1.4 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall apply.

§ 7.1.5 Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

§ 7.1.6 Signing the Construction Agreement shall be considered as signing all contract documents identified.

§ 7.2 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 between any persons or entities other than the Owner and the Contractor.

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§ 7.3 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.

§ 7.4 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.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 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 will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, 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 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.

§ 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use 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.

§ 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

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(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.)

§ 7.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 7.10 Relationship of the Parties [Paragraph Deleted.]

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

(Paragraph deleted)

§ 8.1.1.1 The Owner is the Board of Trustees of the McAllen Independent School District, and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority.

§ 8.1.1.2 The Contractor acknowledges that no lien rights exist with respect to public property.

§ 8.1.2 The Owner shall furnish a legal description of the site.

§ 8.1.3 Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delay, disruption or acceleration of the Work. This limitation on damages is further subject to the limitations set forth in Article 14.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.7.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.1.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is defective or not in accordance with the requirements of the Contract Documents, fails to timely carry out the Work in accordance with the Contract Documents, or is in default of any of its material obligations hereunder, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is 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.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor is in default in any of its material obligations hereunder, neglects to timely carry out the Work in accordance with the Contract Documents, or fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or non-conforming or defective Work with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or such non-conforming or defective Work and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the

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Contractor. The Owner may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 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.

§ 9.1.2 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 8.1.2, 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 any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized 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.

§ 9.1.3 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 any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 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. The Contractor shall assign a Superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The Superintendent shall be on the Project, in this capacity, at all times while work on the Project is in progress.

§ 9.2.2 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.

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

§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient worker and labor, eligible to work in accordance with state and federal law. Contractor shall appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for 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.

§ 9.3.2 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 skilled in tasks assigned to them.

§ 9.3.2.1 The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the

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Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 9.3.2.2 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification. Whether or not any proposed substitution is accepted by the Owner, the Contractor shall reimburse the Owner for any costs incurred, including consulting fees charged by the Architect or other consultants for evaluating each proposed substitute.

(Paragraphs deleted)
§ 9.3.4 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

§ 9.3.5 The Contractor shall review subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any subcontractor(s) or any other person or entity (e.g. a supplier) including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

§ 9.3.6.1 PREVAILING WAGES
The Project is subject to the requirements of Texas Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Contractor, and any subcontractor under him, to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 9.3.6.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the work at the time of construction.

§ 9.3.6.3 A Contractor or Subcontractor who violates the provisions of Subsections 9.3.6.1 or 9.3.6.2 shall pay to Owner the sum of SIXTY AND NO/100 DOLLARS ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 9.4 CRIMINAL HISTORY RECORDS CHECKS
§ 9.4.1 For purposes of this Section 9.4. (and all subsections), the following definitions shall be applicable:

.1 "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.

.2 "Covered Employees", shall mean, all employees of Contractor, as well as employees of Contractor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

§ 9.4.2 Unless otherwise exempt from providing such information by any provision in Texas Education Code, Section 22.08341 (the "Statute"), the Contractor agrees, that prior to commencement of work under this Agreement, using the form promulgated by the Owner or such other form approved by the Owner, Contractor will arrange with the Owner to

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obtain any national criminal history record information ("CHRI") required pursuant to the Statute on all of Contractor's employees, independent contractors, agents, or Subcontractors, Contractor's Subcontractors of every tier ("Subcontractors"), Subcontractors' employees, independent contractors, agents, or sub-subcontractors, if any of these persons is a "Covered Employee" as defined in Section § 9.4.1 and shall reimburse the Owner for the costs and expenses associated with obtaining the required CHRI.

§ 9.4.3 For purposes of this Section a person does not have the opportunity for direct contact with students if:

.1 the public work does not involve the construction, alteration, or repair of an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code ("Instructional Facility);

.2 for a public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first date the facility will be used for instructional purposes; or

.3 for a public work that involves an existing Instructional Facility:

(a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and

(b) the Contractor adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

§ 9.4.4 Any Covered Employee that has during the preceding thirty (30) years, been convicted of one of the following offenses, if at the time of the offense the victim was under eighteen (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 to (a) or (b) under federal law or the laws of another state ("Disqualifying Criminal History Offense") shall be disqualified and prohibited from performing any contract duties or services and neither the Contractor nor its Subcontractor may permit such person to provide services at an instructional facility. If a Covered Employee is determined by the Owner's review of the CHRI to have a Disqualifying Criminal History, Contractor will exclude that person from assignment to the Project. Contractor understands that it will not have access to the results of such criminal history records check, based on statewide regulations beyond the control of the Owner, and agrees to rely solely on the judgment of the Owner as to whether the Covered Employee must be excluded from the Project.

§ 9.4.5 Prior to commencement of its work on the Project the Contractor will provide written certification to the Owner that either: (1) Contractor and its Subcontractors of every tier, do not have any Covered Employees, as defined; (2) are otherwise exempt from compliance with the Statute; or (3) has complied with the statutory and contractual requirements stated in Section 9.4 of this Agreement (including all subparts), as of that date, and that it:

.1 has requested a Criminal History Records Check through the District on all Covered Employees, if any, of every tier, has provided the required information to the District to do so and reimbursed the District for same;

.2 has obtained written certification from its independent contractors, and Subcontractor's s (of any tier) that they have provided the required information to the Contractor, necessary to secure the information from the District and reimbursed the Contractor for same; and

.3 have excluded any Covered Employee reported by the District to have a Disqualifying Criminal History from assignment to the Project.

Further, Contractor agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses, during the performance of the Work, Contractor will immediately remove the Covered Employee from District's property or other location where students are regularly present, and notify the District of said removal within three (3) days of doing so. Contractor understands that any failure to comply with the requirements of this section may be grounds for termination of this Agreement, in accordance with Article VI, Termination.

§ 9.5

(Paragraphs deleted)

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Warranty

§ 9.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good 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. 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 under normal usage.

§ 9.5.2 The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties from subcontractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

§ 9.5.3 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 9.5.4 The warranty provided in Section 9.5 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 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 Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 9.5.5 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 9.5.1 and 9.5.2 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 9.5.6 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 the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, shall have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, the dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner on re-inspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the re-inspection. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the work without interruption until accepted by the Owner, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 9.5.7 Warranties shall become effective on a date established by the Owner 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, except for work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the work is completed or corrected and accepted by the Owner or the date of final payment.

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§ 9.6 Taxes

The Contractor shall not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes. CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

(Paragraphs deleted)

§ 9.7

(Paragraphs deleted)

Permits, Fees, Notices, and Compliance with Laws

§ 9.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as 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 legally required at the time bids are received or negotiations concluded.

§ 9.7.2 In performing its obligations hereunder, the Contractor shall comply fully with all applicable Federal, State and Local laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the Owner of such compliance. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from, arising out of, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees.

§ 9.8 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

(Paragraphs deleted)

§ 9.9 Contractor's Construction Schedules

§ 9.9.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project but not less than monthly, 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.

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

(Paragraph deleted)

§ 9.10

(Paragraphs deleted)

Submittals

§ 9.10.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. 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. The Work shall be in accordance with approved submittals.

§ 9.10.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

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§ 9.10.3 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 or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.11 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor will abide by all applicable rules and regulations of the Owner with respect to conduct, including smoking, possession or consumption of alcohol or drugs, parking of vehicles and entry into adjacent facilities owned by the Owner.

§ 9.12 Cutting and Patching

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

§ 9.13 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and 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 material from and about the Project. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials, and shall clean renovated areas.

§ 9.14 Access to Work

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

§ 9.15 Royalties, Patents and Copyrights

THE CONTRACTOR SHALL PAY ALL ROYALTIES AND LICENSE FEES. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES DEFEND AGAINST ANY AND ALL SUITS, CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS ALLEGED TO HAVE RESULTED FROM CONTRACTOR'S INFRINGEMENT, AND SHALL INDEMNIFY AND HOLD THE OWNER THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM LOSS ON ACCOUNT THEREOF, INCLUDING ATTORNEY'S FEES (AS PERMITTED BY STATUTE), BUT SHALL NOT BE RESPONSIBLE FOR 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 PROVIDED BY THE OWNER OR PREPARED BY THE ARCHITECT. HOWEVER, IF AN INFRINGEMENT OF A COPYRIGHT OR PATENT ATTRIBUTABLE TO THE OWNER OR ARCHITECT, IS DISCOVERED BY, OR MADE KNOWN TO, THE CONTRACTOR, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOSS UNLESS THE INFORMATION IS PROMPTLY FURNISHED TO THE OWNER AND THE ARCHITECT.

(Paragraphs deleted)

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§ 9.16 Indemnification

§ 9.16.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND (EXCEPT AS LIMITED BELOW) AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES (HEREINAFTER IN THIS SECTION 3.18 "OWNER"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), 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), INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEMTHE CONTRACTOR, 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 THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. 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 9.16.

§ 9.16.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 9.16 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 9.16.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

§ 9.16.3 THE DUTY TO DEFEND SET OUT ABOVE SHALL NOT APPLY IN THE EVENT THAT THE CLAIM IS BASED, IN WHOLE OR IN PART, ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE OWNER. NOTWITHSTANDING THE FOREGOING, THE CONTRACTOR AGREES TO REIMBURSE THE OWNER'S REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE CONTRACTOR'S LIABILITY.

§ 9.16.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, 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 THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN addition TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 9.16.1..

§ 9.16.5 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, the Architect and their respective agents, consultants, and representatives pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection,

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occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, the Architect and their respective agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

§ 9.16.6 The provisions of Article 9.16 in its entirety shall survive the completion, termination or expiration of this contract.

§ 9.17 ANTITRUST VIOLATION. To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

ARTICLE 10 ARCHITECT

§ 10.1 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 of the Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 [Paragraph Deleted.]

§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction 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, and delivered on time. In addition, the Architect or its structural consultant will (1) provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable; and (2) provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third-party laboratory or testing services to assist the Architect and Owner.

§ 10.4 On the basis of the site observations, the Architect will keep the Owner reasonably informed about the progress and quality of the Work. The Architect shall promptly report to the Owner and Contractor orally regarding: (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. An oral notification of defects and deficiencies observed in the Work shall be followed by a notice in writing to the Owner and Contractor specifying the defect(s), non-conforming Work, deviations from the Contract Documents and corrective actions taken or recommended. 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 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.

§ 10.5 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, in accordance with the Contract Documents, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The Architect or the Owner has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Architect will review and approve 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.

§ 10.8 Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Architect will make initial decisions on all claims,

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disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.9 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 11 SUBCONTRACTORS

§ 11.1 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.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, in writing, of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the 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 the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

§ 11.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 11.4.1 Each subcontract agreement for any unperformed portion of the Work is assigned by the Contractor to the Owner provided that:

- **.1** assignment is effective only after termination of the Contract by the Owner or abandonment of the Project by the Contractor and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing;
- **.2** assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond relating to the Contract; and
- **.3** The Subcontractor provides bonds as required by law of the prime contractors and by Owner.

Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for site access staging, introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

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ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive. Acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the Change Order.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost plus the Contractor's allocated percent for profit and overhead, subject to equitable adjustment as approved by the Owner. When Change Orders are indicated to be paid from a contingency allowance, if any, identified in the Contract Documents, the Contractor's supervision and all other overhead items and profit shall be deemed to be included in the Contract Sum, and not in the contingency allowance.

§ 13.3 The Architect will have authority 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 shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

§ 13.4 If physical conditions are encountered at the site which are subsurface or otherwise concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents, the Contractor shall notify the Owner of such *conditions promptly before conditions are disturbed, and in no event more than three (3) days after first observation* of the conditions. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Section 21.5.

ARTICLE 14 TIME

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

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

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

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the

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Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

§ 14.6 The Owner, except as provided for in this Subsection 14.6, shall not be liable to the Contractor for delay to the Contractor's work by the act, neglect or default of the Owner, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner delay the Contractor in the work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for such Owner-caused delays.

§ 14.7 This Agreement does not permit the recovery of damages by the Contractor for delay, disruption or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price as applicable, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, or, in the case of a Guaranteed Maximum Price, concurrent with the Guaranteed Maximum Price Proposal, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. 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.

§ 15.1.2 [Paragraph Deleted.]

§ 15.2 Control Estimate [Paragraph Deleted.]

(Paragraphs deleted)

§ 15.3 Applications for Payment

§ 15.3.1 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 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect withheld; and include any revised cost control information required by the terms of this Agreement. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor has not been invoiced by a Subcontractor or supplier, unless such Work was self-performed; in such case, only portions of Work actually performed shall be included on the Contractor's request for payment.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 If approved in advance by the Owner, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

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§ 15.4 Certificates for Payment

§ 15.4.1 In each Application for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of the Application, that 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 that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmens' liens on the Work, and that releases from all subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner that the Architect has observed the progress of the Work and determined that, in the Architect's professional opinion based on the Architect's evaluations of the Work and the data in the Application for Payment, that, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect in writing to the Owner. 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 suppliers and other data unless requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

§ 15.4.3 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 15.4.2 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 15.4.1. If the Contractor and the 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 9.2.2, 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 suppliers 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 and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- **.7** repeated failure to carry out the Work in accordance with the Contract Documents;
- **.8** delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of subcontractors and insurance requirements;
- **.9** failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract Time;
- **.10** evidence of financial inability to perform the Contract fully;
- **.11** failure to submit record documents required by the Contract; or
- **.12** failure of the Contractor to perform any other obligations of the Contract.

The Owner shall not be deemed in default by reason of withholding payment as provided for in Subsection 15.4.3.

§ 15.4.4 If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

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§ 15.5 Progress Payments

§ 15.5.1 In compliance with Texas Government Code Section 2251.022, the Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its subcontractors as are applicable to the contractor hereunder, and if the Owner so requests, shall provide copies of such subcontractor payments to the Owner. If the Contractor has failed to make payment promptly to the Contractor's subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 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.

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.5.5 The Contractor shall, as a condition precedent to any obligation of the Owner under this Agreement, provide to the Owner payment and performance bonds in the full penal amount of the Contract to the extent required by Texas Government Code Chapter 2253.

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. In the event substantial completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until substantial completion is achieved.

§ 15.6.2 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.

§ 15.6.3 Upon receipt of the Contractor's list, the Architect, accompanied by the Owner or Owner's representative, at the Owner's option, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 15.6.5 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 15.7. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon receipt by the Owner of Consent of Surety to Final Payment, make payment of retainage on all or a part of the Work accepted.

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§ 15.7 Final Completion and Final Payment

§ 15.7.1 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner (at Owner's option) will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Work has been completed in accordance with the Contract Documents and that the remainder of the Contract Sum, including all retainage, less any amount withheld pursuant to the Contract and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 15.7.2 The Contractor shall not be entitled to final payment unless and until it submits to the Owner its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

§ 15.7.3 The

(Paragraphs deleted)

Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the issuance of Owner's final Certificate for Payment and compliance with all requirements of Section 15.7.2. Owner shall be entitled to deduct out of any sums due to Contractor at Final Payment, any or all liquidated damages due Owner in accordance with the Contract Documents.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

§ 15.7.5 AUDIT

Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than five (5) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 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. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; 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.

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 and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property 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

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by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.

§ 16.1.1 Contractor's employees, agents, and subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Contractor, its employees, agents, and subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

§ 16.1.2 Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

§ 16.1.3 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition. If such notice is provided orally, written confirmation of such notice by Contractor shall be provided not later than one (1) business day following such notification. Owner shall not be responsible for materials or substances brought to the site by the Contractor. 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 shutdown, delay, and start-up.

§ 16.2.2 [Paragraph Deleted.]

§ 16.2.3 [Paragraph Deleted.]

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain in force insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the table below, the Agreement, or elsewhere in the Contract Documents. No work will be commenced, and no equipment or materials may be shipped, until all requirements of Article 17 have been satisfied, satisfactory evidence of insurance has been provided, and all required insurance is in full force and effect. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Texas. 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. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others. Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 17.1.2. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4.

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§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ONE MILLION DOLLARS ($1,000,000.00) each occurrence, TWO MILLION DOLLARS ($2,000,000.00) general aggregate, for which a Designated Construction Project Aggregate Limit shall be provided, and ONE MILLION DOLLARS ($1,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

.1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
.2 personal and advertising injury;
.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
.4 bodily injury or property damage arising out of completed operations; and
.5 the Contractor's indemnity obligations under Section 9.16.

§ 17.1.2.1 The Contractor's Commercial General Liability policy under this Section 17.1.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
.2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
.3 Claims for bodily injury other than to employees of the insured.
.4 Claims for indemnity under Section 9.16 arising out of injury to employees of the insured.
.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
.8 Claims related to roofing, if the Work involves roofing.
.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
.10 Claims related to earth subsidence or movement, where the Work involves such hazards.
.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than ONE MILLION DOLLARS ($1,000,000.00) 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.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, 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.

§ 17.1.5 Workers' Compensation at statutory limits including all liability arising out of Contractor's employment of workers and anyone for whom Contractor shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.

§17.1.5.1 Workers' Compensation Insurance Coverage

.1 **Definitions**:

.1.1 **Certificate of coverage ("Certificate").** A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

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.1.2 **Duration of the Project.** Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

.1.3 **Persons providing services on the Project ("subcontractor" in Texas Labor Code §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 contracts directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

.2 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.

.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

.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 Owner showing that coverage has been extended.

.5 The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:

.5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.5.2 no later than seven (7) 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.

.6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

.7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

.8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, 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.

.9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:

.9.1 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;

.9.2 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;

.9.3 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;

.9.4 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;

.9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

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.9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.

.10 By signing this 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 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 Texas Department of Insurance, 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 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [28 TAC §110.110(c)(7)]

§ 17.1.6 Employers' Liability with policy limits not less than ONE MILLION DOLLARS ($1,000,000.00) each accident, ONE MILLION DOLLARS ($1,000,000.00) each employee, and TWO MILLION DOLLARS ($2,000,000.00) policy limit.

§ 17.1.7 (Paragraph Deleted.)

§ 17.1.8 (Paragraph Deleted.)

§ 17.1.9 (Paragraph Deleted.)

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability, Automobile Liability and excess or umbrella liability policy.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Contractor. If the insurance is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage and automobile liability coverage required by this Section 17.1 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 for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within ten (10) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the

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lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.13.1 Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 17.1.1.

§ 17.1.14 Other Insurance Provided by the Contractor

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

Builder's Risk. Property insurance on an "All Risk" completed value form sufficient to cover the total value of the entire Project on a replacement costs basis, including materials in transit and stored off site. The coverage required under this Section 17.1.14 shall:

.1 be written for no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others,

.2 provide coverage for direct physical loss or damage resulting from all perils, and shall not exclude the risks of fire, lightening, explosion, theft, vandalism, malicious mischief, collapse, earthquake, hurricane, flood, or windstorm,

(Table deleted)

.3 provide coverage for ensuring loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials,

.4 provide protection on a full replacement cost basis for boiler and machinery equipment during installation, during testing, and until acceptance by Owner,

.5 cover debris removal, including demolition occasioned by enforcement of any applicably legal requirements,

.6 cover reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses,

.7 provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup,

.8 include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds.

§ 17.1.15 The Contractor shall disclose to the Owner the amount of any deductible and the Contractor shall be responsible for losses within the deductible. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, the Contractor shall bear all reasonable costs properly attributable thereto. The property insurance shall be maintained until Substantial Completion and thereafter as required by this Section 17.1, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. Unless the parties agree otherwise, upon Substantial Completion, the Contractor shall continue the insurance required by this Section 17.1 or, if necessary, replace the insurance policy required under this Section 17.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Article 18. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance.

§ 17.2 Owner's Insurance [Paragraphs Deleted.]

(Table deleted)

(Paragraphs deleted)

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum.

§ 17.3.2 The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee.

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§ 17.3.3 The Payment and Performance Bond shall meet requirements of Chapter 2253 of the Texas Governmental Code. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for this Project.

Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company=s capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

The Sureties shall promptly file a signed copy of the Contract, Performance, and Payment Bonds with the Owner in full compliance with Chapter 2253 of the Texas Governmental Code or, in the case of a Construction Manager, as required by Article 8 of the AIA Document A133-2009.

§ 17.3.4 All bonds will be reviewed by the Architect for compliance with the Contract Documents prior to execution of the contract. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's representative for review and decision.

§ 17.3.5 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.

§ 17.3.6 Upon the request in writing 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 permit a copy to be made.

§ 17.3.7 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the Contractor's bonds becomes insufficient, 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) business days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld.

§ 17.3.8 By inclusion of this Section 17.3.8 in the Contract Documents, the surety which issues the bonds is hereby notified that the Owner, the Architect, and their agents and employees do not represent and will not be responsible for the surety's interests during the course of the Work. To protect its interests, the surety shall have the right to attend pay estimate meetings, review Applications for Payment when requested in writing by them, comment upon and make recommendations regarding payments, and inspect the Work in the presence of the Contractor and the Architect. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner, the Architect, their agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Contractor, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or Owner 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 and will be subject to offset by the Owner at Final Payment..

§ 18.1.1 If a portion of the Work has been covered and the Owner's representative has specifically requested to see such Work, or if any known deficiencies exist, or the Contract Documents specifically request inspection prior to its being covered, the Owner's representative may request to see that Work and it shall be uncovered by the Contractor. If the work is not in accordance with the Contract Documents, it must be corrected and covered at the expense of the Contractor. If the Work is according to the Contract Documents, the cost to restore cover on the Work is at the sole expense of the Contractor.

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§ 18.2 In addition to the Contractor's obligations under Section 9.5, 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 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Owner shall give such notice of the condition to the Contractor with reasonable promptness after discovery of the condition. The Contractor shall correct it promptly after receipt of 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.

§ 18.2.1 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of this Agreement or defects in the Work.

§ 18.2.2 The provisions of Section 18.2 apply to Work done by subcontractors of the Contractor as well as work done directly by employees of the Contractor. The provisions of this Subsection 18.2.2 shall not apply to corrective work attributable solely to the acts or omissions of any separate Contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Subsection 18.2.2 to the extent not covered by insurance shall be borne by Contractor.

§ 18.2.3 If, however, Owner and Contractor deem it inexpedient to require the correction of work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum and the Stipulated Sum shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

§ 18.2.4 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 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.

§ 18.5 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that 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.

§ 19.2 Governing Law

The Contract shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the county in which the Project is located. Any litigation to enforce or interpret any terms of the Contract or any other litigation arising out of or as a result of the Contract shall be brought in the State courts of the county in which the Project is located. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is consent to suit.

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§ 19.3 Tests and Inspections
The Owner will contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for the acceptance of the Work by the Owner. The Contractor shall give timely notice to the persons or entities selected by the Owner of the need for such services.

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

Mr. Ruben Treviño
Executive Director of Facilities, Maintenance, and Operations
McAllen Independent School District
2000 N. 23rd St.
McAllen, Texas 78501-6126

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

Juan Delgado, Vice President
Noble Texas Builders, LLC
108 S. Main Street
La Feria, Texas 78559
Phone:956-277-0708
E-mail:juan.delgado@nobletx.com

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

§ 19.7 Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at $100,000 or more and if the Contractor has at least ten (10) full time employees, then the Contractor, by its execution of this Agreement represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 19.7.1 Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at $100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the District that the Contractor does not boycott energy companies and will not boycott energy companies during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 19.7.2 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at $100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the District that the Contractor 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. This section does not apply to a sole proprietorship.

§ 19.7.3 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.

§ 19.7.4 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

§ 19.7.5 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars ($1,000,000.00) or more, the Contractor agrees to : (1) preserve all contracting information related to the contract as provided by the

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records retention requirements applicable to the Owner for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the contract, either: (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Work is stopped for a period of thirty (30) 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 which requires all Work to be stopped;

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

.3 because the Owner has not made payment within the time stated in the Contract Documents.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents;

.5 fails to furnish the Owner, upon written request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;

.6 engages in or permits serious or repeated worker misconduct in violation of Article 9.3;

.7 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or

.8 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 20.2.2 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 (7) days written notice, terminate employment of the Contractor and may, subject to any prior rights of Surety:

.1 Take possession of the site and of all materials, equipment, tools, and construction equipment, and machinery thereof owned by the Contractor.

.2 Accept assignment of subcontracts.

.3 Finish the Work by whatever reasonable method the Owner may deem expedient.

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the Contract Documents.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Any further payment shall be limited to amounts actually earned to the date of termination.

§ 20.2.4 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,

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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 Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and

(Paragraphs deleted)

profit only on that portion of the Work executed.

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or 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. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims by the Contractor must be initiated within twenty-one (21) days after occurrence or of the event giving rise to such Claim.

§ 21.2 Notice of Claims

§ 21.2.1 Claims by the Contractor, shall be initiated by notice to the Owner and to the Architect. Claims under this Section shall be initiated within 21 calendar days after the occurrence of the event giving rise to such Claim or within 21 calendar days after the claimant first knew or should have known of the condition giving rise to the Claim, whichever is earlier. If the full impact cannot be assessed as of the date of the Notice, then Notice shall be provided and amended by a second notice at the earliest date that is reasonably possible, but in no event later than the date of Contractor's Application for Payment covering the period in which the impact can be assessed and quantified.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required. If Texas Government Code, Chapter 2272 is applicable to the Claim, the Owner shall comply with the requirements set out therein as a condition precedent to any initiation of any litigation.

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law. The Contractor waives all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 MEDIATION

§ 21.5.1 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

§ 21.5.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.

§ 21.5.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

§ 21.5.4 Venue for any mediation or lawsuit arising under this contract shall be in the county in which the Project is located. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is consent to suit.

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§ 21.6 The Contractor shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Owner not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, and shall include documentation demonstrating the nature and duration of the delays or disruptions.

§ 21.7 Waiver of Lien. It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

§ 21.8 [Paragraph Deleted.]

§ 21.9 [Paragraph Deleted.]

§ 21.10 Continuing Contract Performance
Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents.

§ 21.11 CALCULATING CLAIMS FOR DAMAGES
Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

.1 No indirect or consequential damages will be allowed.
.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.
.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
.4 No damages will be allowed for home office overhead or other home office changes or any Eichleay formula calculation.

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

MCALLEN INDEPENDENT SCHOOL DISTRICT	**NOBLE TEXAS BUILDERS, LLC**
OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
Tony Forina President Board of Trustees *(Printed name and title)*	Juan Delgado, Vice President *(Printed name and title)*

P Blake Henshaw

Approved as to Form: Blake Henshaw
Attorney: Walsh, Gallegos, Trevino, Kyle & Robinson P.C.

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Blake Henshaw, 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 21:20:08 ET on 02/08/2023 under Order No. 3104236826 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, other than those additions and deletions shown in the associated Additions and Deletions Report.

P Blake Henshaw

(Signed)

Attorney: Walsh, Gallegos, Trevino, Kyle & Robinson, P.C.

(Title)

February 8, 2023

(Dated)

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EXHIBIT "A"

2023-1024 Addendum 3
Noble Texas Builders LLC
Supplier Response

Event Information

Number:	2023-1024 Addendum 3
Title:	Kitchen Renovations for Theodore Roosevelt Elementary, Sam Rayburn Elementary, Reynaldo G. Garza Elementary, and Woodrow Wilson Elementary
Type:	Request for Cooperative Quotes
Issue Date:	1/11/2023
Deadline:	1/25/2023 10:00 AM (CT)
Notes:	McAllen Independent School District (the "District) is accepting quotes through **any awarded Job Order Contract (JOC)** .

All respondents shall be approved vendors through District approved cooperative(s). Some vendors may support multiple cooperative JOC contracts, therefore we request to utilize the contract that proposes the best value for the District. A list of approved McAllen ISD cooperative can be located on our website at https://www.mcallenisd.org/page/cooperative-agreements.

This project is being funded by the Elementary and Secondary School Emergency Relief ("ESSER") Fund and as such, federal requirements apply.

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.

All respondents shall be approved contractors through District awarded cooperative(s) JOCs.

Contractors submitting a response shall not discuss this RFCQ with employees of District or members of the Board of Trustees of the District. Failure to abide by this requirement may result in disqualification.

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.

******To schedule a campus visit, contact Melissa Ortiz, Facilities Project Manager at melissa.ortiz@mcallenisd.net.**

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

Contact Information

Contact: Graciela Garza Senior Buyer
Address: Purchasing Services
2000 N 23rd St
McAllen, TX 78501-6126
Phone: (956) 657-4487
Fax: (956) 632-8848
Email: ggarza@mcallenisd.net

Noble Texas Builders LLC Information

Contact: Jose Castro
Address: 108 S. Main Street
La Feria`, TX 78559
Phone: (956) 277-0708
Email: jose.castro@nobletx.net

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

Jose Castro
Signature

jose.castro@nobletx.com
Email

Submitted at 1/25/2023 09:47:05 AM (CT)

Requested Attachments

Completed Form 1295 Form or Exemption Statement — NOBLE 1295.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.

Assumed Name Certificate/Fictitious Name Documentation/Disregarded Entity Documentation — *No response*

Upload your Assumed Name Certificate/Fictitious Name Documentation/Disregarded Entity Documentation (if applicable).

Completed Conflict of Interest Questionnaire. — NOBLE CIQ.pdf

Please upload your completed CIQ.

Note: If no conflict, please indicate "N/A" on the form.

Proof of Insurance (Acord Certificate of Insurance Form) — NOBLE COI.pdf

Please upload your certificate of insurance in Acord form.

Completed W9 Form — Noble_W9_2023.pdf

Please upload your completed W9 form.

HUB Certificate — *No response*

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)**.

N/A

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.

Noble Texas Builders 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.

A. Principal place of business is in TX

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.

La Feria, Texas

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	**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

20 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.)

21 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.)

22 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.)

23 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.)

24 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.)

25 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.)

26 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.)

27 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.)

28 (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.)

29	**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.)
30	**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.)
31	**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 or any telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. 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.)

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	**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.)

34	**2 C.F.R. § 200.323 CONTRACT COST AND PRICE** (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals. (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles. (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
35	**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.)
36	**2 C.F.R § 200.336 CERTIFICATION OF ACCESS TO RECORDS** Vendor agrees that the District's Inspector General or any of their duly authorized representatives shall have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents. Contractor certifies that Contractor is in compliance with all applicable provisions of 2 CFR 200.336. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
37	**COPYRIGHT** All contracts paid from state or federal grants administered by the Texas Education Agency ("TEA") must retain copyright for TEA and for the federal government (if a federally funded contract) unless otherwise negotiated in writing with TEA. Pursuant to the provisions in 2 C.F.R. 200.315, title to intangible property vests in the District as long as such property is used for authorized purposes. However, TEA and the federal awarding agency reserve a royalty-free, nonexclusive and irrevocable right to reproduce, public, or otherwise use the work for federal purposes, and to authorize others to do so. Contractor certifies that Contractor is in compliance with all applicable Copyright provisions. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)

38 CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When District expends federal funds for any contract resulting from this procurement process, Vendor certifies that it will comply with the 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 (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18). Contractor certifies that Contractor is in compliance with all applicable provisions.

**This is your electronic signature.

☑ I have read and hereby certify. (I have read and hereby certify.)

39 PROFESSIONAL SERVICES CONTRACTS PAID WITH FEDERAL FUNDS

For all professional services contracts paid with federal funds, the contract contains the following provisions:

1. All services will be completed during the effective dates of the contract.
2. All services will be paid only upon receipt of a proper invoice that coincides with the contract upon verification that the services were satisfactorily performed in accordance with the description in the contract. For ongoing services, payment may be made at the end of every month upon receipt of the invoice. Contractors will not be paid in advance.
3. The invoice provided by the contractor will include the list of services provided, dates of services, and location(s) where services were provided during the billing period.
4. The District complies with the regulations pertaining to procurement in 2 C.F.R. § 200.318 - .323.
5. The District complies with the provisions in 2 C.F.R. § 200.459 pertaining to allowable professional service costs.
6. The contract will identify the funding source(s) that will be charged for the services provided, including the specific amount and/or percentage of the total contract amount to be charged to each funding source.
7. The contract will identify and list only reasonable, necessary, and allocable services to be provided in accordance with the funding sources that will be charged.
8. The administrative costs charged to the grant in the contract must be reasonable and must comply with any statutory limitations for administrative costs specified in the federal program funding source.

**This is your electronic signature.

☑ I have read and hereby certify. (I have read and hereby certify.)

40 APPLICABILITY TO SUBCONTRACTORS

Vendor agrees that all contracts it awards pursuant to the contract shall be bound by the foregoing terms and conditions.

**This is your electronic signature.

☑ I have read and hereby certify. (I have read and hereby certify.)

41 COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, RULES, REGULATIONS, AND ORDINANCES

The Vendor also represents and warrants compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances, It is further acknowledged that Vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted below:

1. Americans with Disabilities Act, P. L. 101-336, 42 U.S.C. section 12101, and the regulations effectuating its provisions contained in 28 C.F.R. Parts 35 and 36, 29 C.F.R. Part 1630, and 47 C.F.R. Parts 0 and 64.
2. Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 C.F.R. Part 100.
3. Title IX of the Education Amendments of 1972, as amended (prohibition of sex discrimination in educational institutions), and the regulations effectuating its provisions contained in 34 C.F.R. Part 106, if the Vendor is an educational institution.
4. Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on basis of handicapping condition), and the regulations effectuating its provisions contained in 34 C.F.R. Part 104.
5. Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and any regulations issued thereunder, including the provisions contained in 34 C.F.R. Part 110.
6. Family Educational Rights and Privacy Act ("FERPA") of 1975, as amended (ensures access to educational

records for students and parents while protecting the privacy of such records), and any regulations issued thereunder, including Privacy Rights of Parents and Students (34 C.F.R. Part 99), if the Vendor is an educational institution (20 U.S.C. 1232g).

7. Section 509 of H.R. 5233, as incorporated by reference in P. L. 99-500 and P. L. 99-591 (prohibition against the use of federal grant funds to influence legislation pending before Congress).
8. Pro-Children Act of 2001, which states that no person shall permit smoking within any indoor facility owned or leased or contracted and utilized for the provision of routine or regular kindergarten, elementary, or secondary education or library services to children (P. L. 107-110, Section 4303[a]). In addition, no person shall permit smoking within any indoor facility (or portion of such a facility) owned or leased or contracted and utilized for the provision of regular or routine health care or day care or early childhood development (Head Start) services (P. L. 107-110, Section 4303[b][1]). Any failure to comply with a prohibition in this Act shall be considered to be a violation of this Act, and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty, as determined by the Secretary of Education (P. L. 107-110, Section 4303[e][1]).
9. Buy American Act: DISTRICT, to the greatest extent practicable, has a preference for domestic end goods, products, or materials for supplies acquired for use in the United States when spending federal funds (purchases that are made with non-federal funds or grants are excluded from the Buy American Act). The Vendor certifies that it is in compliance with the Buy America Act in that each end product purchased under any federally funded supply contract exceeding $2,500.00 is considered to have been substantially produced or manufactured in the United States. End products exempt from this requirement are those for which the cost would be unreasonable, products manufactured in the U.S. that are not of satisfactory quality, or products for which the agency head determines that domestic preference would be inconsistent with the public interest. The Vendor also certifies that documentation will be maintained that documents compliance with this requirement (FAR 25.1–25.2).
10. P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000: Educate America Act; P.L. 103- 382, Title XIV, General Provisions of the Elementary and Secondary Education Act, as amended; and General Education Provisions Act, as amended.
11. Prohibition of Text Messaging and E-mailing while Driving during Official Federal Grant Business: Personnel funded from federal grants and their subcontractors and subgrantees are prohibited from text messaging while driving an organization-owned vehicle, or while driving their own privately owned vehicle during official grant business, or from using organization-supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under Executive Order 13513, “Federal Leadership On Reducing Text Messaging While Driving,” October 1, 2009 (pursuant to provisions attached to federal grants funded by the U.S. Department of Education).
12. Trafficking Victims Protection Act of 2000 (“TVPA”), as amended (22 U.S.C. 7104[g]): In accordance with 2 C.F.R. 175, this award may be terminated unilaterally, without penalty, if Contractor or an employee of Contractor violates any of the applicable prohibitions of this award term through conduct that is either associated with performance under this award or imputed to Contractor using the standards and due process for imputing the conduct of an individual to an organization that are provided in 34 C.F.R. 85.630. Contractor and Contractor’s employees may not (i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect; (ii) Procure a commercial sex act during the period of time the award is in effect; or (iii) Use forced labor in the performance of the award or subaward.
13. Fair Labor Standards Act (29 U.S.C. 207), as applicable, and their implementing regulations in 29 CFR 500-899.
14. Energy Policy and Conservation Act (42 USC 6321 et seq.; 49 CFR Part 18) and the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the EPCA.

**This is your electronic signature.

☑ I have read and hereby certify. (I have read and hereby certify.)

42 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.)

43	**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.)

44	**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	**Cooperative Contract** **Item Attributes** **1. Cooperative Vendor** I hereby certify that my Firm/Company is an approved Job Order Contract ("JOC") vendor through a Cooperative Contract for the scope of this RFCQ. A list of approved McAllen ISD cooperative can be located on our website at https://www.mcallenisd.org/page/cooperative-agreements. ***This is your electronic signature. ☑ I have read, understand and hereby certify. (I have read, understand and hereby certify.) **2. Cooperative JOC Contract Name** Specify Cooperative Contract name. Buy Board **3. Cooperative JOC Contract Number** Specify Cooperative JOC Contract number. 581-19

2	**Project Cost (Theodore Roosevelt Elementary)** **All labor, material, services, equipment and Payment and Performance Bonds necessary for the completion of work shown on the plans and drawings, and project manual.**	LumpSum:	$1,602,655.00	Total: $1,602,655.00

3	**Contingency Amount**	Contingency:	$100,000.00	Total: $100,000.00

4	**Project Cost (Sam Rayburn Elementary)** **All labor, material, services, equipment, and Payment and Performance Bonds necessary for the completion of work shown on the plans and drawings, and project manual.**	LumpSum:	$1,674,390.00	Total:	$1,674,390.00
5	**Contingency Amount**	Contingency:	$100,000.00	Total:	$100,000.00
6	**Project Cost (Reynaldo G. Garza Elementary)** **All labor, material, services, equipment and Payment and Performance Bonds necessary for the completion of work shown on the plans and drawings, and project manual.**	LumpSum:	$1,466,544.00	Total:	$1,466,544.00
7	**Contingency Amount**	Contingency:	$100,000.00	Total:	$100,000.00
8	**Project Cost (Woodrow Wilson Elementary)** **All labor, material, services, equipment, and Payment and Performance Bonds necessary for the completion of work shown on the plans and drawings, and project manual.**	LumpSum:	$1,242,272.00	Total:	$1,242,272.00
9	**Contingency Amount**	Contingency:	$100,000.00	Total:	$100,000.00

10 **Project timeline**

Item Attributes

1. Specify the calendar days that you can substantially complete the project.

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Response Total: $6,385,861.00

Alexandra Molina
Executive Director for Child Nutrition
and Purchasing

January 25, 2023

RE: BEST AND FINAL OFFER – Request for Cooperative Quotes No. 2023-1024 Kitchen Renovations for Theodore Roosevelt Elementary, Sam Rayburn Elementary, Reynaldo G. Garza Elementary, and Woodrow Wilson Elementary

Thank you for participating in the District's Request for Cooperative Quotes No. 2023-1024. We would like to invite you to provide a best and final offer.

Please complete the Best and Final Offer and return via email to: alexandra.molina@mcallenisd.net with a Cc to ggarza@mcallenisd.net, no later than 1:00 p.m. CST, Thursday, January 26, 2023.

Please note that Best and Final Offers shall be completed on this form. Should you have any questions regarding this request, please feel free to email at alexandra.molina@mcallenisd.net with a Cc to ggarza@mcallenisd.net.

☐ The original quote submitted is the Best and Final Offer **(NOTE: If making this selection, Pricing Matrix must be completed)**

☒ The Best and Final Offer is as follows:

Pricing Matrix

DESCRIPTION	QTY	TOTAL
Project Cost (Theodore Roosevelt Elementary)	1	$1,593,548
Contingency for Theodore Roosevelt Elementary	1	$100,000.00
Project Cost (Sam Rayburn Elementary)	1	$1,665,284
Contingency for Sam Rayburn Elementary	1	$100,000.00
Project Cost (Reynaldo G. Garza Elementary)	1	$1,457,437
Contingency for Reynaldo G. Garza Elementary	1	$100,000.00
Project Cost (Woodrow Wilson Elementary)	1	$1,233,166
Contingency for Woodrow Wilson Elementary	1	$100,000.00
	Project Total	$6,349,435

****

Acknowledgement must be legible, preferably typed, and signed by an authorized official with legal binding authority.

ACKNOWLEDGEMENT BEST AND FINAL OFFER:

SIGNATURE _____ DATE: 1/26/2023

PRINTED NAME Juan Delgado TITLE: Vicepresident

COMPANY NAME Noble Texas Builders

Exhibit B

Payment and Performance Bonds

EXHIBIT "C"

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/25/2022

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 IBTX Risk Services 32335 US Hwy 281 N. Suite #1201 Bulverde TX 78163	**CONTACT NAME:** Jayme York **PHONE (A/C, No, Ext):** 214-989-7100 **FAX (A/C, No):** 210-696-8414 **E-MAIL ADDRESS:** service@ib-tx.com
INSURED NOBLTEX-01 Noble Texas Builders, LLC 108 S. Main Street La Feria TX 78559	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** **INSURER A :** Valley Forge Insurance Company 20443 **INSURER B :** The Continental Insurance Company 42625 **INSURER C :** Valley Forge Insurance Company 20508 **INSURER D :** Nautilus Insurance Company 17370 **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** 1452315029 **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 X Contractual Liab X XCU GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:			6080436520	5/1/2022	5/1/2023	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 $ 1,000,000 $ 15,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	**AUTOMOBILE LIABILITY** X ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY [ ]			6080436534	5/1/2022	5/1/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) [ ]	$ 1,000,000 $ $ $ $
B	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED X RETENTION $ 10,000			6080436551	5/1/2022	5/1/2023	EACH OCCURRENCE AGGREGATE [ ]	$ 10,000,000 $ 10,000,000 $
C	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		6080436548	5/1/2022	5/1/2023	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
D	Pollution/Professional Liability			NEED	5/1/2022	5/1/2023	Pollution Limit Pollution Agg. Lmt. Prof Lmt/Agg.	1,000,000 2,000,000 2,000,000

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

The General Liab. and Auto policies include blanket additional insured endorsement [CG2010 07/04, CG2037 07/04, CNA75079XX 10/16, CNA74705XX 01/15 CNA63359XX 04/12] as required in a written contract with the Named Insured. The General Liab., Auto & Work Comp policies include a blanket waiver of subrogation endorsement [CNA74705XX 01/15, CNA63359XX 4/12,WC420304B] as required in a written contract with the Named Insured. Primary Non-Contributory per attached [CNA75079XX 10/16, CNA63359XX 04/12]. Cancellation per [CNA74702XX 01/15, CNA 68021XX 2/13, CC68021A]. Umbrella is follow form of the General Liability, Auto and Work Compensation policies subject to policy terms and conditions.
RE: Various Projects

CERTIFICATE HOLDER

McAllen Independent School District
2000 N. 23rd Street
McAllen TX 78501

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CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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EXHIBIT D

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FW101	FIRE ALARM OVERALL PLAN – W.WILSON ELEMENTARY
FW102	FIRE ALARM DEMOLITION PLAN – W.WILSON ELEMENTARY
FW103	FIRE ALARM PLAN – W.WILSON ELEMENTARY
FW501	FIRE ALARM DETAILS I – W.WILSON ELEMENTARY
FW502	FIRE ALARM DETAILS II – W.WILSON ELEMENTARY
WOODROW WILSON: SPECIAL SYSTEMS	
SW001	SPECIAL SYSTEMS GENERAL LEGEND
SW101	SPECIAL SYSTEMS OVERALL PLAN – W.WILSON ELEMENTARY
SW102	SPECIAL SYSTEMS DEMOLITION PLAN – W.WILSON ELEMENTARY
SW103	SPECIAL SYSTEMS PLAN – W.WILSON ELEMENTARY
SW501	SPECIAL SYSTEMS DETAILS II – W.WILSON ELEMENTARY

CODES

CODE REFERENCES

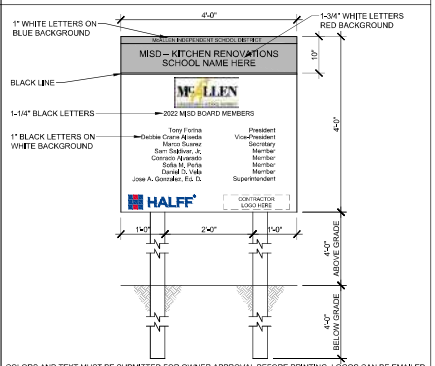
2018 INTERNATIONAL BUILDING CODE
2018 INTERNATIONAL MECHANICAL CODE
2018 INTERNATIONAL PLUMBING CODE
2018 INTERNATIONAL FUEL GAS CODE
2018 INTERNATIONAL FIRE CODE
2017 NATIONAL ELECTRICAL CODE
2015 INTERNATIONAL ENERGY CONSERVATION CODE

TRADE DESIGNATION	CAMPUS DESIGNATION	SHEET NUMBER

SHEET NUMBER LEGEND

A	T	1.00 (T)heodore Roosevelt Elementary School
M	S	1.00 (S)am Rayburn Elementary School
E	R	1.00 (R)eynaldo G. Garza Elementary School
P	W	1.00 (W)oodrow Wilson Elementary School

PROJECT SIGNAGE DETAIL



COLORS AND TEXT MUST BE SUBMITTED FOR OWNER APPROVAL BEFORE PRINTING. LOGOS CAN BE EMAILED UPON REQUEST.

NOTE:
BACKSIDE OF SIGN TO BE PAINTED WHITE.

ANCHORS:
ANCHOR PLYWOOD TO POST WITH 1/2" DIA. X 6" THRU BOLTS AND NUTS (6 TOTAL) SPACING AS INDICATED.

SIGN:
4'X4' X3/4" EXTERIOR GRADE PLYWOOD WITH EXTERIOR GLUE.

POSTS:
4'X4' X12' WITH HORIZONTAL BRACES.

KITCHENS RENOVATIONS FOR
Theodore Roosevelt Elementary School,
Sam Rayburn Elementary School,
Reynaldo G. Garza Elementary School,
Woodrow Wilson Elementary School

MCALLEN INDEPENDENT SCHOOL DISTRICT

183 HALFF
500 WEST MILITARY, SUITE 100
TEL: (956) 782-5003
FAX: (956) 782-5002

No.	Revision	Date	Description

BENTON J. MURRAY III
87004
REGISTERED
PROFESSIONAL
ENGINEER
STATE OF TEXAS

Project No.	45830
Issued:	01/09/2023
Drawn By:	MH
Checked By:	LM
Scale:	AS NOTED

Sheet Title
COVER SHEET

G002
Sheet Number

File Name: I:\45000s\45830\010\CADD\Sheets\MCA\G002 -00- 45830.010.dwg
Current Tab: (Layout): G002 User: JM3622
Printed Date: 1/9/2023 2:38:17 PM

EXHIBIT E

MCALLEN ISD – KITCHEN RENOVATIONS
REYNALDO G. GARZA ELEMENTARY SCHOOL
WOODROW WILSON ELEMENTARY SCHOOL
SAM RAYBURN ELEMENTARY SCHOOL
THEODORE ROOSEVELT ELEMENTARY SCHOOL
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011000S	SUMMARY
012100	ALLOWANCES
012500	SUBSTITUTION PROCEDURES
013000	SUBMITTAL PROCEDURES
013100	PROJECT MANAGEMENT AND COORDINATION
013233	PHOTOGRAPHIC DOCUMENTATION
013300A	SHOP DRAWINGS AND SAMPLES
013300C	SUBMITTAL PROCEDURES
014200	DEFINITIONS AND TERMINOLOGY
014200C	DEFINITIONS AND TERMINOLOGY
014500	CUTTING AND PATCHING
014513	ALTERATIONS
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015000	TEMPORARY FACILITIES AND CONTROLS
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024200	DEMOLITION OF EXISTING CIVIL SITE IMPROVEMENTS

DIVISION 03 – EXISTING CONDITIONS

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032000	CONCRETE REINFORCING
033000	CAST IN PLACE CONCRETE
033000C	CAST IN PLACE CONCRETE
033500	CONCRETE FINISHING
033900	CONCRETE CURING
036000	GROUTING

MCALLEN ISD – KITCHEN RENOVATIONS
REYNALDO G. GARZA ELEMENTARY SCHOOL
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055800 MISCELLANEOUS SHEET METAL

DIVISION 06 – WOOD, PLASTICS, AND COMPOSITES
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MCALLEN ISD – KITCHEN RENOVATIONS
REYNALDO G. GARZA ELEMENTARY SCHOOL
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MCALLEN ISD – KITCHEN RENOVATIONS
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321220 PAVING REPAIR AND RESURFACING
321313 CONCRETE PAVEMENT
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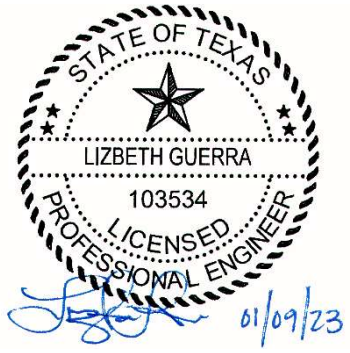
321373 CONCRETE PAVING JOINT SEALANTS
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1.1 DESIGN PROFESSIONALS OF RECORD for PROJECT MANUAL TECHNICAL SECTIONS

MECHANICAL ENGINEER	Trey Murray P.E TX 121984 Divisions 22, 23	
ELECTRICAL ENGINEER	Lizbeth Guerra. P.E. TX 103534 Division 26	
CIVIL ENGINEER	Andrew A. Salinas, P.E. TX 128943 Divisions 02, 03, 31, 32,33	

ARCHITECTURAL ENGINEER	Eduardo G. Vela TX 14407 Divisions 08



STRUCTURAL ENGINEER	Miguel Chanin, P.E. TX 93127 Divisions 03, 04, 31



RCDD ENGINEER	Jose Delgado, P.E. TX 260372



END OF SECTION 000100

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Discussion & Possible Action on Contract No. 2023-156 Hellas Construction Inc. through RFCQ 2023-1026 McAllen High School Football Field Sports Lighting

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District solicited cooperative quotes for football field sports lighting for McAllen High 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:

One hundred twenty three (123) contractors were invited to submit cooperative quotes. Six (6) contractors responded, including three (3) no bids. Ruben Treviño, Executive Director of Facilities, Maintenance and Operations; Melissa Ortiz, Project Manager for Facilities, Maintenance and Operations; Eduardo Barnhart, Assistant Director for Facilities, Maintenance and Operations; and Roel Moroles, Assistant Director for Facilities, Maintenance and Operations evaluated the quotes and are recommending that the Board of Trustees award this contract to Hellas Construction Inc. from Austin, TX, through their TexBuy Purchasing Cooperative Contract 021-A.

LEGAL REVIEW:

The Contract has been approved by legal.

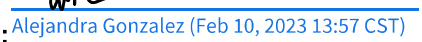
BUDGETARY CONSIDERATIONS:

The contract price for this project is $325,746.00. Funds are budgeted through General Fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Contract No. 2023-156 Hellas Construction Inc. through RFCQ 2023-1026 McAllen High School Football Field Sports Lighting.

SUBMITTED BY: 

SUPERVISOR: 
Alejandra Gonzalez (Feb 10, 2023 13:57 CST)

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

AIA® Document A104™ – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the FOURTEENTH day of FEBRUARY in the year TWO THOUSAND TWENTY-THREE
(In words, indicate day, month and year.)

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

McAllen Independent School District, a public school district and political subdivision of the State of Texas
2000 North 23rd Street
McAllen, Texas 78501

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

Hellas Construction, Inc.
12000 West Parmer Lane
Austin, Texas 78613
Phone: 512-250-2910
Fax: 512-250-1960

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

Request for Cooperative Quote 2023-1026 McAllen High School Football Field Sports Lighting (Owner Contract No: 2023-156)
2021 La Vista Avenue
McAllen, Texas 78501

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

Halff Associates, Inc.
5000 W. Military Hwy, Suite 100
McAllen, Texas 78503
Phone: 956-664-0286

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.

Init.
/

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2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3 CONTRACT SUM

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7 GENERAL PROVISIONS

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19 MISCELLANEOUS PROVISIONS

20 TERMINATION OF THE CONTRACT

21 CLAIMS AND DISPUTES

EXHIBIT A DETERMINATION OF THE COST OF THE WORK

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User Notes: (1298754923)

ARTICLE 1 THE WORK OF THIS CONTRACT

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

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

[ ] The date of this Agreement.

[ ] A date set forth in a notice to proceed issued by the Owner.

[X] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

The commencement date will be the first business day after the Contractor's receipt of the written notice to proceed. The notice to proceed shall not be issued by Architect until the Agreement has been signed by the Contractor, approved by the Owner's Board of Trustees, signed by the Owner's authorized representative, and Owner and Architect have received all required payment and performance bonds and insurance, in compliance with Article 11 of the AIA document A201-2017

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

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

§ 2.3 Substantial Completion

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

[X] Not later than ONE HUNDRED (100) calendar days from the date of commencement of the Work.

[ ] By the following date:

§ 2.3.2 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

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

[X] Stipulated Sum, in accordance with Section 3.2 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

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User Notes: (1298754923)

§ 3.2 The Stipulated Sum shall be THREE HUNDRED TWENTY-FIVE THOUSAND SEVEN HUNDRED FORTY-SIX AND NO/100 DOLLARS ($325,746.00), subject to additions and deductions as provided in the Contract Documents.

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

None.

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

Item	Units and Limitations	Price per Unit ($0.00)
None.		

§ 3.2.3 Allowances, if any, included in the stipulated sum:
(Identify each allowance.)

Item	Price
Owner's Contingency for use only upon the Owner's instructions	$10,000
Electrical Service Utility Installation Contingency	$5,000

§ 3.2.3.1 The Owner's Contingency may be used only at the direction of the Owner and only after execution of an Allowance Expenditure Authorization ("AEA") signed by the Owner and Architect. Use of other contingency allowances listed above shall be only as approved by the Architect in accordance with the Owner's instructions, and only by AEA which shall designate amounts to be charged to the allowance. Unused amounts, if any, remaining in the Owner's Contingency and any Allowance shall be credited to the Owner by deductive Change Order at Project closeout. contingency

§ 3.3 Cost of the Work Plus Contractor's Fee [Paragraph Deleted.]

(Paragraphs deleted)
§ 3.4.3 Guaranteed Maximum Price
§ 3.4.3.1
(Paragraphs deleted)
[Paragraph Deleted.]

§ 3.4.3.2
(Paragraphs deleted)
[Paragraph Deleted.]

§ 3.4.3.3
(Paragraphs deleted)
[Paragraph Deleted.]
§ 3.4.3.4
(Paragraphs deleted)
[Paragraph Deleted.]
§ 3.4.3.5
(Paragraphs deleted)
[Paragraph Deleted.]
§ 3.4.3.6 [Paragraph Deleted.]

§ 3.4.3.7 [Paragraph Deleted.]

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User Notes: (1298754923)

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

If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work: TWO HUNDRED FIFTY AND 00/100 DOLLARS ($250.00).

§ 3.5.1 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 3.5.2 In addition to Liquidated Damages, if any, the Contractor shall reimburse the Owner for any Supplemental or Additional Services of the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor or caused by Contractor's failure to achieve the applicable Contract Time requirements.

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 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 for undisputed amounts in the manner and within the time provided in the Contract Documents, on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. Payment shall be made by the Owner of undisputed amounts certified by the Architect not later than forty-five (45) days of its receipt of the Certificate for Payment from the Architect, if Owner's Board of Trustees normally meets once a month, or thirty (30) days of its receipt of the Certificate for Payment from the Architect if the Owner's Board of Trustees normally meets twice a month. Owner shall provide written notification to Contractor within twenty-one (21) days if Owner disputes the Contractor's Certificate for Payment, pursuant to Texas Government Code section 2251.042 et. seq., listing the specific reasons for non-payment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents or Construction Documents. 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 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 may require. This schedule shall be used as the basis for reviewing Contractor's Applications for Payment. Applications for Payment shall comply with all requirements of this Contract, including submission of the required certifications, and shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. The Contractor's Application for Payment shall be received by the Architect not later than the last day of a month in order to assure timely payment in accordance with §4.1.3 of this Article.

§ 4.1.3 The Architect shall have seven (7) business days from the date of its receipt of a properly documented Application for Payment from the Contractor to approve or reject all or any part of the Application for Payment and submit its Certificate for Payment to the Owner. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within forty-five (45) days, if Owner's Board of Trustees meets once a month, or thirty (30) days, if Owner's Board of Trustees meets twice a month, of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.
(Federal, state or local laws may require payment within a certain period of time.)

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§ 4.1.4 For each progress payment, the Owner may withhold retainage from the payment otherwise due as follows:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

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

.1 Take 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, less retainage of five percent (5%). Pending final determination of the cost to the Owner of changes in the Work, amounts not in dispute shall be included;

.2 Add 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), less retainage of five percent (5%);

.3 Subtract the aggregate of previous payments made by the Owner;

.4 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate of Payment a provided for in this Contract; and

.5 Upon Substantial Completion of the Work, add a sum sufficient to increase the total payments to ninety-five percent (95%) of the full amount of the Contract Sum, less such amounts as the owner shall determine is necessary for incomplete work and unsettled claims.

§ 4.1.5 Undisputed payments due and unpaid under the Contract shall bear interest
(Paragraphs deleted)
in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall not be made by the Owner to the Contractor until:

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with a Guaranteed Maximum Price;

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1; and

.4 Owner has received consent of surety to final payment.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 31 days after Owner's receipt of the Architect's final Certificate for Payment, and satisfaction of all conditions set out in § 4.2.1.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 21.6 of this Agreement

[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 in a court of competent jurisdiction.

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ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 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.)

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 6.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

See Table of Contents attached hereto as Exhibit B.

Section	Title	Date	Pages

§ 6.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

See Table of Contents attached hereto as Exhibit B-1.

Number	Title	Date

§ 6.1.6 The 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 enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other Exhibits:
(Check all boxes that apply.)

[X] Exhibit A, Hellas Construction Inc. Proposal for McAllen Practice Lighting, dated January 10, 2023..

[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

[ ] The Sustainability Plan:

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Title	Date	Pages

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents.)

Exhibit B, Table of Contents
Exhibit B-1, Index of Drawings

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

§ 7.1.1 The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, Project Manual and the Bid or Proposal Documents prepared and submitted by the Owner and the Contractor's Bid or Proposal submitted by the Contractor, to the extent they do not conflict with the terms of this Agreement, and other documents listed in this Agreement and Modifications issued after execution of this Agreement. 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. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.1.2 Precedence Of The Contract Documents. The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

.1 Contract Modifications signed by Contractor and Owner.
.2 Addenda, with those of later date having precedence over those of earlier date.
.3 Specifications and Drawings – to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of work indicated.
.4 The Standard Abbreviated Form of Agreement Between Owner and Contractor – AIA Document A104-2017.
.5 Bid/Proposal Documents including the Project Manual, Contractor's Bid or Proposal Documents (to the extent such Bid or Proposal submitted by the Contractor is part of the Contract Documents and is not inconsistent with other portions of the Contract Documents)

§ 7.1.3 Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Owner.

§ 7.1.4 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall apply.

§ 7.1.5 Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

§ 7.1.6 Signing the Construction Agreement shall be considered as signing all contract documents identified.

§ 7.2 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

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construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 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.

§ 7.4 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.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 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 will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, 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 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.

§ 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use 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.

§ 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given in person, by

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mail, by courier, or by electronic transmission 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.)

§ 7.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 7.10 Relationship of the Parties [Paragraph Deleted.]

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

(Paragraph deleted)

§ 8.1.1.1 The Owner is the Board of Trustees of the McAllen Independent School District, and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority.

§ 8.1.1.2 The Contractor acknowledges that no lien rights exist with respect to public property.

§ 8.1.2 The Owner shall furnish a legal description of the site.

§ 8.1.3 Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delay, disruption or acceleration of the Work. This limitation on damages is further subject to the limitations set forth in Article 14.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.7.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.1.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is defective or not in accordance with the requirements of the Contract Documents, fails to timely carry out the Work in accordance with the Contract Documents, or is in default of any of its material obligations hereunder, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is 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.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor is in default in any of its material obligations hereunder, neglects to timely carry out the Work in accordance with the Contract Documents, or fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or non-conforming or defective Work with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or such non-conforming or defective Work and may deduct the reasonable cost thereof, including Owner's expenses and

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compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor. The Owner may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 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.

§ 9.1.2 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 8.1.2, 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 any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized 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.

§ 9.1.3 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 any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 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. The Contractor shall assign a Superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The Superintendent shall be on the Project, in this capacity, at all times while work on the Project is in progress.

§ 9.2.2 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.

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

§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient worker and labor, eligible to work in accordance with state and federal law. Contractor shall appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for 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.

§ 9.3.2 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 skilled in tasks assigned to them.

§ 9.3.2.1 The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project

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Site. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 9.3.2.2 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification. Whether or not any proposed substitution is accepted by the Owner, the Contractor shall reimburse the Owner for any costs incurred, including consulting fees charged by the Architect or other consultants for evaluating each proposed substitute.

(Paragraphs deleted)
§ 9.3.4 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

§ 9.3.5 The Contractor shall review subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any subcontractor(s) or any other person or entity (e.g. a supplier) including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

§ 9.3.6.1 PREVAILING WAGES
The Project is subject to the requirements of Texas Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Contractor, and any subcontractor under him, to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 9.3.6.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the work at the time of construction.

§ 9.3.6.3 A Contractor or Subcontractor who violates the provisions of Subsections 9.3.6.1 or 9.3.6.2 shall pay to Owner the sum of SIXTY AND NO/100 DOLLARS ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 9.4 CRIMINAL HISTORY RECORDS CHECKS
§ 9.4.1 For purposes of this Section 9.4. (and all subsections), the following definitions shall be applicable:

.1 "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.

.2 "Covered Employees", shall mean, all employees of Contractor, as well as employees of Contractor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

§ 9.4.2 Unless otherwise exempt from providing such information by any provision in Texas Education Code, Section 22.08341 (the "Statute"), the Contractor agrees, that prior to commencement of work under this Agreement, using the

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form promulgated by the Owner or such other form approved by the Owner, Contractor will arrange with the Owner to obtain any national criminal history record information ("CHRI") required pursuant to the Statute on all of Contractor's employees, independent contractors, agents, or Subcontractors, Contractor's Subcontractors of every tier ("Subcontractors"), Subcontractors' employees, independent contractors, agents, or sub-subcontractors, if any of these persons is a "Covered Employee" as defined in Section § 9.4.1 and shall reimburse the Owner for the costs and expenses associated with obtaining the required CHRI.

§ 9.4.3 For purposes of this Section a person does not have the opportunity for direct contact with students if:

.1 the public work does not involve the construction, alteration, or repair of an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code ("Instructional Facility);

.2 for a public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first date the facility will be used for instructional purposes; or

.3 for a public work that involves an existing Instructional Facility:

(a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and

(b) the Contractor adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

§ 9.4.4 Any Covered Employee that has during the preceding thirty (30) years, been convicted of one of the following offenses, if at the time of the offense the victim was under eighteen (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 to (a) or (b) under federal law or the laws of another state ("Disqualifying Criminal History Offense") shall be disqualified and prohibited from performing any contract duties or services and neither the Contractor nor its Subcontractor may permit such person to provide services at an instructional facility. If a Covered Employee is determined by the Owner's review of the CHRI to have a Disqualifying Criminal History, Contractor will exclude that person from assignment to the Project. Contractor understands that it will not have access to the results of such criminal history records check, based on statewide regulations beyond the control of the Owner, and agrees to rely solely on the judgment of the Owner as to whether the Covered Employee must be excluded from the Project.

§ 9.4.5 Prior to commencement of its work on the Project the Contractor will provide written certification to the Owner that either: (1) Contractor and its Subcontractors of every tier, do not have any Covered Employees, as defined; (2) are otherwise exempt from compliance with the Statute; or (3) has complied with the statutory and contractual requirements stated in Section 9.4 of this Agreement (including all subparts), as of that date, and that it:

.1 has requested a Criminal History Records Check through the District on all Covered Employees, if any, of every tier, has provided the required information to the District to do so and reimbursed the District for same;

.2 has obtained written certification from its independent contractors, and Subcontractor's s (of any tier) that they have provided the required information to the Contractor, necessary to secure the information from the District and reimbursed the Contractor for same; and

.3 have excluded any Covered Employee reported by the District to have a Disqualifying Criminal History from assignment to the Project.

Further, Contractor agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses, during the performance of the Work, Contractor will immediately remove the Covered Employee from District's property or other location where students are regularly present, and notify the District of said removal within three (3) days of doing so. Contractor understands that any failure to comply with the requirements of this section may be grounds for termination of this Agreement, in accordance with Article VI, Termination.

§ 9.5
(Paragraphs deleted)

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Warranty

§ 9.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good 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. 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 under normal usage.

§ 9.5.2 The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties from subcontractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

§ 9.5.3 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 9.5.4 The warranty provided in Section 9.5 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 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 Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 9.5.5 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 9.5.1 and 9.5.2 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 9.5.6 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 the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, shall have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, the dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner on re-inspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the re-inspection. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the work without interruption until accepted by the Owner, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 9.5.7 Warranties shall become effective on a date established by the Owner 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, except for work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the work is completed or corrected and accepted by the Owner or the date of final payment.

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§ 9.6 Taxes

The Contractor shall not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes. CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

(Paragraphs deleted)

§ 9.7

(Paragraphs deleted)

Permits, Fees, Notices, and Compliance with Laws

§ 9.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as 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 legally required at the time bids are received or negotiations concluded.

§ 9.7.2 In performing its obligations hereunder, the Contractor shall comply fully with all applicable Federal, State and Local laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the Owner of such compliance. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from, arising out of, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees.

§ 9.8 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

(Paragraphs deleted)

§ 9.9 Contractor's Construction Schedules

§ 9.9.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project but not less than monthly, 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.

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

(Paragraph deleted)

§ 9.10

(Paragraphs deleted)

Submittals

§ 9.10.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. 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. The Work shall be in accordance with approved submittals.

§ 9.10.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

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§ 9.10.3 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 or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.11 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor will abide by all applicable rules and regulations of the Owner with respect to conduct, including smoking, possession or consumption of alcohol or drugs, parking of vehicles and entry into adjacent facilities owned by the Owner.

§ 9.12 Cutting and Patching

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

§ 9.13 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and 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 material from and about the Project. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials, and shall clean renovated areas.

§ 9.14 Access to Work

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

§ 9.15 Royalties, Patents and Copyrights

THE CONTRACTOR SHALL PAY ALL ROYALTIES AND LICENSE FEES. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES DEFEND AGAINST ANY AND ALL SUITS, CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS ALLEGED TO HAVE RESULTED FROM CONTRACTOR'S INFRINGEMENT, AND SHALL INDEMNIFY AND HOLD THE OWNER THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM LOSS ON ACCOUNT THEREOF, INCLUDING ATTORNEY'S FEES (AS PERMITTED BY STATUTE), BUT SHALL NOT BE RESPONSIBLE FOR 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 PROVIDED BY THE OWNER OR PREPARED BY THE ARCHITECT. HOWEVER, IF AN INFRINGEMENT OF A COPYRIGHT OR PATENT ATTRIBUTABLE TO THE OWNER OR ARCHITECT, IS DISCOVERED BY, OR MADE KNOWN TO, THE CONTRACTOR, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOSS UNLESS THE INFORMATION IS PROMPTLY FURNISHED TO THE OWNER AND THE ARCHITECT.

(Paragraphs deleted)

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§ 9.16 Indemnification

§ 9.16.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND (EXCEPT AS LIMITED BELOW) AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES (HEREINAFTER IN THIS SECTION 3.18 "OWNER"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), 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), INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEMTHE CONTRACTOR, 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 THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. 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 9.16.

§ 9.16.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 9.16 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 9.16.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

§ 9.16.3 THE DUTY TO DEFEND SET OUT ABOVE SHALL NOT APPLY IN THE EVENT THAT THE CLAIM IS BASED, IN WHOLE OR IN PART, ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE OWNER. NOTWITHSTANDING THE FOREGOING, THE CONTRACTOR AGREES TO REIMBURSE THE OWNER'S REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE CONTRACTOR'S LIABILITY.

§ 9.16.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, 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 THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 9.16.1..

§ 9.16.5 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, the Architect and their respective agents, consultants, and representatives pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection,

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occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, the Architect and their respective agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

§ 9.16.6 The provisions of Article 9.16 in its entirety shall survive the completion, termination or expiration of this contract.

§ 9.17 ANTITRUST VIOLATION. To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

ARTICLE 10 ARCHITECT

§ 10.1 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 of the Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 [Paragraph Deleted.]

§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction 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, and delivered on time. In addition, the Architect or its structural consultant will (1) provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable; and (2) provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third-party laboratory or testing services to assist the Architect and Owner.

§ 10.4 On the basis of the site observations, the Architect will keep the Owner reasonably informed about the progress and quality of the Work. The Architect shall promptly report to the Owner and Contractor orally regarding: (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. An oral notification of defects and deficiencies observed in the Work shall be followed by a notice in writing to the Owner and Contractor specifying the defect(s), non-conforming Work, deviations from the Contract Documents and corrective actions taken or recommended. 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 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.

§ 10.5 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, in accordance with the Contract Documents, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The Architect or the Owner has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Architect will review and approve 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.

§ 10.8 Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Architect will make initial decisions on all claims,

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disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.9 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 11 SUBCONTRACTORS

§ 11.1 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.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, in writing, of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the 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 the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

§ 11.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 11.4.1 Each subcontract agreement for any unperformed portion of the Work is assigned by the Contractor to the Owner provided that:

.1 assignment is effective only after termination of the Contract by the Owner or abandonment of the Project by the Contractor and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing;

.2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond relating to the Contract; and

.3 The Subcontractor provides bonds as required by law of the prime contractors and by Owner.

Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for site access staging, introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

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ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive. Acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the Change Order.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost plus the Contractor's allocated percent for profit and overhead, subject to equitable adjustment as approved by the Owner. When Change Orders are indicated to be paid from a contingency allowance, if any, identified in the Contract Documents, the Contractor's supervision and all other overhead items and profit shall be deemed to be included in the Contract Sum, and not in the contingency allowance.

§ 13.3 The Architect will have authority 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 shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

§ 13.4 If physical conditions are encountered at the site which are subsurface or otherwise concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents, the Contractor shall notify the Owner of such *conditions promptly before conditions are disturbed, and in no event more than three (3) days after first observation* of the conditions. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Section 21.5.

ARTICLE 14 TIME

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

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

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

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the

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Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

§ 14.6 The Owner, except as provided for in this Subsection 14.6, shall not be liable to the Contractor for delay to the Contractor's work by the act, neglect or default of the Owner, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner delay the Contractor in the work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for such Owner-caused delays.

§ 14.7 This Agreement does not permit the recovery of damages by the Contractor for delay, disruption or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price as applicable, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, or, in the case of a Guaranteed Maximum Price, concurrent with the Guaranteed Maximum Price Proposal, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. 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.

§ 15.1.2 [Paragraph Deleted.]

§ 15.2 Control Estimate [Paragraph Deleted.]

(Paragraphs deleted)

§ 15.3 Applications for Payment

§ 15.3.1 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 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect withheld; and include any revised cost control information required by the terms of this Agreement. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor has not been invoiced by a Subcontractor or supplier, unless such Work was self-performed; in such case, only portions of Work actually performed shall be included on the Contractor's request for payment.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 If approved in advance by the Owner, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

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§ 15.4 Certificates for Payment

§ 15.4.1 In each Application for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of the Application, that 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 that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmens' liens on the Work, and that releases from all subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner that the Architect has observed the progress of the Work and determined that, in the Architect's professional opinion based on the Architect's evaluations of the Work and the data in the Application for Payment, that, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect in writing to the Owner. 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 suppliers and other data unless requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

§ 15.4.3 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 15.4.2 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 15.4.1. If the Contractor and the 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 9.2.2, 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 suppliers 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 and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
.7 repeated failure to carry out the Work in accordance with the Contract Documents;
.8 delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of subcontractors and insurance requirements;
.9 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract Time;
.10 evidence of financial inability to perform the Contract fully;
.11 failure to submit record documents required by the Contract; or
.12 failure of the Contractor to perform any other obligations of the Contract.

The Owner shall not be deemed in default by reason of withholding payment as provided for in Subsection 15.4.3.

§ 15.4.4 If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

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§ 15.5 Progress Payments

§ 15.5.1 In compliance with Texas Government Code Section 2251.022, the Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its subcontractors as are applicable to the contractor hereunder, and if the Owner so requests, shall provide copies of such subcontractor payments to the Owner. If the Contractor has failed to make payment promptly to the Contractor's subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 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.

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.5.5 The Contractor shall, as a condition precedent to any obligation of the Owner under this Agreement, provide to the Owner payment and performance bonds in the full penal amount of the Contract to the extent required by Texas Government Code Chapter 2253.

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. In the event substantial completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until substantial completion is achieved.

§ 15.6.2 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.

§ 15.6.3 Upon receipt of the Contractor's list, the Architect, accompanied by the Owner or Owner's representative, at the Owner's option, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 15.6.5 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 15.7. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon receipt by the Owner of Consent of Surety to Final Payment, make payment of retainage on all or a part of the Work accepted.

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§ 15.7 Final Completion and Final Payment

§ 15.7.1 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner (at Owner's option) will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Work has been completed in accordance with the Contract Documents and that the remainder of the Contract Sum, including all retainage, less any amount withheld pursuant to the Contract and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 15.7.2 The Contractor shall not be entitled to final payment unless and until it submits to the Owner its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

§ 15.7.3 The

(Paragraphs deleted)

Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the issuance of Owner's final Certificate for Payment and compliance with all requirements of Section 15.7.2. Owner shall be entitled to deduct out of any sums due to Contractor at Final Payment, any or all liquidated damages due Owner in accordance with the Contract Documents.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

§ 15.7.5 AUDIT

Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than five (5) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 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. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; 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.

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 and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property 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

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by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.

§ 16.1.1 Contractor's employees, agents, and subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Contractor, its employees, agents, and subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

§ 16.1.2 Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

§ 16.1.3 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition. If such notice is provided orally, written confirmation of such notice by Contractor shall be provided not later than one (1) business day following such notification. Owner shall not be responsible for materials or substances brought to the site by the Contractor. 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 shutdown, delay, and start-up.

§ 16.2.2 [Paragraph Deleted.]

§ 16.2.3 [Paragraph Deleted.]

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain in force insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the table below, the Agreement, or elsewhere in the Contract Documents. No work will be commenced, and no equipment or materials may be shipped, until all requirements of Article 17 have been satisfied, satisfactory evidence of insurance has been provided, and all required insurance is in full force and effect. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Texas. 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. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others. Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 17.1.2. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4.

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§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ONE MILLION DOLLARS ($1,000,000.00) each occurrence, TWO MILLION DOLLARS ($2,000,000.00) general aggregate, for which a Designated Construction Project Aggregate Limit shall be provided, and ONE MILLION DOLLARS ($1,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

.1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
.2 personal and advertising injury;
.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
.4 bodily injury or property damage arising out of completed operations; and
.5 the Contractor's indemnity obligations under Section 9.16.

§ 17.1.2.1 The Contractor's Commercial General Liability policy under this Section 17.1.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
.2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
.3 Claims for bodily injury other than to employees of the insured.
.4 Claims for indemnity under Section 9.16 arising out of injury to employees of the insured.
.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
.8 Claims related to roofing, if the Work involves roofing.
.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
.10 Claims related to earth subsidence or movement, where the Work involves such hazards.
.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than ONE MILLION DOLLARS ($1,000,000.00) 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.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, 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.

§ 17.1.5 Workers' Compensation at statutory limits including all liability arising out of Contractor's employment of workers and anyone for whom Contractor shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.

§17.1.5.1 Workers' Compensation Insurance Coverage

.1 **Definitions:**

.1.1 **Certificate of coverage ("Certificate").** A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

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.1.2 **Duration of the Project.** Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

.1.3 **Persons providing services on the Project ("subcontractor" in Texas Labor Code §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 contracts directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

.2 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.

.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

.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 Owner showing that coverage has been extended.

.5 The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:

.5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.5.2 no later than seven (7) 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.

.6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

.7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

.8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, 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.

.9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:

.9.1 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;

.9.2 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;

.9.3 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;

.9.4 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;

.9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

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.9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.

.10 By signing this 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 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 Texas Department of Insurance, 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 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [28 TAC §110.110(c)(7)]

§ 17.1.6 Employers' Liability with policy limits not less than ONE MILLION DOLLARS ($1,000,000.00) each accident, ONE MILLION DOLLARS ($1,000,000.00) each employee, and TWO MILLION DOLLARS ($2,000,000.00) policy limit.

§ 17.1.7 [Paragraph Deleted.]

§ 17.1.8 [Paragraph Deleted.]

§ 17.1.9 [Paragraph Deleted.]

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability, Automobile Liability and excess or umbrella liability policy.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Contractor. If the insurance is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage and automobile liability coverage required by this Section 17.1 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 for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within ten (10) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the

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lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.13.1 Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 17.1.1.

§ 17.1.14 Other Insurance Provided by the Contractor

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

Builder's Risk. Property insurance on an "All Risk" completed value form sufficient to cover the total value of the entire Project on a replacement costs basis, including materials in transit and stored off site. The coverage required under this Section 17.1.14 shall:

.1 be written for no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others,

.2 provide coverage for direct physical loss or damage resulting from all perils, and shall not exclude the risks of fire, lightening, explosion, theft, vandalism, malicious mischief, collapse, earthquake, hurricane, flood, or windstorm,

(Table deleted)

.3 provide coverage for ensuring loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials,

.4 provide protection on a full replacement cost basis for boiler and machinery equipment during installation, during testing, and until acceptance by Owner,

.5 cover debris removal, including demolition occasioned by enforcement of any applicably legal requirements,

.6 cover reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses,

.7 provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup,

.8 include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds.

§ 17.1.15 The Contractor shall disclose to the Owner the amount of any deductible and the Contractor shall be responsible for losses within the deductible. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, the Contractor shall bear all reasonable costs properly attributable thereto. The property insurance shall be maintained until Substantial Completion and thereafter as required by this Section 17.1, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. Unless the parties agree otherwise, upon Substantial Completion, the Contractor shall continue the insurance required by this Section 17.1 or, if necessary, replace the insurance policy required under this Section 17.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Article 18. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance.

§ 17.2 Owner's Insurance [Paragraphs Deleted.]

(Table deleted)

(Paragraphs deleted)

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum.

§ 17.3.2 The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee.

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§ 17.3.3 The Payment and Performance Bond shall meet requirements of Chapter 2253 of the Texas Governmental Code. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for this Project.

Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company=s capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

The Sureties shall promptly file a signed copy of the Contract, Performance, and Payment Bonds with the Owner in full compliance with Chapter 2253 of the Texas Governmental Code or, in the case of a Construction Manager, as required by Article 8 of the AIA Document A133-2009.

§ 17.3.4 All bonds will be reviewed by the Architect for compliance with the Contract Documents prior to execution of the contract. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's representative for review and decision.

§ 17.3.5 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.

§ 17.3.6 Upon the request in writing 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 permit a copy to be made.

§ 17.3.7 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the Contractor's bonds becomes insufficient, 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) business days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld.

§ 17.3.8 By inclusion of this Section 17.3.8 in the Contract Documents, the surety which issues the bonds is hereby notified that the Owner, the Architect, and their agents and employees do not represent and will not be responsible for the surety's interests during the course of the Work. To protect its interests, the surety shall have the right to attend pay estimate meetings, review Applications for Payment when requested in writing by them, comment upon and make recommendations regarding payments, and inspect the Work in the presence of the Contractor and the Architect. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner, the Architect, their agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Contractor, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or Owner 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 and will be subject to offset by the Owner at Final Payment..

§ 18.1.1 If a portion of the Work has been covered and the Owner's representative has specifically requested to see such Work, or if any known deficiencies exist, or the Contract Documents specifically request inspection prior to its being covered, the Owner's representative may request to see that Work and it shall be uncovered by the Contractor. If the work is not in accordance with the Contract Documents, it must be corrected and covered at the expense of the Contractor. If the Work is according to the Contract Documents, the cost to restore cover on the Work is at the sole expense of the Contractor.

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§ 18.2 In addition to the Contractor's obligations under Section 9.5, 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 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Owner shall give such notice of the condition to the Contractor with reasonable promptness after discovery of the condition. The Contractor shall correct it promptly after receipt of 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.

§ 18.2.1 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of this Agreement or defects in the Work.

§ 18.2.2 The provisions of Section 18.2 apply to Work done by subcontractors of the Contractor as well as work done directly by employees of the Contractor. The provisions of this Subsection 18.2.2 shall not apply to corrective work attributable solely to the acts or omissions of any separate Contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Subsection 18.2.2 to the extent not covered by insurance shall be borne by Contractor.

§ 18.2.3 If, however, Owner and Contractor deem it inexpedient to require the correction of work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum and the Stipulated Sum shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

§ 18.2.4 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 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.

§ 18.5 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that 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.

§ 19.2 Governing Law

The Contract shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the county in which the Project is located. Any litigation to enforce or interpret any terms of the Contract or any other litigation arising out of or as a result of the Contract shall be brought in the State courts of the county in which the Project is located. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is consent to suit.

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§ 19.3 Tests and Inspections
The Owner will contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for the acceptance of the Work by the Owner. The Contractor shall give timely notice to the persons or entities selected by the Owner of the need for such services.

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

Mr. Ruben Treviño
Executive Director of Facilities, Maintenance, and Operations
McAllen Independent School District
2000 N. 23rd St.
McAllen, Texas 78501-6126
Phone: 956-618-6000
E-mail: **ruben.trevino@mcallenisd.net**

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

Wayne Huntsinger
Vice President of Sports Lighting
Hellas Construction, Inc.
12000 West Parmer Lane
Austin, Texas 78613
Phone: 512-748-1895
Fax: 512-250-1960

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

§ 19.7 Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at $100,000 or more and if the Contractor has at least ten (10) full time employees, then the Contractor, by its execution of this Agreement represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 19.7.1 Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at $100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the District that the Contractor does not boycott energy companies and will not boycott energy companies during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 19.7.2 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at $100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the District that the Contractor 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. This section does not apply to a sole proprietorship.

§ 19.7.3 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.

§ 19.7.4 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

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§ 19.7.5 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars ($1,000,000.00) or more, the Contractor agrees to : (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the contract, either: (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Work is stopped for a period of thirty (30) 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 which requires all Work to be stopped;

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

.3 because the Owner has not made payment within the time stated in the Contract Documents.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents;

.5 fails to furnish the Owner, upon written request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;

.6 engages in or permits serious or repeated worker misconduct in violation of Article 9.3;

.7 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or

.8 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 20.2.2 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 (7) days written notice, terminate employment of the Contractor and may, subject to any prior rights of Surety:

.1 Take possession of the site and of all materials, equipment, tools, and construction equipment, and machinery thereof owned by the Contractor.

.2 Accept assignment of subcontracts.

.3 Finish the Work by whatever reasonable method the Owner may deem expedient.

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the Contract Documents.

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§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Any further payment shall be limited to amounts actually earned to the date of termination.

§ 20.2.4 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 Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and

(Paragraphs deleted)

profit only on that portion of the Work executed.

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or 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. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims by the Contractor must be initiated within twenty-one (21) days after occurrence or of the event giving rise to such Claim.

§ 21.2 Notice of Claims

§ 21.2.1 Claims by the Contractor, shall be initiated by notice to the Owner and to the Architect. Claims under this Section shall be initiated within 21 calendar days after the occurrence of the event giving rise to such Claim or within 21 calendar days after the claimant first knew or should have known of the condition giving rise to the Claim, whichever is earlier. If the full impact cannot be assessed as of the date of the Notice, then Notice shall be provided and amended by a second notice at the earliest date that is reasonably possible, but in no event later than the date of Contractor's Application for Payment covering the period in which the impact can be assessed and quantified.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required. If Texas Government Code, Chapter 2272 is applicable to the Claim, the Owner shall comply with the requirements set out therein as a condition precedent to any initiation of any litigation.

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law. The Contractor waives all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 MEDIATION

§ 21.5.1 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

§ 21.5.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.

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§ 21.5.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

§ 21.5.4 Venue for any mediation or lawsuit arising under this contract shall be in the county in which the Project is located. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is consent to suit.

§ 21.6 The Contractor shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Owner not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, and shall include documentation demonstrating the nature and duration of the delays or disruptions.

§ 21.7 Waiver of Lien. It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

§ 21.8 [Paragraph Deleted.]

§ 21.9 [Paragraph Deleted.]

§ 21.10 Continuing Contract Performance
Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents.

§ 21.11 CALCULATING CLAIMS FOR DAMAGES
Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

.1 No indirect or consequential damages will be allowed.
.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.
.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
.4 No damages will be allowed for home office overhead or other home office changes or any Eichleay formula calculation.

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

MCALLEN INDEPENDENT SCHOOL DISTRICT	**HELLAS CONSTRUCTION, INC.**
OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
(Printed name and title)	*(Printed name and title)*

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PAGE 1

AGREEMENT made as of the FOURTEENTH day of FEBRUARY in the year TWO THOUSAND TWENTY-THREE

...

McAllen Independent School District, a public school district and political subdivision of the State of Texas
2000 North 23rd Street
McAllen, Texas 78501

...

Hellas Construction, Inc.
12000 West Parmer Lane
Austin, Texas 78613
Phone: 512-250-2910
Fax: 512-250-1960

...

Request for Cooperative Quote 2023-1026 McAllen High School Football Field Sports Lighting (Owner Contract No: 2023-156)
2021 La Vista Avenue
McAllen, Texas 78501

...

Halff Associates, Inc.
5000 W. Military Hwy, Suite 100
McAllen, Texas 78503
Phone: 956-664-0286

The Owner and Contractor agree as ~~follows.~~follows:

PAGE 2

EXHIBIT A DETERMINATION OF THE COST OF THE WORK

Note: ANY reference to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos

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Trevino Kyle & Robinson P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

PAGE 3

[X] Established as follows:

...

The commencement date will be the first business day after the Contractor's receipt of the written notice to proceed. The notice to proceed shall not be issued by Architect until the Agreement has been signed by the Contractor, approved by the Owner's Board of Trustees, signed by the Owner's authorized representative, and Owner and Architect have received all required payment and performance bonds and insurance, in compliance with Article 11 of the AIA document A201-2017

...

[X] Not later than ~~(~~ ONE HUNDRED (100) calendar days from the date of commencement of the Work.

...

[X] Stipulated Sum, in accordance with Section 3.2 ~~below~~

~~[ ] Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below~~

~~[ ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below~~

PAGE 4

§ 3.2 The Stipulated Sum shall be ~~($),~~ THREE HUNDRED TWENTY-FIVE THOUSAND SEVEN HUNDRED FORTY-SIX AND NO/100 DOLLARS ($325,746.00), subject to additions and deductions as provided in the Contract Documents.

...

None.

...

None.

...

Owner's Contingency for use only upon the Owner's instructions	$10,000
Electrical Service Utility Installation Contingency	$5,000

§ 3.2.3.1 The Owner's Contingency may be used only at the direction of the Owner and only after execution of an Allowance Expenditure Authorization ("AEA") signed by the Owner and Architect. Use of other contingency allowances listed above shall be only as approved by the Architect in accordance with the Owner's instructions, and only by AEA which shall designate amounts to be charged to the allowance. Unused amounts, if any, remaining in the Owner's Contingency and any Allowance shall be credited to the Owner by deductive Change Order at Project closeout. contingency

§ 3.3 **Cost of the Work Plus Contractor's Fee** [Paragraph Deleted.]

~~§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.~~

~~§ 3.3.2 The Contractor's Fee:~~

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(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed ($), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

[Paragraph Deleted.]

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

[Paragraph Deleted.]

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

Item	Units and Limitations	Price per Unit ($0.00)

[Paragraph Deleted.]

§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price

[Paragraph Deleted.]

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

[Paragraph Deleted.]

§ 3.4.3.6 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.
[Paragraph Deleted.]

§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract

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~~Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.~~
[Paragraph Deleted.]
PAGE 5

If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work: TWO HUNDRED FIFTY AND 00/100 DOLLARS ($250.00).

§ 3.5.1 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 3.5.2 In addition to Liquidated Damages, if any, the Contractor shall reimburse the Owner for any Supplemental or Additional Services of the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor or caused by Contractor's failure to achieve the applicable Contract Time requirements.

...

§ 4.1.1 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 for undisputed amounts in the manner and within the time provided in the Contract Documents, on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. Payment shall be made by the Owner of undisputed amounts certified by the Architect not later than forty-five (45) days of its receipt of the Certificate for Payment from the Architect, if Owner's Board of Trustees normally meets once a month, or thirty (30) days of its receipt of the Certificate for Payment from the Architect if the Owner's Board of Trustees normally meets twice a month. Owner shall provide written notification to Contractor within twenty-one (21) days if Owner disputes the Contractor's Certificate for Payment, pursuant to Texas Government Code section 2251.042 et. seq., listing the specific reasons for non-payment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents or Construction Documents. 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 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 may require. This schedule shall be used as the basis for reviewing Contractor's Applications for Payment. Applications for Payment shall comply with all requirements of this Contract, including submission of the required certifications, and shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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

month. The Contractor's Application for Payment shall be received by the Architect not later than the last day of a month in order to assure timely payment in accordance with §4.1.3 of this Article.

§ 4.1.3 ~~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 certified amount to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~The Architect shall have seven (7) business days from the date of its receipt of a properly documented Application for Payment from the Contractor to approve or reject all or any part of the Application for Payment and submit its Certificate for Payment to the Owner. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within forty-five (45) days, if Owner's Board of Trustees meets once a month, or thirty (30) days, if Owner's Board of Trustees meets twice a month, of receipt of the Certificate for Payment from the Architect

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and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.
PAGE 6

§ 4.1.4 For each progress ~~payment made prior to Substantial Completion of the Work, the~~ payment, the Owner may withhold retainage from the payment otherwise due as follows:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

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

.1 Take 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, less retainage of five percent (5%). Pending final determination of the cost to the Owner of changes in the Work, amounts not in dispute shall be included;

.2 Add 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), less retainage of five percent (5%);

.3 Subtract the aggregate of previous payments made by the Owner;

.4 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate of Payment a provided for in this Contract; and

.5 Upon Substantial Completion of the Work, add a sum sufficient to increase the total payments to ninety-five percent (95%) of the full amount of the Contract Sum, less such amounts as the owner shall determine is necessary for incomplete work and unsettled claims.

§ 4.1.5 ~~Payments~~ Undisputed 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.)*~~

~~%~~ in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

...

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall not be made by the Owner to the Contractor ~~when~~until:

...

.2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with ~~or without~~ a Guaranteed Maximum Price;~~and~~

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section ~~15.7.1.~~15.7.1; and

.4 Owner has received consent of surety to final payment.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than ~~30~~ 31 days after ~~the issuance~~ Owner's receipt of the Architect's final Certificate for Payment, ~~or as follows:~~

and satisfaction of all conditions set out in § 4.2.1.

...

[X] Litigation in a court of competent jurisdiction
PAGE 7

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See Table of Contents attached hereto as Exhibit B.

...

See Table of Contents attached hereto as Exhibit B-1.

...

[ ] ~~Exhibit A, Determination of the Cost of the Work.~~ [X] Exhibit A, Hellas Construction Inc. Proposal for McAllen Practice Lighting, dated January 10, 2023..

PAGE 8

Exhibit B, Table of Contents
Exhibit B-1, Index of Drawings

...

~~The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. 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. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.~~ § 7.1.1 The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, Project Manual and the Bid or Proposal Documents prepared and submitted by the Owner and the Contractor's Bid or Proposal submitted by the Contractor, to the extent they do not conflict with the terms of this Agreement, and other documents listed in this Agreement and Modifications issued after execution of this Agreement. 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. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.1.2 Precedence Of The Contract Documents. The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

.1 Contract Modifications signed by Contractor and Owner.
.2 Addenda, with those of later date having precedence over those of earlier date.
.3 Specifications and Drawings – to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of work indicated.
.4 The Standard Abbreviated Form of Agreement Between Owner and Contractor – AIA Document A104-2017.
.5 Bid/Proposal Documents including the Project Manual, Contractor's Bid or Proposal Documents (to the extent such Bid or Proposal submitted by the Contractor is part of the Contract Documents and is not inconsistent with other portions of the Contract Documents)

§ 7.1.3 Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Owner.

§ 7.1.4 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall apply.

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§ 7.1.5 Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

§ 7.1.6 Signing the Construction Agreement shall be considered as signing all contract documents identified.
PAGE 9

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
PAGE 10

§ 7.10 Relationship of the Parties
~~**Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration 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 and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.~~[Paragraph Deleted.]

...

~~§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.~~

§ 8.1.1.1 The Owner is the Board of Trustees of the McAllen Independent School District, and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority.

§ 8.1.1.2 The Contractor acknowledges that no lien rights exist with respect to public property.

§ 8.1.2 The Owner shall furnish ~~all necessary surveys and~~ a legal description of the site.

§ 8.1.3 ~~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.~~Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delay, disruption or acceleration of the Work. This limitation on damages is further subject to the limitations set forth in Article 14.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section ~~9.6.1,~~ 9.7.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

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§ 8.1.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

...

If the Contractor fails to correct Work ~~which is~~ that is defective or not in accordance with the requirements of the Contract Documents, ~~or repeatedly~~ fails to timely carry out the Work in accordance with the Contract Documents, or is in default of any of its material obligations hereunder, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is 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.

...

If the Contractor ~~defaults or neglects to~~ is in default in any of its material obligations hereunder, neglects to timely carry out the Work in accordance with the Contract Documents, ~~and~~ or fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default ~~or neglect~~ or non-conforming or defective Work with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or ~~neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 15.4.3,~~ such non-conforming or defective Work and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor. The Owner may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such ~~deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.~~ deficiencies.

§ 9.2.1 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. The Contractor shall assign a Superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The Superintendent shall be on the Project, in this capacity, at all times while work on the Project is in progress.

...

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

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient worker and labor, eligible to work in accordance with state and federal law. Contractor shall appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for 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.

...

§ 9.3.2.1 The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

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§ 9.3.2.2 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification. Whether or not any proposed substitution is accepted by the Owner, the Contractor shall reimburse the Owner for any costs incurred, including consulting fees charged by the Architect or other consultants for evaluating each proposed substitute.

~~§ 9.4 Warranty~~

~~The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good 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. 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 under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.~~

§ 9.3.4 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

§ 9.3.5 The Contractor shall review subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any subcontractor(s) or any other person or entity (e.g. a supplier) including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

§ 9.3.6.1 PREVAILING WAGES

The Project is subject to the requirements of Texas Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Contractor, and any subcontractor under him, to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 9.3.6.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the work at the time of construction.

§ 9.3.6.3 A Contractor or Subcontractor who violates the provisions of Subsections 9.3.6.1 or 9.3.6.2 shall pay to Owner the sum of SIXTY AND NO/100 DOLLARS ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 9.4 CRIMINAL HISTORY RECORDS CHECKS

§ 9.4.1 For purposes of this Section 9.4. (and all subsections), the following definitions shall be applicable:

.1 "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.

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.2 "Covered Employees", shall mean, all employees of Contractor, as well as employees of Contractor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

§ 9.4.2 Unless otherwise exempt from providing such information by any provision in Texas Education Code, Section 22.08341 (the "Statute"), the Contractor agrees, that prior to commencement of work under this Agreement, using the form promulgated by the Owner or such other form approved by the Owner, Contractor will arrange with the Owner to obtain any national criminal history record information ("CHRI") required pursuant to the Statute on all of Contractor's employees, independent contractors, agents, or Subcontractors, Contractor's Subcontractors of every tier ("Subcontractors"), Subcontractors' employees, independent contractors, agents, or sub-subcontractors, if any of these persons is a "Covered Employee" as defined in Section § 9.4.1 and shall reimburse the Owner for the costs and expenses associated with obtaining the required CHRI.

§ 9.4.3 For purposes of this Section a person does not have the opportunity for direct contact with students if:

.1 the public work does not involve the construction, alteration, or repair of an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code ("Instructional Facility);

.2 for a public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first date the facility will be used for instructional purposes; or

.3 for a public work that involves an existing Instructional Facility:

(a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and

(b) the Contractor adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

§ 9.4.4 Any Covered Employee that has during the preceding thirty (30) years, been convicted of one of the following offenses, if at the time of the offense the victim was under eighteen (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 to (a) or (b) under federal law or the laws of another state ("Disqualifying Criminal History Offense") shall be disqualified and prohibited from performing any contract duties or services and neither the Contractor nor its Subcontractor may permit such person to provide services at an instructional facility. If a Covered Employee is determined by the Owner's review of the CHRI to have a Disqualifying Criminal History, Contractor will exclude that person from assignment to the Project. Contractor understands that it will not have access to the results of such criminal history records check, based on statewide regulations beyond the control of the Owner, and agrees to rely solely on the judgment of the Owner as to whether the Covered Employee must be excluded from the Project.

§ 9.4.5 Prior to commencement of its work on the Project the Contractor will provide written certification to the Owner that either: (1) Contractor and its Subcontractors of every tier, do not have any Covered Employees, as defined; (2) are otherwise exempt from compliance with the Statute; or (3) has complied with the statutory and contractual requirements stated in Section 9.4 of this Agreement (including all subparts), as of that date, and that it:

.1 has requested a Criminal History Records Check through the District on all Covered Employees, if any, of every tier, has provided the required information to the District to do so and reimbursed the District for same;

.2 has obtained written certification from its independent contractors, and Subcontractor's s (of any tier) that they have provided the required information to the Contractor, necessary to secure the information from the District and reimbursed the Contractor for same; and

.3 have excluded any Covered Employee reported by the District to have a Disqualifying Criminal History from assignment to the Project.

Further, Contractor agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses, during the performance of the Work, Contractor will immediately remove the Covered Employee from District's property or other location where students are regularly present, and

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notify the District of said removal within three (3) days of doing so. Contractor understands that any failure to comply with the requirements of this section may be grounds for termination of this Agreement, in accordance with Article VI, Termination.

§ 9.5 ~~Taxes~~

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

Warranty

§ 9.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good 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. 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 under normal usage.

§ 9.5.2 The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties from subcontractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

§ 9.5.3 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 9.5.4 The warranty provided in Section 9.5 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 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 Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 9.5.5 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 9.5.1 and 9.5.2 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 9.5.6 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 the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, shall have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, the dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner on re-inspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the re-inspection. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the work without interruption until accepted by the Owner, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

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§ 9.5.7 Warranties shall become effective on a date established by the Owner 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, except for work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the work is completed or corrected and accepted by the Owner or the date of final payment.

§ 9.6 ~~Permits, Fees, Notices, and Compliance with Laws~~Taxes

The Contractor shall not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes. CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

~~§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as 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 legally required at the time bids are received or negotiations concluded.~~

~~§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.~~

§ 9.7 Allowances

~~The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.~~

Permits, Fees, Notices, and Compliance with Laws

§ 9.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as 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 legally required at the time bids are received or negotiations concluded.

§ 9.7.2 In performing its obligations hereunder, the Contractor shall comply fully with all applicable Federal, State and Local laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the Owner of such compliance. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from, arising out of, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees.

§ 9.8 ~~Contractor's Construction Schedules~~Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

~~§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised 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.~~

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~~§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect.~~

§ 9.9 ~~Submittals~~Contractor's Construction Schedules

§ 9.9.1 The ~~Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. 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. The Work shall be in accordance with approved submittals.~~ Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project but not less than monthly, 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.

§ 9.9.2 ~~Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.~~The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect.

~~§ 9.9.3 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 or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.~~

~~§ 9.10 Use of Site~~

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

Submittals

§ 9.10.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. 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. The Work shall be in accordance with approved submittals.

§ 9.10.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.10.3 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 or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided

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by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.11 ~~Cutting and Patching~~Use of Site

The Contractor shall ~~be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.~~confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor will abide by all applicable rules and regulations of the Owner with respect to conduct, including smoking, possession or consumption of alcohol or drugs, parking of vehicles and entry into adjacent facilities owned by the Owner.

§ 9.12 ~~Cleaning Up~~Cutting and Patching

The Contractor shall ~~keep the premises and surrounding area free from accumulation of waste materials and 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 material from and about the Project.~~be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.13 ~~Access to Work~~Cleaning Up

The ~~Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.~~Contractor shall keep the premises and surrounding area free from accumulation of waste materials and 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 material from and about the Project. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials, and shall clean renovated areas.

§ 9.14 ~~Royalties, Patents and Copyrights~~Access to Work

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 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.~~provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 9.15 ~~Indemnification~~Royalties, Patents and Copyrights

THE CONTRACTOR SHALL PAY ALL ROYALTIES AND LICENSE FEES. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES DEFEND AGAINST ANY AND ALL SUITS, CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS ALLEGED TO HAVE RESULTED FROM CONTRACTOR'S INFRINGEMENT, AND SHALL INDEMNIFY AND HOLD THE OWNER THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM LOSS ON ACCOUNT THEREOF, INCLUDING ATTORNEY'S FEES (AS PERMITTED BY STATUTE), BUT SHALL NOT BE RESPONSIBLE FOR 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 PROVIDED BY THE OWNER OR PREPARED BY THE ARCHITECT. HOWEVER, IF AN INFRINGEMENT OF A COPYRIGHT OR PATENT ATTRIBUTABLE TO THE OWNER OR ARCHITECT, IS DISCOVERED BY, OR

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MADE KNOWN TO, THE CONTRACTOR, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOSS UNLESS THE INFORMATION IS PROMPTLY FURNISHED TO THE OWNER AND THE ARCHITECT.

~~§ 9.15.1 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 which would otherwise exist as to a party or person described in this Section 9.15.1.~~

~~§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 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 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.~~

§ 9.16 Indemnification

§ 9.16.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND (EXCEPT AS LIMITED BELOW) AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES (HEREINAFTER IN THIS SECTION 3.18 "OWNER"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), 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), INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEMTHE CONTRACTOR, 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 THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. 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 9.16.

§ 9.16.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 9.16 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 9.16.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

§ 9.16.3 THE DUTY TO DEFEND SET OUT ABOVE SHALL NOT APPLY IN THE EVENT THAT THE CLAIM IS BASED, IN WHOLE OR IN PART, ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE OWNER. NOTWITHSTANDING THE FOREGOING, THE CONTRACTOR AGREES TO REIMBURSE THE OWNER'S REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE CONTRACTOR'S LIABILITY.

§ 9.16.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH

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ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, 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 THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 9.16.1..

§ 9.16.5 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, the Architect and their respective agents, consultants, and representatives pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, the Architect and their respective agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

§ 9.16.6 The provisions of Article 9.16 in its entirety shall survive the completion, termination or expiration of this contract.

§ 9.17 ANTITRUST VIOLATION. To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

§ 10.1 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.~~ of the Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 ~~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.~~[Paragraph Deleted.]

§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction 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. 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 safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.~~Documents, and delivered on time. In addition, the Architect or its structural consultant will (1) provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable; and (2) provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third-party laboratory or testing services to assist the Architect and Owner.

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§ 10.4 On the basis of the site ~~visits,~~ observations, the Architect will keep the Owner reasonably informed about the progress and quality of the ~~portion of the Work completed, and~~ Work. The Architect shall promptly report to the Owner and Contractor orally regarding: (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. An oral notification of defects and deficiencies observed in the Work shall be followed by a notice in writing to the Owner and Contractor specifying the defect(s), non-conforming Work, deviations from the Contract Documents and corrective actions taken or recommended. 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 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.

§ 10.5 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, in accordance with the Contract Documents, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The Architect or the Owner has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.
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§ 10.8 ~~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.~~ Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.
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§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and ~~Architect~~ Architect, in writing, of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

...

§ 11.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 11.4.1 Each subcontract agreement for any unperformed portion of the Work is assigned by the Contractor to the Owner provided that:

.1 assignment is effective only after termination of the Contract by the Owner or abandonment of the Project by the Contractor and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing;

.2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond relating to the Contract; and

.3 The Subcontractor provides bonds as required by law of the prime contractors and by Owner.

Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to

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those of this ~~Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.~~Contract.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for site access staging, introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.
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§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive. Acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the Change Order.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost plus the Contractor's allocated percent for profit and overhead, subject to equitable adjustment as approved by the Owner. When Change Orders are indicated to be paid from a contingency allowance, if any, identified in the Contract Documents, the Contractor's supervision and all other overhead items and profit shall be deemed to be included in the Contract Sum, and not in the contingency allowance.

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§ 13.4 If ~~concealed or unknown~~ physical conditions are encountered at the site ~~that differ materially~~ which are subsurface or otherwise concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract ~~Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.~~Documents, the Contractor shall notify the Owner of such *conditions promptly before conditions are disturbed, and in no event more than three (3) days after first observation* of the conditions. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Section 21.5.
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§ 14.6 The Owner, except as provided for in this Subsection 14.6, shall not be liable to the Contractor for delay to the Contractor's work by the act, neglect or default of the Owner, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner delay the Contractor in the work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for such Owner-caused delays.

§ 14.7 This Agreement does not permit the recovery of damages by the Contractor for delay, disruption or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

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§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price ~~pursuant to Section 3.2 or 3.4,~~ as applicable, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, or, in the case of a Guaranteed Maximum Price, concurrent with the Guaranteed Maximum Price Proposal, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. 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.

§ 15.1.2 ~~The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.~~[Paragraph Deleted.]

§ 15.2 Control Estimate [Paragraph Deleted.]

~~§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.~~

~~§ 15.2.2 The Control Estimate shall include:~~

- ~~.1 the documents enumerated in Article 6, including all Modifications thereto;~~
- ~~.2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;~~
- ~~.3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;~~
- ~~.4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment, the Owner's occupancy requirements, and the date of Substantial Completion; and~~
- ~~.5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.~~

~~§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.~~

~~§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.~~

~~§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.~~

§ 15.3.1 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 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect ~~retainage if provided for in the Contract Documents;~~ withheld; and include any revised cost control information required by ~~Section 15.2.4.~~ the terms of this Agreement. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor ~~does not intend to pay~~ has not been invoiced by a Subcontractor or

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supplier, unless such Work ~~has been performed by others whom the Contractor intends to pay.~~was self-performed; in such case, only portions of Work actually performed shall be included on the Contractor's request for payment.

...

§ 15.3.3 ~~Payments~~ If approved in advance by the Owner, 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~~ Work or for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.4.1 ~~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 of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.~~In each Application for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of the Application, that 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 that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmens' liens on the Work, and that releases from all subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the ~~Owner,~~ Owner that the Architect has observed the progress of the Work and determined that, in the Architect's professional opinion based on the Architect's evaluations of the Work and the data in the Application for Payment, that, ~~to the best of the Architect's knowledge, information, and belief, the~~ Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by ~~the Architect.~~ the Architect in writing to the Owner. 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 suppliers and other data unless requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

...

.6 reasonable evidence that the Work will not be completed within the Contract Time and 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.~~the Contract Documents;

.8 delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of subcontractors and insurance requirements;

.9 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract Time;

.10 evidence of financial inability to perform the Contract fully;

.11 failure to submit record documents required by the Contract; or

.12 failure of the Contractor to perform any other obligations of the Contract.

The Owner shall not be deemed in default by reason of withholding payment as provided for in Subsection 15.4.3.

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§ 15.4.4 ~~When either party disputes the Architect's~~ If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.
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§ 15.5.1 ~~The Contractor shall pay each Subcontractor, no later than seven days after~~ In compliance with Texas Government Code Section 2251.022, the Contractor shall, within ten (10) days following 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.~~ pay all bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its subcontractors as are applicable to the contractor hereunder, and if the Owner so requests, shall provide copies of such subcontractor payments to the Owner. If the Contractor has failed to make payment promptly to the Contractor's subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

...

§ 15.5.5 The Contractor shall, as a condition precedent to any obligation of the Owner under this Agreement, provide to the Owner payment and performance bonds in the full penal amount of the Contract to the extent required by Texas Government Code Chapter 2253.

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. In the event substantial completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until substantial completion is achieved.

...

§ 15.6.3 Upon receipt of the Contractor's list, the ~~Architect~~ Architect, accompanied by the Owner or Owner's representative, at the Owner's option, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. ~~Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the 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.~~

§ 15.6.5 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 15.7. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon receipt by the Owner of Consent of Surety to Final Payment, make payment of retainage on all or a part of the Work accepted.
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§ 15.7.1 ~~Upon receipt of the Contractor's 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~~ When all of the Work is finally completed

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and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner (at Owner's option) will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been 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~~ certifying to the Owner that the Work has been completed in accordance with the Contract Documents and that the ~~entire balance found to be due the Contractor~~ remainder of the Contract Sum, including all retainage, less any amount withheld pursuant to the Contract and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 15.7.2 ~~Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or 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 costs and reasonable attorneys' fees.~~The Contractor shall not be entitled to final payment unless and until it submits to the Owner its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

§ 15.7.3 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 audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the issuance of Owner's final Certificate for Payment and compliance with all requirements of Section 15.7.2. Owner shall be entitled to deduct out of any sums due to Contractor at Final Payment, any or all liquidated damages due Owner in accordance with the Contract Documents.

...

§ 15.7.5 AUDIT

Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than five (5) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

...

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 and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property 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 16.1.2 and 16.1.3. The ~~Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable,~~

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~~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 ~~9.15.~~9.

§ 16.1.1 Contractor's employees, agents, and subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Contractor, its employees, agents, and subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

§ 16.1.2 Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

§ 16.1.3 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

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§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition. If such notice is provided orally, written confirmation of such notice by Contractor shall be provided not later than one (1) business day following such notification. Owner shall not be responsible for materials or substances brought to the site by the Contractor. 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 shutdown, delay, and start-up.

§ 16.2.2 ~~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 16.2.1 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.~~[Paragraph Deleted.]

§ 16.2.3 ~~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.~~[Paragraph Deleted.]

...

§ 17.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain in force insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in ~~this Section 17.1~~ the table below, the Agreement, or elsewhere in the Contract Documents. No work will be commenced, and no equipment or materials may be shipped, until all requirements of Article 17 have been satisfied, satisfactory evidence of insurance has been provided, and all required insurance is in full force and effect. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies

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lawfully authorized to issue insurance in ~~the jurisdiction where the Project is located.~~ the State of Texas. 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. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others. Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 17.1.2. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in ~~Section 18.4, unless a different duration is stated below:~~

Section 18.4.

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~($) each occurrence, ($) general aggregate, and ($)~~ ONE MILLION DOLLARS ($1,000,000.00) each occurrence, TWO MILLION DOLLARS ($2,000,000.00) general aggregate, for which a Designated Construction Project Aggregate Limit shall be provided, and ONE MILLION DOLLARS ($1,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

.5 the Contractor's indemnity obligations ~~under Section 9.15.~~under Section 9.16.

§ 17.1.2.1 The Contractor's Commercial General Liability policy under this Section 17.1.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

.2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.

.3 Claims for bodily injury other than to employees of the insured.

.4 Claims for indemnity under Section 9.16 arising out of injury to employees of the insured.

.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.

.8 Claims related to roofing, if the Work involves roofing.

.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.

.10 Claims related to earth subsidence or movement, where the Work involves such hazards.

.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than ~~($)~~ ONE MILLION DOLLARS ($1,000,000.00) 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.

...

§ 17.1.5 Workers' Compensation at statutory ~~limits.~~limits including all liability arising out of Contractor's employment of workers and anyone for whom Contractor shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.

§17.1.5.1 Workers' Compensation Insurance Coverage

.1 **Definitions:**

.1.1 **Certificate of coverage ("Certificate").** A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC

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Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

.1.2 **Duration of the Project.** Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

.1.3 **Persons providing services on the Project ("subcontractor" in Texas Labor Code §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 contracts directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

.2 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.

.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

.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 Owner showing that coverage has been extended.

.5 The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:

.5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.5.2 no later than seven (7) 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.

.6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

.7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

.8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, 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.

.9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:

.9.1 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;

.9.2 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;

.9.3 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;

.9.4 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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.9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

.9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.

.10 By signing this 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 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 Texas Department of Insurance, 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 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [28 TAC §110.110(c)(7)]

§ 17.1.6 Employers' Liability with policy limits not less than ~~($) each accident, ($) each employee, and ($)~~ ONE MILLION DOLLARS ($1,000,000.00) each accident, ONE MILLION DOLLARS ($1,000,000.00) each employee, and TWO MILLION DOLLARS ($2,000,000.00) policy limit.

§ 17.1.7 ~~If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ($) per claim and ($) in the aggregate.~~[Paragraph Deleted.]

§ 17.1.8 ~~If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ($) per claim and ($) in the aggregate.~~[Paragraph Deleted.]

§ 17.1.9 ~~Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ($) per claim and ($) in the aggregate.~~[Paragraph Deleted.]

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability, Automobile Liability and excess or umbrella liability policy.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Contractor. If the insurance is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage and automobile liability coverage required by this Section 17.1 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 for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and

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shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within ~~three (3)~~ ten (10) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 17.1.13.1 Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 17.1.1.
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Builder's Risk. Property insurance on an "All Risk" completed value form sufficient to cover the total value of the entire Project on a replacement costs basis, including materials in transit and stored off site. The coverage required under this Section 17.1.14 shall:

.1 be written for no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others,

.2 provide coverage for direct physical loss or damage resulting from all perils, and shall not exclude the risks of fire, lightening, explosion, theft, vandalism, malicious mischief, collapse, earthquake, hurricane, flood, or windstorm,

Coverage **~~Limits~~**

.3 provide coverage for ensuring loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials,

.4 provide protection on a full replacement cost basis for boiler and machinery equipment during installation, during testing, and until acceptance by Owner,

.5 cover debris removal, including demolition occasioned by enforcement of any applicably legal requirements,

.6 cover reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses,

.7 provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup,

.8 include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds.

§ 17.1.15 The Contractor shall disclose to the Owner the amount of any deductible and the Contractor shall be responsible for losses within the deductible. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, the Contractor shall bear all reasonable costs properly attributable thereto. The property insurance shall be maintained until Substantial Completion and thereafter as required by this Section 17.1, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. Unless the parties agree otherwise, upon Substantial Completion, the Contractor shall continue the insurance required by this Section 17.1 or, if necessary, replace the insurance policy required under this Section 17.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Article 18. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance.

§ 17.2 Owner's Insurance [Paragraphs Deleted.]
~~§ 17.2.1 Owner's Liability Insurance~~
~~The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.~~

~~§ 17.2.2 Property Insurance~~
~~§ 17.2.2.1~~ ~~The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's~~

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risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.2.2.7.2 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, to the extent permissible by such policies, the Owner waives all

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~~rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

~~§ 17.2.2.8 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. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~

~~§ 17.2.3 Other Insurance Provided by the Owner~~
~~*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*~~

~~Coverage~~ ~~Limits~~

§ 17.3.1 The ~~Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.~~Contractor is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum.

§ 17.3.2 ~~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.~~The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee.

§ 17.3.3 The Payment and Performance Bond shall meet requirements of Chapter 2253 of the Texas Governmental Code. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for this Project.

Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company=s capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

The Sureties shall promptly file a signed copy of the Contract, Performance, and Payment Bonds with the Owner in full compliance with Chapter 2253 of the Texas Governmental Code or, in the case of a Construction Manager, as required by Article 8 of the AIA Document A133-2009.

§ 17.3.4 All bonds will be reviewed by the Architect for compliance with the Contract Documents prior to execution of the contract. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's representative for review and decision.

§ 17.3.5 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.

§ 17.3.6 Upon the request in writing 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 permit a copy to be made.

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§ 17.3.7 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the Contractor's bonds becomes insufficient, 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) business days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld.

§ 17.3.8 By inclusion of this Section 17.3.8 in the Contract Documents, the surety which issues the bonds is hereby notified that the Owner, the Architect, and their agents and employees do not represent and will not be responsible for the surety's interests during the course of the Work. To protect its interests, the surety shall have the right to attend pay estimate meetings, review Applications for Payment when requested in writing by them, comment upon and make recommendations regarding payments, and inspect the Work in the presence of the Contractor and the Architect. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner, the Architect, their agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Contractor, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.
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§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or Owner 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, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.~~expense and will be subject to offset by the Owner at Final Payment..

§ 18.1.1 If a portion of the Work has been covered and the Owner's representative has specifically requested to see such Work, or if any known deficiencies exist, or the Contract Documents specifically request inspection prior to its being covered, the Owner's representative may request to see that Work and it shall be uncovered by the Contractor. If the work is not in accordance with the Contract Documents, it must be corrected and covered at the expense of the Contractor. If the Work is according to the Contract Documents, the cost to restore cover on the Work is at the sole expense of the Contractor.

§ 18.2 In addition to the Contractor's obligations under Section ~~9.4, 9.5,~~ 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 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Owner shall give such notice of the condition to the Contractor with reasonable promptness after discovery of the condition. The Contractor shall correct it promptly after receipt of 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.~~

§ 18.2.1 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of this Agreement or defects in the Work.

§ 18.2.2 The provisions of Section 18.2 apply to Work done by subcontractors of the Contractor as well as work done directly by employees of the Contractor. The provisions of this Subsection 18.2.2 shall not apply to corrective work attributable solely to the acts or omissions of any separate Contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Subsection 18.2.2 to the extent not covered by insurance shall be borne by Contractor.

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§ 18.2.3 If, however, Owner and Contractor deem it inexpedient to require the correction of work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum and the Stipulated Sum shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

§ 18.2.4 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.
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§ 18.5 The one-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Contractor pursuant to this Article 18.

...

The Contract shall be governed by the ~~law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.~~laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the county in which the Project is located. Any litigation to enforce or interpret any terms of the Contract or any other litigation arising out of or as a result of the Contract shall be brought in the State courts of the county in which the Project is located. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is consent to suit.
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~~Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. 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. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.~~The Owner will contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for the acceptance of the Work by the Owner. The Contractor shall give timely notice to the persons or entities selected by the Owner of the need for such services.

...

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...

§ 19.7 Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at $100,000 or more and if the Contractor has at least ten (10) full time employees, then the Contractor, by its execution of this Agreement represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 19.7.1 Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at $100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the District that the Contractor does not boycott energy companies and will not boycott energy companies during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 19.7.2 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at $100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the District that the Contractor 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. This section does not apply to a sole proprietorship.

§ 19.7.3 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.

§ 19.7.4 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

§ 19.7.5 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars ($1,000,000.00) or more, the Contractor agrees to : (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the contract, either: (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

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If the ~~Architect fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the 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.~~Work is stopped for a period of thirty (30) 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 which requires all Work to be stopped;

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.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

.3 because the Owner has not made payment within the time stated in the Contract Documents.

...

.4 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents;

.5 fails to furnish the Owner, upon written request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;

.6 engages in or permits serious or repeated worker misconduct in violation of Article 9.3;

.7 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or

.8 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 20.2.2 When any of the ~~reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take~~ 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 (7) days written notice, terminate employment of the Contractor and may, subject to any prior rights of Surety:

.1 Take possession of the site and of all materials, equipment, tools, and construction ~~equipment and machinery thereon owned by the Contractor and may finish~~ equipment, and machinery thereof owned by the Contractor.

.2 Accept assignment of subcontracts.

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon 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.~~

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the Contract Documents.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Any further payment shall be limited to amounts actually earned to the date of termination.

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The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; ~~and~~ costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and ~~a termination fee, if any, as follows:~~

~~*(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)*~~

profit only on that portion of the Work executed.

...

§ 21.1 ~~Claims, disputes, and other matters in question~~ A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or 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 ~~this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such~~

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~~matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.~~the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims by the Contractor must be initiated within twenty-one (21) days after occurrence or of the event giving rise to such Claim.

...

§ 21.2.1 Claims by ~~either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Architect within 21 days after~~ the Contractor, shall be initiated by notice to the Owner and to the Architect. Claims under this Section shall be initiated within 21 calendar days after the occurrence of the event giving rise to such Claim or within 21 calendar days after the claimant first ~~recognizes~~ knew or should have known of the condition giving rise to the Claim, whichever ~~is later.~~is earlier. If the full impact cannot be assessed as of the date of the Notice, then Notice shall be provided and amended by a second notice at the earliest date that is reasonably possible, but in no event later than the date of Contractor's Application for Payment covering the period in which the impact can be assessed and quantified.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required. If Texas Government Code, Chapter 2272 is applicable to the Claim, the Owner shall comply with the requirements set out therein as a condition precedent to any initiation of any litigation.

...

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the 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~~ law. The Contractor waives all claims and causes of action not commenced in accordance with this Section 21.3.

...

§ 21.5 ~~The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution 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, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

MEDIATION

§ 21.5.1 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

§ 21.5.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.

§ 21.5.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

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§ 21.5.4 Venue for any mediation or lawsuit arising under this contract shall be in the county in which the Project is located. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is consent to suit.

§ 21.6 ~~If the parties have selected arbitration as the method for binding dispute resolution in this 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 the Construction Industry Arbitration Rules in effect on the date of this Agreement. 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 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.~~The Contractor shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Owner not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, and shall include documentation demonstrating the nature and duration of the delays or disruptions.

§ 21.7 ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, 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).~~**Waiver of Lien.** It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

§ 21.8 ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration 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 a Claim not described in the written Consent.~~[Paragraph Deleted.]

§ 21.9 ~~The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~[Paragraph Deleted.]

PAGE 35

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents.

§ 21.11 ~~**Waiver of Claims for Consequential Damages**~~**CALCULATING CLAIMS FOR DAMAGES**

~~The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

.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~~No indirect or consequential damages will be allowed.

.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

.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.~~.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

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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 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~.4 No damages will be allowed for home office overhead or other home office changes or any Eichleay formula calculation.

...

MCALLEN INDEPENDENT SCHOOL DISTRICT	HELLAS CONSTRUCTION, INC.
_____	_____

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, DESTINEE GESING, 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 12:28:17 ET on 01/26/2023 under Order No. 3104236826 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

Destinee Gesing

(Signed)

Attorney for McAllen Independent School District

(Title)

February 10, 2023

(Dated)

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EXHIBIT A

Hellas CONSTRUCTION, INC.

Proposal

Think Safety!

12000 West Parmer Lane
Phone: 512-250-2910 Fax: 512-250-1960

Date 1/10/2023
Proposal #: McAllen

Project Name: McAllen Practice Lighting
McAllen TX

Estimator: Wayne Huntsinger
512-748-1895

Type of Field: Photometrics	Football 50 footcandle
Type of Fixture:	Cooper Lumasport 8/Hellas Z600

Quantity:	Description:
1	Provide New Cooper Lumasport 8 Lighting System
1	Drill and Set Light Poles
1	Installation of New Luminaires
1	Electrical Circuits to each pole from 480 service within 100' of the field
1	Synapse Air Mesh Lighting Controller with Dynamic Scenes Capability
1	Aiming and Testing

Best and Final

Practice Field LED Lighting Installation with Cooper	$ 310,746.00
Practice Field LED Lighting Installation with Hellas Z600	$ 286,413.00
Contingency Add	$10,000
Utiltiy Allowance Add	$ 5,000.00

AEPA 021 Athletic Lighting

Project Notes:

* Customer shall pay all taxes, duties, levies or fees.
* Payment Bond is Not Included
* Based on Standard Soil Conditions. No rock excavation or dewatering.
* Based on having full access to the field

SPORTS LIGHTING DIVISION
BUILDING FOR SPORTS FROM START TO FINISH

EXHIBIT B

MCALLEN HIGH SCHOOL
FOOTBALL FIELD SPORTS LIGHTING
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013100	PROJECT MANAGEMENT AND COORDINATION
013233	PHOTOGRAPHIC DOCUMENTATION
013300	SUBMITTAL PROCEDURES
014200	DEFINITIONS AND TERMINOLOGY
015000	TEMPORARY FACILITIES AND CONTROLS
016000	PRODUCT REQUIREMENTS
017300	EXECUTION
017700	CLOSEOUT PROCEDURES
017823	OPERATION AND MAINTENANCE DATA
017839	PROJECT RECORD DOCUMENTS
DIVISION 26 - ELECTRICAL	
26 00 00	BASIC ELECTRICAL REQUIREMENTS
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26 05 53	IDENTIFICATION FOR ELECTRICAL SYSTEMS
26 05 73	OVERCURRENT PROTECTIVE DEVICE COORDINATION STUDY
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END OF TABLE OF CONTENTS

EXHIBIT B-1

McAllen High School
Football Field Sports Lighting

McAllen Independent School District

BOARD MEMBERS

Tony Forina	President
Debbie Crane Aliseda	Vice-President
Marco Suarez	Secretary
Conrado Alvarado	Member
Sofia M. Pena	Member
Sam Saldivar Jr.	Member
Daniel D. Vela	Member

Construction Documents

Halff AVO#45830 W14

SHEET INDEX

SHEET #	SHEET NAME
G0.01	COVER SHEET
E0.01	ELECTRICAL GENERAL LEGEND
E1.01	ELECTRICAL OVERALL SITE PLAN
E1.02	ELECTRICAL ENLARGED SITE PLAN
E2.01	ELECTRICAL ONE-LINE DIAGRAM
E2.02	ELECTRICAL SCHEDULES
E3.01	ELECTRICAL DETAILS I
E3.02	ELECTRICAL DETAILS II

PROJECT TEAM

Halff Associates, Inc.
5000 West Military Highway, Ste. 100
McAllen, Texas 78503-7446
Tel:956.664.0286
Fax:956.664.0282

Lizbeth Guerra, P.E.(Electrical),
Email:lguerra@Halff.com

McAllen ISD Facilities, Maintenance, & Operations
4309 Warrior Avenue
McAllen, TX 78501
Tel:956.632.3200
Fax:956.632.3645

Ruben D. Trevino
Email:Ruben.Trevino@mcallenisd.net

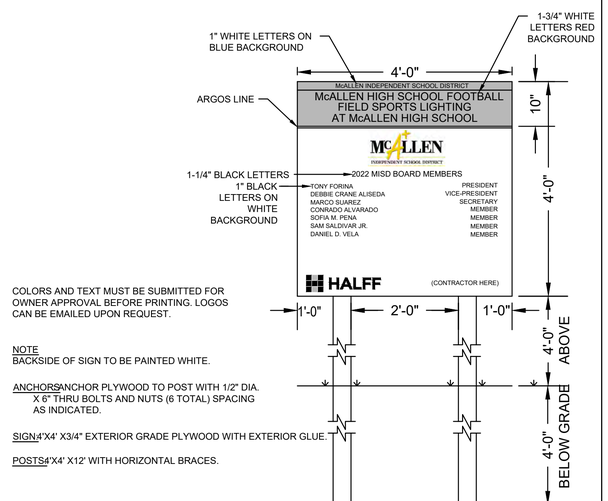
Melissa Rodriguez
Email:Melissa.Rodriguez@mcallenisd.net

LOCATION



2021 La Vista Ave.
McAllen, TX 78501
Phone (956) 632-3100/(956)632-3114

PROJECT SIGNAGE



COLORS AND TEXT MUST BE SUBMITTED FOR OWNER APPROVAL BEFORE PRINTING. LOGOS CAN BE EMAILED UPON REQUEST.

NOTE
BACKSIDE OF SIGN TO BE PAINTED WHITE.

ANCHORS:ANCHOR PLYWOOD TO POST WITH 1/2" DIA. X 6" THRU BOLTS AND NUTS (6 TOTAL) SPACING AS INDICATED.

SIGN:4'X4' X3/4" EXTERIOR GRADE PLYWOOD WITH EXTERIOR GLUE.

POSTS:4'X4' X12' WITH HORIZONTAL BRACES.

MCALLEN HIGH SCHOOL
FOOTBALL FIELD SPORTS LIGHTING
2021 LA VISTA AVE., MCALLEN, TX 78501

McALLEN INDEPENDENT SCHOOL DISTRICT

HALFF
5000 WEST MILITARY, SUITE 100
MAILING: P.O. BOX 2518
TEL (956) 664-0286
FAX (956) 664-0292
TBPE FIRM # 312

Revision No.	Date	Description

STATE OF TEXAS
LIZBETH GUERRA
103534
LICENSED PROFESSIONAL ENGINEER
11/21/22

Project No.:	45830.14
Issued:	11/29/2022
Drawn By:	JS
Checked By:	LG,RV
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Sheet Title
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G0.01
Sheet Number

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ELECTRICAL GENERAL LEGEND

ALL SYMBOLS SHOWN MAY NOT APPEAR IN ALL DRAWINGS. SYMBOLS ARE SHOWN SCHEMATIC AND MAY NOT BE TO SCALE.

SYMBOL	DESCRIPTION	MTG. HT. UNO (SEE NOTE 1)
□	12"x12" LIGHT FIXTURE	SEE FIX. SCH.
	POLE MOUNTED FIXTURE	SEE FIX. SCH.
⊕	SPORTS LIGHTING POLE AND LUMINAIRE ASSEMBLY	SEE FIX. SCH.
$_{WP}	WEATHERPROOF SINGLE POLE SWITCH	48" AFF
$_{WP/WU}	DUPLEX RCPT. GFI/WATER PROOF – 20A/125V/1P/3W/G NEMA 5-20R WITH WHILE IN USE COVER	15" AFF
	PANELBOARD	–
~	SINGLE LINE CONTINUATION	–
	CIRCUIT HOME RUN TO PANELBOARD (2 #10, 1 #10G, 3/4"C. 20A/1P CB UNO)	–
x,xx	THREE SINGLE POLE DEVICE CIRCUIT NUMBERS	–
x/x/x	MULTI-POLE DEVICE CIRCUIT NUMBERS	–
—— OE ——	EXISTING ELECTRICAL PRIMARY OVERHEAD LINE	–
————	NEW ELECTRICAL UNDERGROUND CONDUIT	–
——UE——	ELECTRICAL UNDERGROUND CONDUIT	–
$\varnothing_{PP}$	UTILITY POWER POLE	–
—X—X—	EXISTING FENCE LINE	
—X—X—	NEW FENCE LINE	
——G——	EXISTING UNDERGROUND GAS LINE	
——W——	EXISTING WATER LINE	

ELECTRICAL GENERAL NOTES

A. ELECTRICAL CONTRACTOR SHALL CONTACT UTILITY COMPANY SERVICE REPRESENTATIVE AND COORDINATE SERVICE INSTALLATION PRIOR TO COMMENCING WORK.

B. ELECTRICAL CONTRACTOR SHALL INCLUDE IN HIS BID TO OWNER ALL FEES AND CONSTRUCTION COSTS CHARGED BY UTILITY COMPANY FOR MAIN LINE EXTENSIONS AND NEW SERVICE INSTALLATION.

C. ELECTRICAL CONTRACTOR SHALL PROVIDE FOUNDATIONS FOR ALL LIGHT POLES SHOWN ON DRAWINGS.

D. ELECTRICAL CONTRACTOR SHALL INSTALL ALL UNDERGROUND CONDUIT, CONDUCTORS, AND CABLE AS SPECIFIED IN PROJECT MANUAL.

E. MOUNTING HEIGHT OF DEVICES AS PER PROJECT SPECIFICATIONS UNLESS NOTED OTHERWISE.

CURRENT CODES COMMERCIAL

INTERNATIONAL BUILDING CODE 2018

INTERNATIONAL PLUMBING CODE 2018

INTERNATIONAL MECHANICAL CODE 2018

INTERNATIONAL FUEL GAS CODE 2018

INTERNATIONAL FIRE CODE 2018

INTERNATIONAL ENERGY CODE 2015

NATIONAL ELECTRIC CODE 2017

GENERAL ABBREVIATIONS

ABS	ABOVE BACK SPLASH	EX	EXISTING	MTD	MOUNT OR MOUNTED	NL	NIGHT LIGHT	SW	SWITCH
AFF	ABOVE FINISHED FLOOR	F	FUSE	MTG	MOUNTING	NO (N.O.)	NORMALLY OPEN	UF	UNDERFLOOR
BFC	BELOW FINISHED CEILING	G	GROUND (EQUIPMENT)	NC (N.C.)	NORMALLY CLOSED	RCPT(S)	RECEPTACLE(S)	UG	UNDERGROUND
C	CONDUIT	GFI	GROUND FAULT INTERRUPTER	NF	NONFUSED	PNL	PANEL	WG	WIRE GUARD
CB	CIRCUIT BREAKER	H	HORIZONTAL MOUNTING	NIC	NOT IN CONTRACT	SO (S.O.)	SPACE ONLY	WP	WEATHERPROOF
CLG	CEILING	IC	INTERRUPTING CAPACITY	TYP	TYPICAL	SP	SPARE	XFMR	TRANSFORMER
EC	EMPTY CONDUIT	IG	ISOLATED GROUND	EP	ELECTRICAL PRIMARY	ST (S.T.)	SHUNT TRIP	UNO	UNLESS NOTED OTHERWISE

NOTES:
1. 48" AFF INDICATES TO TOP OF DEVICE;
   15" AFF INDICATES TO BOTTOM OF DEVICE;
   ALL OTHER MOUNTING HEIGHTS REFER TO CENTERLINE OF DEVICE.

MCALLEN HIGH SCHOOL
FOOTBALL FIELD SPORTS LIGHTING
2021 LA VISTA AVE., MCALLEN, TX 78501

MCALLEN INDEPENDENT SCHOOL DISTRICT

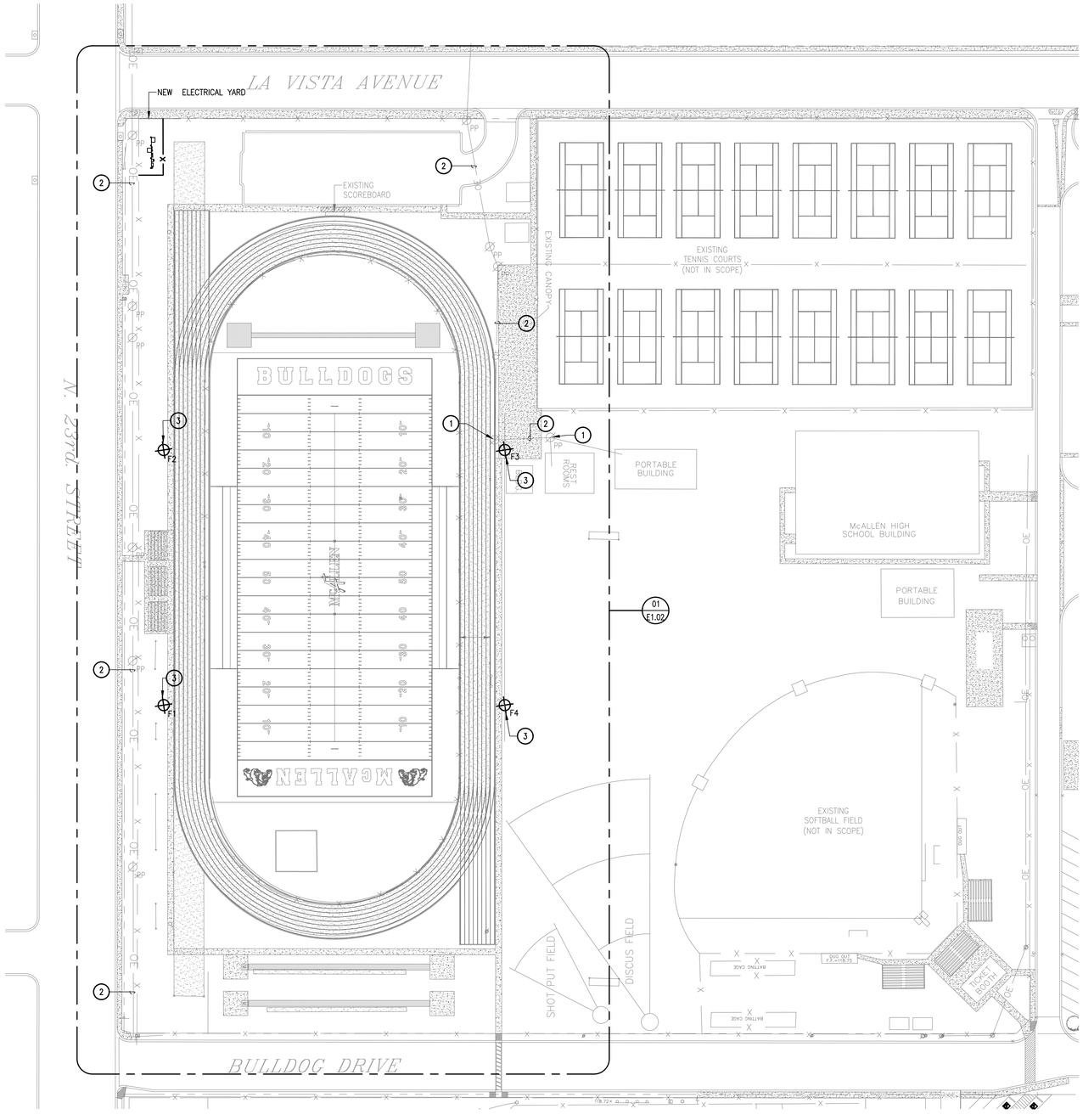
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TEL (915) 684-0282
FAX (915) 684-0283
TBPE FIRM # 312

Revision No.	Date	Description

STATE OF TEXAS
LIZBETH GUERRA
103534
LICENSED
PROFESSIONAL ENGINEER
11/29/22

Project No.:	45830.14
Issued:	11/29/2022
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Sheet Number	E0.01

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01 ELECTRICAL OVERALL SITE PLAN
SCALE: 1" = 50'

GENERAL NOTES:

A. REFER TO SHEET E0.01 FOR ELECTRICAL GENERAL NOTES.

B. INFORMATION ON THIS SHEET HAS BEEN TAKEN FROM RECORD DRAWINGS, SITE SURVEY AND NEW WORK PROPOSED. CONTRACTOR SHALL FIELD VERIFY ALL EXISTING CONDITIONS. UNDERGROUND OR ABOVE GROUND UTILITIES, ELECTRICAL EQUIPMENT, CONDUIT, CONDUCTORS OR DEVICES NOT SHOWN THAT REQUIRE RELOCATION DUE TO NEW WORK SHALL BE DONE BY THE CONTRACTOR. ALL FINDINGS SHALL BE ADDED TO FINAL BID OR SHALL BE AT NO ADDITIONAL COST TO OWNER. RELOCATE ANY UTILITIES, CIRCUITS, EQUIPMENT OR DEVICES FOUND THAT ARE NOT ON PLANS BEFORE COMMENCING WORK AND REPORT THE DISCREPANCIES BETWEEN ACTUAL CONDITIONS AND THESE PLANS TO THE ENGINEER IMMEDIATELY.

C. CONTRACTOR SHALL CONTACT AEP UTILITY COMPANY SERVICE REPRESENTATIVE AND COORDINATE SERVICE ENTRANCE INSTALLATION PRIOR TO COMMENCING WORK.

CONTACT MARTIN VALDES AT:
D: 956.283.2596
C. 956.693.3833

OR VIA EMIAL AT:
mavaldes@aep.com
FOR UTILITY SERVICE INSTALLATION RELATED COORDINATION AND REQUIREMENTS. CONTRACTOR SHALL PROVIDE A $5,000 ALLOWANCE FOR SERVICE UTILITY INSTALLATION COSTS. ANY UNUSED ALLOWANCE SHALL BE REIMBURSED BACK TO OWNER.

KEY NOTES:

1. CONTRACTOR SHALL COORDINATE WITH OWNER AND UTILITY COMPANY TO RELOCATE POWER POLES AS REQUIRED BEFORE COMMENCING WORK. PROVIDE ALL CLEARANCES REQUIRED BY ELECTRICAL UTILITY PERTAINING TO OVERHEAD AND ANY BUILDING OR OBJECTS IN ITS VICINITY.
2. APPROXIMATE LOCATION OF EXISTING UTILITY THREE PHASE OVERHEAD LINES.
3. NEW SPORTS LIGHTING LUMINAIRE POLE.

MCALLEN HIGH SCHOOL
FOOTBALL FIELD SPORTS LIGHTING
2021 LA VISTA AVE., MCALLEN, TX 78501

MCALLEN INDEPENDENT SCHOOL DISTRICT

HALFF
5000 WEST MILITARY, SUITE 100
MIDLAND, TEXAS 79703
TEL: (550) 684-4288
FAX: (550) 684-0302
TBPE FIRM # F-312

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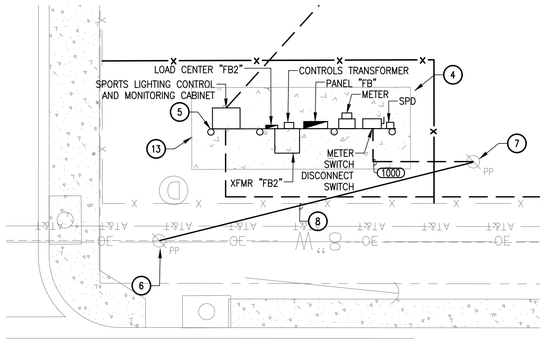
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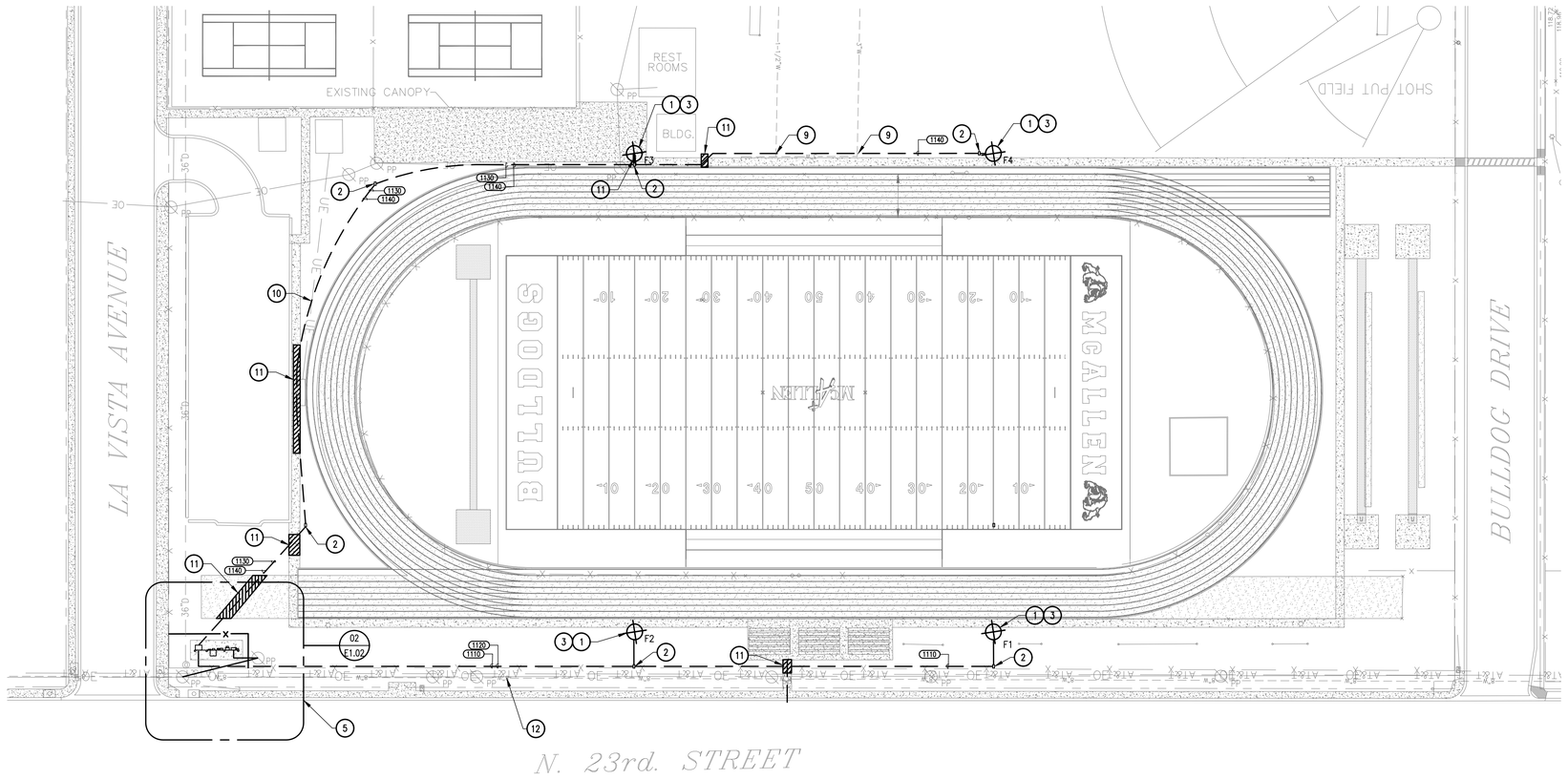
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02 ELECTRICAL ENLARGED POWER PLAN
SCALE: 1" = 10'



01 ELECTRICAL ENLARGED SITE PLAN
SCALE: 1" = 40'

GENERAL NOTES:

A. REFER TO SHEET E0.01 FOR ELECTRICAL GENERAL NOTES.

B. INFORMATION ON THIS SHEET HAS BEEN TAKEN FROM RECORD DRAWINGS SITE SURVEY AND NEW WORK PROPOSED. CONTRACTOR SHALL FIELD VERIFY ALL EXISTING CONDITIONS. UNDERGROUND OR ABOVE GROUND UTILITIES, ELECTRICAL EQUIPMENT, CONDUIT, CONDUCTORS OR DEVICES NOT SHOWN THAT REQUIRE RELOCATION DUE TO NEW WORK SHALL BE DONE BY THE CONTRACTOR. ALL FINDINGS SHALL BE ADDED TO FINAL BID OR SHALL BE AT NO ADDITIONAL COST TO OWNER. RELOCATE ANY UTILITIES, CIRCUITS, EQUIPMENT OR DEVICES FOUND THAT ARE NOT ON PLANS BEFORE COMMENCING WORK AND REPORT THE DISCREPANCIES BETWEEN ACTUAL CONDITIONS AND THESE PLANS TO THE ENGINEER IMMEDIATELY.

C. NEW SPORTS LIGHTING LUMINAIRE POLES ARE SHOWN AT AN OPTIMAL ILLUMINATION DISTRIBUTION LOCATION. CONTRACTOR SHALL FIELD ADJUST(SLIGHTLY) TO ACCOMODATE UNFORSEEN UNDERGROUND EXISTING CONDITION AT NO ADDITIONAL COST TO OWNER. COORDINATE WITH ENGINEER AND OWNER PRIOR ANY ADJUSTMENT.

KEY NOTES:

1. CONTRACTOR SHALL FURNISH AND INSTALL MUSCO LIGHTING POLE FOUNDATIONS AS PER MANUFACTURERS STRUCTURAL ENGINEER RECOMMENDATIONS AND SPECIFICATIONS. CONTRACTOR SHALL EXTEND CONDUIT AND CIRCUIT CONDUCTORS TO LIGHT POLE DRIVER ENCLOSURE, AND MAKE FINAL TERMINATIONS.
2. FURNISH AND INSTALL AN OLD CASTLE H-SERIES #1324 PULLBOX WITH TIER 15 LOAD RATING. REFER TO DETAIL 01/E3.02 FOR ADDITIONAL REQUIREMENTS. PROVIDE WITH INTEGRAL CABLE MANAGEMENT J-HOOKS SO THAT CABLING IS SUPPORTED AND FREE FROM GROUND.
3. POLE APPROXIMATE LOCATION(S). DIMENSIONS OF LIGHT FIXTURE ON PLANS ARE FOR REFERENCE PURPOSE ONLY. COORDINATE WITH SPORTS LIGHTING MANUFACTURER FOR EXACT LOCATION OF LIGHT FIXTURES, PLACEMENT OF FIXTURES ON POLE AND ORIENTATION/ANGLE OF LIGHT FIXTURES PER POLE.
4. DIMENSIONS OF NEW PROPOSED FENCE IS SHOWN FOR REFERENCE PURPOSE ONLY. COORDINATE WITH OWNER TO PROVIDE NEW HURRICANE FENCE WITH DOUBLE DOOR GATE WITH LOCK FOR SECURITY PURPOSES OF NEW ELECTRICAL EQUIPMENT ON RACK. ALL ASSOCIATED COST SHALL BE INCLUDED IN FINAL BID. ELECTRICAL EQUIPMENT SHALL HAVE AT MINIMUM 36-INCHES OF WORKING CLEARENCE.
5. NEW ELECTRICAL RACK LOCATION. REFER TO SHEET E3.01 FOR ELECTRICAL RACK DETAILS AND SHEET E2.01 FOR ONE-LINE DIAGRAM.
6. EXISTING UTILITY ELECTRICAL POLE AND NEW THREE PHASE TRANSFORMER BANK BY AEP.
7. CONTRACTOR SHALL FURNISH AND INSTALL NEW DIP POLE. COORDINATE WITH AEP FOR REQUIREMENTS AND FEES ASSOCIATED WITH THIS INSTALLATION.
8. ALL ELECTRICAL OVERHEAD PRIMARY LINES SHALL BE INSTALLED AS PER AEP UTILITY REQUIREMENTS.
9. EXISTING WATERLINE UNDERGROUND IN PATH OF NEW ELECTRICAL CONDUIT RUN. FIELD VERIFY DEPTH AND LOCATION PRIOR TO COMMENCING WORK AND CONFIRM IF LINE IS OWNED BY MCALLEN PUBLIC UTILITY (MPU) OR MCALLEN ISD. IF OWNED BY MPU, PROVIDE 2' VERTICAL REQUIRED CLEARANCE BETWEEN BOTH UTILITIES. OTHERWISE, PROVIDE A MINIMUM 12" CLEARANCE BETWEEN THE TWO UTILITIES.
10. EXISTING ELECTRICAL UNDERGROUND IN PATH OF NEW ELECTRICAL CONDUIT RUN. FIELD VERIFY DEPTH AND LOCATION PRIOR TO COMMENCING WORK.
11. CONTRACTOR SHALL BORE UNDER WALKWAY CONCRETE OR SAW CUT CONCRETE. RESTORE AFFECTED AREA TO ITS' ORIGINAL STATE MATCHING EXISTING CONCRETE PAVEMENT.
12. EXISTING WATER, AT&T AND AEP UTILITIES LINES SHOWN FOR REFERENCE PURPOSES ONLY.
13. 6 INCH CONCRETE PAD. CONCRETE PAD SHALL BE SIZED TO PROVIDE 3 FOOT CLEARANCE IN FRONT OF ELECTRICAL EQUIPMENT ON BOTH SIDES OF RACK.

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TBPLS FIRM # 10194412

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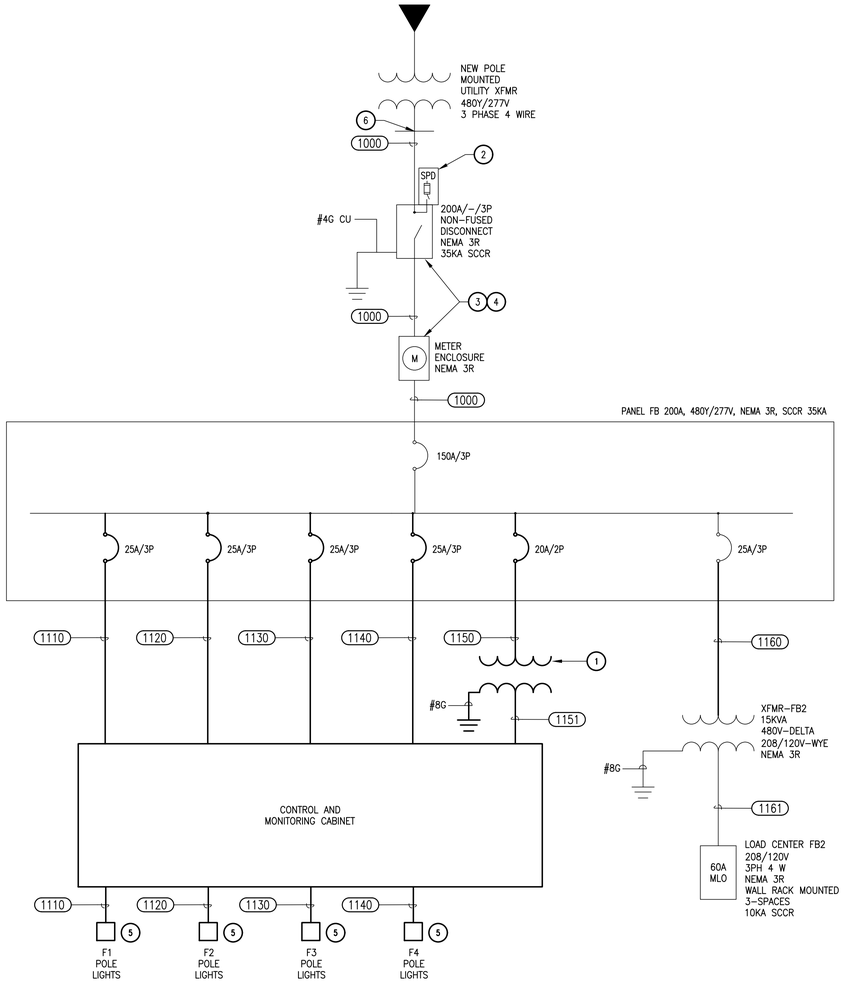
STATE OF TEXAS
LIZBETH GUERRA
103534
LICENSED
PROFESSIONAL ENGINEER
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E1.02
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01 ELECTRICAL ONE-LINE DIAGRAM
N.T.S.

GENERAL NOTES:

A. REFER TO SHEET E0.01 FOR ELECTRICAL GENERAL NOTES.

B. ALL HARDWARE SHALL BE OF CORROSION RESISTIVE GALVANIZED MATERIAL.

C. ABOVE GROUND CONDUIT SHALL BE GALVANIZED RIGID CONDUIT UNLESS OTHERWISE NOTED.

KEY NOTES: (#)

1. CONTRACTOR SHALL FURNISH AND INSTALL A 3KVA STEP DOWN SINGLE-PHASE TRANSFORMER MODEL #9070T3000D1 BY SQUARE D OR EQUAL. CONTROL TRANSFORMER SHALL BE MOUNTED INSIDE A NEMA 3R ENCLOSURE.
2. CONTRACTOR SHALL FURNISH AND INSTALL A TYPE 1 SURGE PORTECTION DEVICE MODEL# ACT471-277Y-160KA-SEL-SS-D-F-C2-M2. (INDUSTRIAL SERIES SPD, 277/480 VAC 4W+G, 160 KA/ MODE, MODULAR SELENIUM HYBRID FILTER/PROTECTOR AT 160KA/MODE, INTERNAL DISCONNECT, EMI/NOISE FILTER, 2 SURGE COUNTERS, V2 OPTION ON THE POWER QUALITY METER) OR EQUAL. USE #2AWG LOW "Z" CONDUCTORS TO CONNECT LINE SIDE OF MAIN DISCONNECT TO SPD. SURGE PROTECTION SHALL BE INSTALLED AS CLOSE AS POSSIBE TO DISCONNECT ENCLOSURE.
3. REFER TO DETAIL 02/E3.01 FOR ADDITIONAL AEP GROUNDING REQUIREMENTS AND NOTES.
4. COORDINATE WITH AEP REPRESENTATIVE AND AEP GUIDE FOR ELECTRIC SERVICE AND METER INSTALLATIONS DOCUMENT CONCERNING ALL OVERHEAD SERVICE DROP REQUIREMENTS. INSTALLATION SHALL ADHERE TO AEP-TEXAS SERVICE ENTRANCE REQUIREMENTS.
5. NOMINAL VOLTAGE AT LINE SIDE OF THE DRIVER AND STRUCTURES LOCATED WITHIN 3 FEET OF DESIGN LOCATIONS SHALL BE PLUS OR MINUS 3%.
6. POINT OF COMMON COUPLING AT SERVICE ENTRANCE CONNECTION AT DIP POLE, WEATHERHEAD.

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GENERAL NOTES:

A. CIRCUIT BREAKERS KAIC RATING SHALL MATCH ITS CORRESPONDING ELECTRICAL EQUIPMENT BUS SHORT CIRCUIT CURRENT RATING (SCCR) STATED AT MINIMUM.

PANELBOARD FB

VOLTAGE: 480V/277V 3 PHASE 4 WIRE — LOCATION: FOOTBALL PRACTICE FIELD
150A MAIN CIRCUIT BREAKER — MOUNTING: RACK
BUSES: MAIN – 200A; EQUIPMENT GROUND — 35KA SCCR

VA:L	VA:R	VA:O	LOAD	BKR	CKT	PH	CKT	BKR	LOAD	VA:L	VA:R	VA:O
4790			LIGHT POLE F1	25/3	1	A	2	25/3	LIGHT POLE F2	4790		
4790			"	–	3	B	4	–	"	4790		
4790			"	–	5	C	6	–	"	4790		
4790			LIGHT POLE F3	25/3	7	A	8	25/3	LIGHT POLE F4	4790		
4790			"	–	9	B	10	–	"	4790		
4790			"	–	11	C	12	–	"	4790		
		5000	XFMR FB2	25/3	13	A	14	20/3	SPARE	0		
		5000	"	–	15	B	16	–	"	0		
		5000	"	–	17	C	18	–	"	0		
0		1920	CONTROLS POWER	20/2	19	A	20	25/3	SPARE	0		
0			"	–	21	B	22	–	"	0		
0			SPACE	0	23	C	24	–	"	0		

VA:L (LIGHTING)	57480	CONNECTED	71850 DEMAND
VA:R (RECEPTACLES)	0	CONNECTED	0 DEMAND
VA:O (OTHER)	16920	CONNECTED	16920 DEMAND
VA: TOTAL	74400	CONNECTED	88770 DEMAND
AMPS: TOTAL	89	CONNECTED	107 DEMAND

L	R	O		TOTAL			
19160	0	6920	VA CONNECTED TO A PHASE	26080	VA =	94	AMPS CONNECTED TO A PHASE @ 277 VOLTS
19160	0	5000	VA CONNECTED TO B PHASE	24160	VA =	87	AMPS CONNECTED TO B PHASE @ 277 VOLTS
19160	0	5000	VA CONNECTED TO C PHASE	24160	VA =	87	AMPS CONNECTED TO C PHASE @ 277 VOLTS
57480	0	16920	TOTAL	74400	VA		

LOAD CENTER FB2

LOCATION: FOOTBALL PRACTICE FIELD — VOLTS: 208V/120V — A.I.C. RATING: 10KA SCCR
FED FROM: XFMR FB2 — PHASES: 3 — MAINS TYPE: MLO
MOUNTING: RACK — WIRES: 4 — MAINS RATING: 60A
ENCLOSURE: NEMA 3R

CKT	CIRCUIT DESCRIPTION	# OF POLES	TRIP RATING	LOAD	REMARKS
1	GFCI RECEPTACLE	1	20	1920	
2	SPARE	1	20	1920	
3	SPARE	1	20	1920	

NET CALCULATED DEMAND = 5760 VA
N/A = N/A A

NOTES:

FEEDER / BRANCH CIRCUIT SCHEDULE

MARK	RACEWAY	PHASE CONDUCTORS	NEUTRAL CONDUCTORS	GROUND CONDUCTORS	REMARKS
1000	2"	3#3/0	1#3/0	1#6	----
1110	3/4"	3#8	----	1#10	----
1120	3/4"	3#10	----	1#10	----
1130	3/4"	3#8	----	1#10	----
1140	3/4"	3#6	----	1#10	----
1150	3/4"	3#12	----	1#12	----
1151	3/4"	3#12	----	1#12	----
1160	3/4"	3#10	----	1#10	----
1161	1-1/4"	3#4	1#4	1#10	----

LIGHTING FIXTURE SCHEDULE

TYPE	MANUF & MODEL NUMBER	FIXTURE QTY.	LAMPS	VA	VOLTAGE	DESCRIPTION	NOTES
F1	TLC-LED-1500 TLC-BT-575	7 2	LED	14370	480	70-FT SPORTS LED LIGHTING POLE	MTG HEIGHT: 70' MTG HEIGHT: 16'
F2	TLC-LED-1500 TLC-BT-575	7 2	LED	14370	480	70-FT SPORTS LED LIGHTING POLE	MTG HEIGHT: 70' MTG HEIGHT: 16'
F3	TLC-LED-1500 TLC-BT-575	7 2	LED	14370	480	70-FT SPORTS LED LIGHTING POLE	MTG HEIGHT: 70' MTG HEIGHT: 16'
F4	TLC-LED-1500 TLC-BT-575	7 2	LED	14370	480	70-FT SPORTS LED LIGHTING POLE	MTG HEIGHT: 70' MTG HEIGHT: 16'

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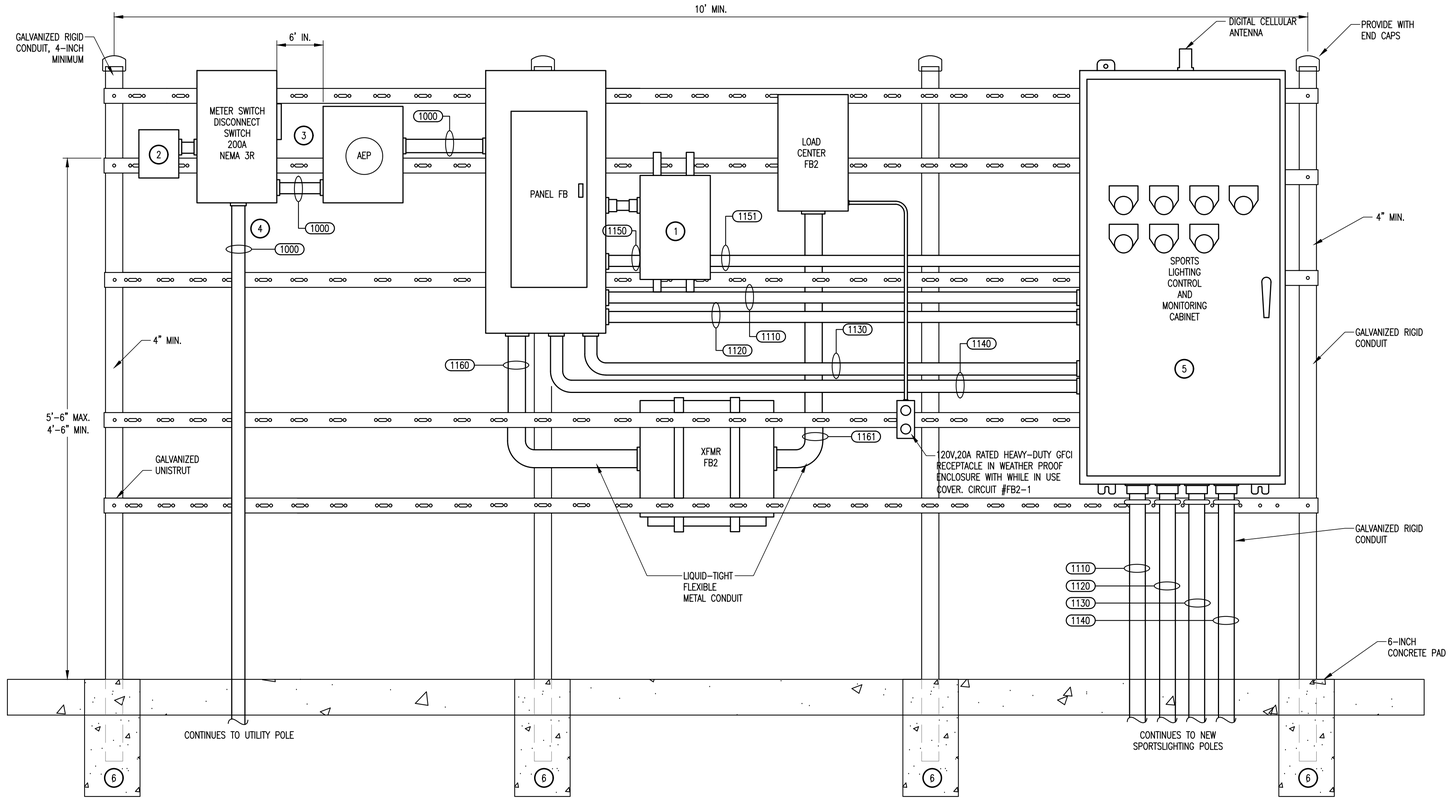
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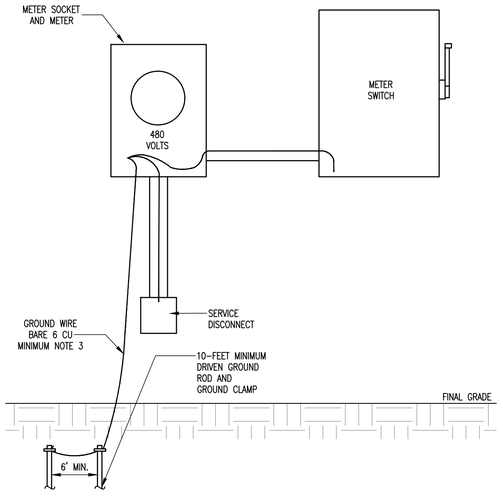
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01 ELECTRICAL RACK
N.T.S.



02 GROUND DETAIL
N.T.S.

NOTES:

1. METER SWITCH SUPPLIED AND INSTALLED BY CUSTOMER. METER SWITCH AND METER ENCLOSURE TO BE LOCKED AND SEALED UNDER THE EXCLUSIVE CONTROL OF THE COMPANY. THE FOLLOWING COMPANIES DO NOT ALLOW 277/480 VOLT SELF-CONTAINED METERING: AEP OHIO, IMPCo, APCo, KINGSPORT POWER, AND KYPCo.
2. METER SOCKET SECURELY MOUNTED IN PLUMB POSITION BY CUSTOMER. SERVICE ATTACHMENT AND METERING INSTALLATION LOCATION TO BE SPECIFIED BY POWER COMPANY.
3. CUSTOMER GROUNDING SHALL BE IN ACCORDANCE WITH NEC AND LOCAL REGULATIONS. IN ARKANSAS, OKLAHOMA. LOUISIANA AND TEXAS. THE GROUND WIRE SHAII BE CONNECTED IN THE METER SOCKET. THE CUSTOMER SHALL HAVE A MINIMUM OF 2 DRIVEN GROUND RODS AT LEAST 6 FEET APART.
4. THE CUSTOMER'S SERVICE DISCONNECT SHALL BE GROUNDED.
5. METER SWITCH MUST BE OPEN WHEN INSTALLING OR REMOVING THE METER.
6. METER SWITCH SHALL BE NON-FUSED, WITH A MIN RATING OF 200 AMPS, 600 VOLTS, UL LISTED, TYPE 3R FOR NON-CORROSIVE, TYPE 4X FOR CORROSIVE ENVIRONMENTS.
7. METER ENCLOSURE MUST HAVE 'FULLY RATED BY-PASS' FOR COMMERCIAL INSTALLATIONS.

GENERAL NOTES:

A. REFER TO SHEET E0.01 FOR ELECTRICAL GENERAL NOTES.

B. ALL HARDWARE SHALL BE OF CORROSION RESISTIVE GALVANIZED MATERIAL.

C. ABOVE GROUND CONDUIT SHALL BE GALVANIZED RIGID CONDUIT UNLESS OTHERWISE NOTED.

D. PROVIDE ARC FLASH AND SHORT CIRCUIT CALCULATION LABELS AS PER PROJECT SPECIFICATION MANUAL.

KEY NOTES: (#)

1. CONTRACTOR SHALL FURNISH AND INSTALL A 3KVA STEP DOWN SINGLE-PHASE TRANSFORMER MODEL #9070T3000D1 BY SQUARE D OR EQUAL. CONTROL TRANSFORMER SHALL BE MOUNTED INSIDE A NEMA 3R ENCLOSURE.
2. TYPE 1 SURGE PROTECTION DEVICE.
3. REFER TO DETAIL 02/E3.01 FOR ADDITIONAL AEP GROUNDING REQUIREMENTS AND NOTES.
4. COORDINATE WITH AEP REPRESENTATIVE AND AEP GUIDE FOR ELECTRIC SERVICE AND METER INSTALLATIONS DOCUMENT CONCERNING ALL OVERHEAD SERVICE DROP REQUIREMENTS.
5. VENDOR SUPPLIED EQUIPMENT, INSTALLED BY CONTRACTOR.
6. SUBMERGE PIPE AT MINIMUM 2-FEET IN CONCRETE FOOTING.

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POLYMER CONCRETE HANDHOLE SPECIFICATION

1. SCOPE
1.1. **GENERAL**. THIS SPECIFICATION COVERS THE REQUIREMENTS FOR NON-CONCRETE ENCLOSURES USED TO CONTAIN AND PROTECT INFRASTRUCTURE FACILITIES TO BE INSTALLED AT OR BELOW GRADE LEVEL EITHER DIRECTLY BURIED IN NATIVE SOIL OR EMBEDDED IN EITHER A CONCRETE OR ASPHALT SURROUND.
1.1.1. ENCLOSURES DEFINED BY THIS SPECIFICATION ARE NOT INTENDED FOR USE WITHIN ESTABLISHED VEHICULAR TRAFFIC LANES OR ROADWAY. THE DESIGN LOADS PROVIDE GUIDANCE FOR THE NON-DELIBERATE INCIDENTAL TRAFFIC THAT THE ENCLOSURE COULD EXPERIENCE.
1.2. **TESTS AND REQUIREMENTS**. STANDARD SIZES, DESIGN, APPEARANCE, PRODUCT AND MATERIAL PERFORMANCE CRITERIA ARE DEFINED. ALL TESTS SHALL BE PERFORMED ON COMPLETE SPECIMENS OR SPECIMENS TAKEN FROM FINISHED PRODUCT SAMPLES OR MATERIAL.
1.3. **COMPLIANCE**. UNLESS OTHERWISE STATED, COMPLIANCE WITH, AND VERIFICATION OF, ALL APPLICABLE TESTS PROVIDED HEREIN SHALL BE THE RESPONSIBILITY OF THE MANUFACTURER. AFTER QUALIFICATION & APPROVAL, NO CHANGES SHALL BE MADE WITHOUT RE-QUALIFICATION.

2. REFERENCED STANDARDS & GUIDELINES
ALL STANDARDS & GUIDELINES REFERENCED SHALL BE THE LATEST EDITION. THE REFERENCED DOCUMENT MAY STILL BE USEFUL EVEN IF "WITHDRAWN" BY ASTM.

2.1. AASHTO STANDARD SPECIFICATIONS FOR HIGHWAY BRIDGES
2.2. ASTM C857 STANDARD PRACTICE FOR MINIMUM STRUCTURAL DESIGN LOADING FOR UNDERGROUND PRECAST CONCRETE UTILITY STRUCTURES 2.3. ASTM C1028 STANDARD TEST METHOD FOR DETERMINING THE STATIC COEFFICIENT OF FRICTION OF CERAMIC TILE AND OTHER LIKE SURFACES BY THE HORIZONTAL DYNAMOMETER PULL-METER METHOD 2.4. ASTM D543 STANDARD PRACTICE FOR EVALUATING THE RESISTANCE OF PLASTICS TO CHEMICAL REAGENTS 2.5. ASTM D570 STANDARD TEST METHOD FOR WATER ABSORPTION OF PLASTICS 2.6. ASTM D756 STANDARD TEST METHOD FOR DETERMINATION OF WEIGHT AND SHAPE CHANGES OF PLASTICS UNDER ACCELERATED SERVICE CONDITIONS 2.7. ASTM D2444 STANDARD TEST METHOD FOR DETERMINATION OF THE IMPACT RESISTANCE OF THERMOPLASTIC PIPE AND FITTINGS BY MEANS OF A TUP 2.8. ASTM G154 STANDARD PRACTICE FOR OPERATING FLUORESCENT LIGHT APPARATUS FOR UV EXPOSURE OF NONMETALLIC MATERIALS 2.9. WESTERN UNDERGROUND COMMITTEE, GUIDE 3.6 NON-CONCRETE ENCLOSURES

3. DEFINITIONS
3.1. **BODY** IS THE FOUR SIDED "BOX" CONSISTING OF A RECESS PROVISION WITH FASTENER(S) TO RETAIN THE COVER. FASTENERS SHALL BE "SELF-ALIGNING".
3.2. **COVER** IS THE REMOVABLE TOP, CLOSING THE BODY OPENING.
3.3. **DESIGN LOAD** IS THE LOAD THE ENCLOSURE IS EXPECTED TO SUPPORT RELIABLY WHILE IN SERVICE. THE BOX DESIGN LOAD SHALL BE INTENDED TO SUPPORT THE WHEEL LOAD THAT MAY BE REPEATEDLY APPLIED TO THE ENCLOSURE AND THE SURROUNDING AREA WHILE NOT CONTRIBUTING TO ITS FAILURE
3.4. **ENCLOSURE** IS THE COMPLETE BODY, COVER AND IF APPLICABLE, EXTENSION.
3.5. **FAILURE** IS ANY CRACKING, SPLITTING, DE-LAMINATION, OR DEFORMATION EXCEEDING THOSE DEFINED
3.6. **FAILURE LOAD** IS THE LOAD RESULTING IN ENCLOSURE FAILURE. THE "MINIMUM FAILURE LOAD" MAY NOT NECESSARILY RESULT IN BREAKAGE. FAILURE MAY BE DEFINED AS THE POINT WHERE AN ENCLOSURE MAY NO LONGER SUSTAINS AN INCREASING LOAD. IT MAY BE QUANTIFIED AS THE POINT ON A STRESS/ STRAIN CURVE WHERE THE RATE OF RESULTANT STRAIN CHANGES RELATIVE TO THE RATE OF APPLIED STRESS.
3.7. **KEY** IS THE PROVISION FOR INTERLOCKING THE BODY INTO THE SURROUNDING SURFACE.
3.8. **PERMANENT DEFLECTION** IS THE RESULTING DIFFERENCE BETWEEN THE DEFLECTION MEASURES AT THE START OF TESTING (AFTER PRE-LOAD) AND THE END OF THE TENTH CYCLE, AFTER THE "TEST LOAD" IS REMOVED.
3.9. **TEST LOAD** IS THE ULTIMATE LOAD THAT MUST BE SUSTAINED DURING TESTING.

4. DIMENSIONS
4.1 ENCLOSURE SIZES ARE MOST COMMONLY IDENTIFIED BY THEIR APPROXIMATE COVER DIMENSIONS IN WHOLE INCHES, LISTED BY WIDTH AND LENGTH. GENERALLY, MANUFACTURERS HAVE NOT ADOPTED COMPLETELY UNIFORM DIMENSIONS FOR COVERS OR THEIR BODIES. IF COMMITTED TO PURCHASE FROM MULTIPLE VENDORS AND EXPECTING CROSS BRAND INTERCHANGEABILITY, IN ADDITION TO COVER WIDTH AND LENGTH, OPERATING COMPANY SHALL CONFIRM COMPLIANCE WITH AND MANUFACTURING TOLERANCES FOR COVER THICKNESS, DRAFT ANGLE, CORNER RADII AND BOLT HOLE LOCATIONS.
4.2.ENCLOSURE BODIES SHALL BE "STRAIGHT WALL" DESIGN MINIMIZING THE EXCAVATION REQUIREMENTS. "FLARED WALL" DESIGN ENCLOSURES SHALL NOT BE ACCEPTED DUE TO LIMITED ACCESS FROM REDUCED COVER OPENING DIMENSIONS FOR A GIVEN INTERIOR VOLUME AND DIMENSION.

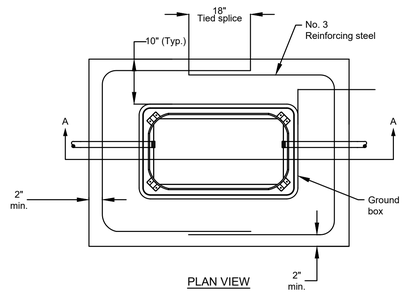
5. DESIGN REQUIREMENTS
DESIGN LOADS & TEST LOADS. THE NATIONAL ELECTRIC CODE HAS DETERMINED THAT "HANDHOLE ENCLOSURES SHALL BE DESIGNED AND INSTALLED TO WITHSTAND ALL LOADS LIKELY TO BE IMPOSED." IT IS IMPORTANT TO DETERMINE WHAT WHEEL LOADS ARE REASONABLE TO EXPECT BOTH ON TOP OF AND ADJACENT TO ENCLOSURES BASED ON THEIR INSTALLATION LOCATION AND TRAFFIC IN THOSE AREAS.
5.1. THIS SPECIFICATION PROVIDES FOR THE FOLLOWING CLASSIFICATION OF VEHICLES, THEIR WHEEL LOADING AND CORRESPONDING ENCLOSURE DESIGN LOADS.

Class Vehicle	GVW	Maximum Wheel Load	Load Category	Vertical Design Load	Vertical Failure Load
Light and Medium Duty Trucks; up to Class 5	20,000	8,000	Non-Continuous Vehicular Traffic, H10/ A-8	8,000 lbf	17,360 lbf

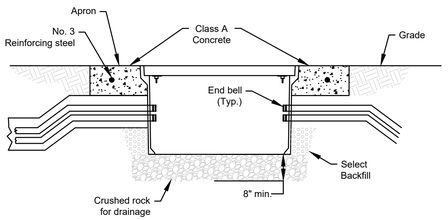
5.2. ENCLOSURE BODIES AND COVERS SHALL BE MADE OF FIBERGLASS REINFORCED POLYMER CONCRETE. COVER SHALL CONTAIN SUFFICIENT LAYERS OF FIBERGLASS CLOTH REINFORCEMENT TO MEET OR EXCEED THE PRODUCT PERFORMANCE CHARACTERISTICS SPECIFIED, INCLUDING BUT NOT LIMITED TO VERTICAL LOADING.
5.3. THE BODY BASE SHALL HAVE AN ADEQUATE SOIL BEARING AREA. TO AVOID SUBSIDENCE UNDER MAXIMUM LOADING (AT DESIGN LOAD), THE ENCLOSURE SOIL BEARING AREA SHALL NOT BE LESS THAN THE CAPACITY OF THE NOMINAL SOIL BEARING PRESSURE. UNIMPROVED SPOILS (EXCAVATED NATIVE SOIL) MAY HAVE A SOIL BEARING PRESSURE OF 1000 PSF. A TAMPED BASE OF SELECT BACKFILL IS REQUIRED TO ACHIEVE A SOIL BEARING PRESSURE ≥ 2000 PSF.
5.4. THE TOP EXTERNAL PERIMETER OF THE BODY SHALL BE PROVIDED WITH A METHOD OF KEYING THE BODY TO SURROUNDING SURFACE INTO WHICH IT MAY BE PLACED.
5.5. BODIES, COVERS, EXTENSIONS, AND BASES SHALL BE CAPABLE OF WITHSTANDING NORMAL SHIPPING AND INSTALLATION PRACTICES WITHOUT CHIPPING, CRACKING, OR STRUCTURAL DAMAGE.
5.6. ENCLOSURE SHALL BE DESIGNED AND SUITABLE FOR INSTALLATION AND USE THROUGH A TEMPERATURE RANGE OF -40˚ C TO 60˚ C (-40˚ F TO 140˚ F).
5.7. THE BODY, COVER AND EXTENSION SHALL BE SUNLIGHT RESISTANT. ANY SPECIFIC REQUIREMENT FOR COLOR STABILITY OR RETENTION OF MATERIAL PROPERTIES SHALL BE SPECIFIED.
5.8. THE TOP OF THE COVER SHALL BE PERMANENTLY MARKED INDICATING THE TYPE OF FACILITIES CONTAINED. INFRASTRUCTURE OWNERSHIP MAY ALSO BE INCLUDED IN "MARKING" AS SPECIFIED:(ACCESS CONTROL), (EMERGENCY ELECTRIC POWER), (LIGHTING).
5.9. "MARKING" SHALL BE RECESSED. LETTER HEIGHT SHALL BE AT LEAST 1" TALL.
5.10. COVERS SHALL BE SECURED TO THE BODY USING CORROSION RESISTANT FASTENERS.
5.11. THE BODY ANCHORAGE (FASTENER) FOR THE COVER BOLT(S) SHALL NOT TRAP FOREIGN MATERIAL. THE ENCLOSURE COMPONENT SHALL BE A "FLOATING NUT" STYLE AND SHALL BE FIELD REPLACEABLE USING COMMON HAND TOOLS WITHOUT CAUSING DAMAGE TO THE BODY.

6. INSTALLATION GUIDELINES
6.1. 8,000 LB. DESIGN LOAD MAY BE INSTALLED WHERE IT IS REASONABLE TO EXPECT THAT NON-DELIBERATE VEHICULAR TRAFFIC WILL BE LIMITED TO CLASS 5 (1 ½ TON TRUCK) VEHICLES OR LIGHTER. THIS AREA MAY INCLUDE GRASS SURROUND. OR, IF PROTECTED IN A SIDEWALK I.E. ADJACENT TO A LIGHTING STANDARD OR STREET CABINET.
6.2. 16,000 LB. DESIGN LOAD MAY BE INSTALLED ANYWHERE IN A SIDEWALK OR PARKING LOT BUT NOT IN THE DRIVEWAY. THIS DESIGN LOAD IS SUITABLE FOR INSTALLATION IN A HIGHWAY EASEMENT BUT NOT THE HIGHWAY SHOULDER; THESE INSTALLATIONS GENERALLY BENEFIT FROM A CONCRETE COLLAR (SURROUND).

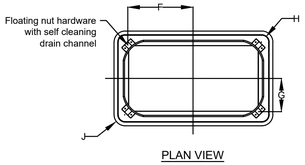
7. PRODUCT TESTS
7.1. THE VERTICAL FAILURE LOAD FOR AASHTO HS 20-44 (SAME AS ASTM C857, A-16) PERFORMANCE DESIGNATION SHALL BE COMPUTED BY FACTORING THE "DESIGN LOAD" BY AASHTO SAFETY FACTORS (DL X 1.3 X 2.17 = MFL). NOTE: THIS FOLLOWS THE PRECEDENT SET BY ASTM C497 ...FOR PROOF OF DESIGN LOAD.
7.2. ENCLOSURE LOAD CAPACITIES SHALL BE DETERMINED BY TESTS PERFORMED TO WESTERN UNDERGROUND GUIDE 3.6 TEST PROTOCOL (CURRENT REVISION).
7.3. WHEN THE INTENDED INSTALLATION LOCATION FOR THE GRADE LEVEL ENCLOSURE WILL BE IN A DESIGNATED PEDESTRIAN WALKWAY (I.E. SIDEWALK), EXPOSED SURFACES OF THE BODY & COVER SHALL HAVE A MINIMUM COEFFICIENT OF FRICTION (COF) GREATER THAN 0.60 UNDER BOTH WET AND DRY CONDITIONS AS MEASURED BY ASTM C1028.
7.4. ANY POINT ON POLYMER CONCRETE COVERS SHALL WITHSTAND A 70 FOOT-POUND IMPACT ADMINISTERED WITH A 12 POUND WEIGHT HAVING A "C" TUP (ASTM D2444) WITHOUT PUNCTURING OR SPLITTING. THE TEST SHALL BE PERFORMED WITH THE COVER RESISTING UPON A FLAT, RIGID SURFACE SUCH AS CONCRETE OR A 1" STEEL PLATE.
7.5. FASTENERS (1/2-13 UNC), SHALL BE CAPABLE OF WITHSTANDING, WITHOUT DAMAGE, A MINIMUM TORQUE OF 70 FOOT-POUNDS AND A MINIMUM STRAIGHT PULLOUT STRENGTH OF 750 POUNDS.



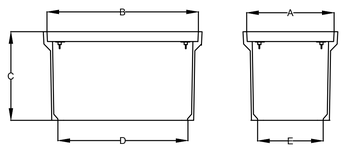
PLAN VIEW



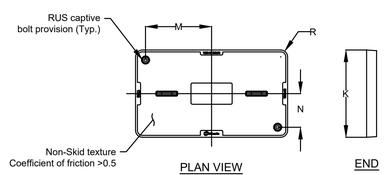
SECTION A-A



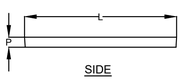
PLAN VIEW



SIDE END



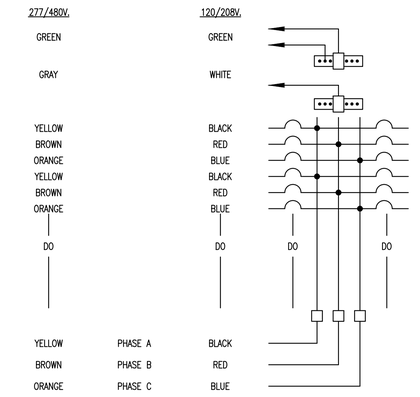
PLAN VIEW END



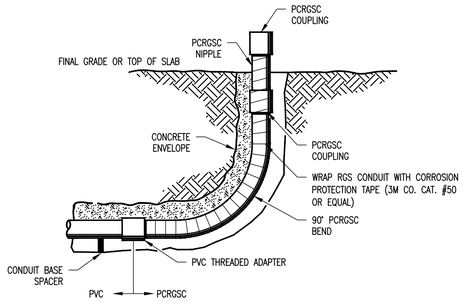
SIDE

01 PULLBOX DETAIL
SCALE: N.T.S.

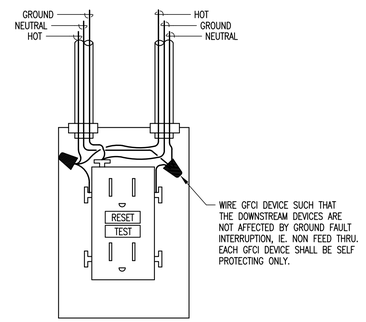
Ground Box Dimensions										Ground Box Cover Dimensions						
Box	A	B	C (depths)	D (min-max)	E (min-max)	F	G	H	J	Cover	K	L	M	N	P	R
1118	11 1/2	18 3/8	12, 18	15 3/16 - 15 7/16	8 5/16 - 8 9/16	7 7/8	4 1/2	1 1/4	2 3/16	1118	11 1/4	18 1/8	7 7/8	4 1/2	1 1/4	1 3/4
1324	14	1'-11 1/2"	12, 18, 24	18 3/4 - 19 1/4	9 1/4 - 9 3/4	0'-9 7/8"	5 1/8	1 1/2	2 1/4	1324	13 3/4	23 1/4	0'-9 7/8"	5 1/8	1 3/8	2
1730	17 3/4	30 3/4	12, 18, 24, 30	26 1/8 - 26 1/2	13 1/8 - 13 1/2	13 1/4	6 3/4	1 1/2	2 1/4	1730	17 1/2	30 1/2	13 1/4	6 3/4	1 3/8	2
2424	26 3/16	26 3/16	24, 36	20 3/16 - 20 5/8	20 3/16 - 20 5/8	10 1/2	10 1/2	5 1/8	6	2424	25 15/16	25 15/16	10 1/2	10 1/2	5	2
2436	24 1/4	35 7/8	18, 24, 30, 36	29 1/4 - 30	17 3/4 - 18 3/8	15 9/16	9 3/4	5 1/8	6	2436	24	35 5/8	15 9/16	9 3/4	5	2
3048	30 3/8	47 7/8	18, 24, 30, 36	40 15/16 - 41 5/8	23 7/16 - 24 1/8	21 5/16	12 9/16	5 1/8	6	3048	30 1/8	47 5/8	21 5/16	12 9/16	5	2
3636	37 1/8	37 1/8	36, 48	31 1/2 - 31 7/8	31 1/2 - 31 7/8	16 1/2	16 1/2	5 1/8	6	3636	38	38	16 1/2	16 1/2	5	2
4848	52 5/8	52 5/8	36, 48	45 11/16 - 46 1/8	45 11/16 - 46 1/8	23 3/4	23 3/4	5 1/8	6 1/8	4848	52 3/8	52 3/8	23 3/4	23 3/4	5	2



02 TYPICAL PANEL COLOR CODE
N.T.S.



04 TYPICAL CONDUIT STUB-UP DETAIL
N.T.S.



03 GFCI RECEPTACLE - WIRING DIAGRAM
N.T.S.

MCALLEN HIGH SCHOOL
FOOTBALL FIELD SPORTS LIGHTING
2021 LA VISTA AVE., MCALLEN, TX 78501

MCALLEN
INDEPENDENT SCHOOL DISTRICT

HALFF
5000 WEST MILITARY, SUITE 100
MIDLAND, TEXAS 79703
TEL (550) 694-0283
FAX (550) 694-0282
TBPE FIRM # F-312
TBPLS FIRM # F-10

Revision No.	Date	Description

STATE OF TEXAS
LIZBETH GUERRA
103534
LICENSED
PROFESSIONAL ENGINEER
11/29/22

Project No.:	45830.14
Issued:	11/29/2022
Drawn By:	JS
Checked By:	LG,RV
Scale:	AS NOTED

Sheet Title
ELECTRICAL DETAILS II

E3.02
Sheet Number

File Name: i:\45000s\45830\014\CADD\sheetsmcn\E404-SC--45830.014.dwg
Current Tab (Layout): ELECTRICAL DETAILS II User: AH2281
Printed Date: 12/1/2022 12:05:05 PM

Liberty Mutual

Interchange Corporate Center
450 Plymouth Road, Suite 400
Plymouth Meeting, PA. 19462-1644
Ph. (610) 832-8240

STATUTORY PAYMENT BOND PURSUANT TO CHAPTER 2253 OF THE TEXAS GOVERNMENT CODE

(Public Work - State of Texas)

Bond Number: **022234166**

KNOW ALL MEN BY THESE PRESENTS: that **Hellas Construction, Inc.** as Principal (the "Principal"), and LIBERTY MUTUAL INSURANCE COMPANY, a Massachusetts stock insurance company, as surety (the "Surety"), are held and firmly bound unto **McAllen Independent School District**, as obligee (the "Obligee"), in the amount of **Three Hundred Twenty-five Thousand Seven Hundred Forty-six And No/100** Dollars ($**325,746.00**), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee dated the **14th** day of **February**, **2023**, to

Request for Cooperative Quote 2023-1026 McAllen High School Football Field Sports, Lighting (Owner Contract No: 2023-156), McAllen, TX

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the Provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein. Pursuant to Chapter 2253, any notice of claim should be sent to the Surety at the address referenced above.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this **14th** day of **February**, **2023**.

WITNESS / ATTEST:

Hellas Construction, Inc.
(Principal)

By: _____ (Seal)
Name: Samuel Hernandez
Title: Director of Estimating

LIBERTY MUTUAL INSURANCE COMPANY
(Surety)

By: _____ (Seal)
Ginger Hoke Attorney-in-Fact

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8206213-969499

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Ginger Hoke, Mark R. DeWitt

all of the city of Dallas state of TX each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 31st day of August, 2021.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: _____
David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 31st day of August, 2021 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.

Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: _____
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.
Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.
Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 14th day of February, 2023.

By: _____
Renee C. Llewellyn, Assistant Secretary

LMS-12873 LMIC OCIC WAIC Multi Co 02/21

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email

Liberty Mutual Surety
Attention: LMS Claims
P.O. Box 34526
Seattle, WA 98124
Phone: 206-473-6210
Fax: 866-548-6837
Email: HOSCL@libertymutual.com
www.LibertyMutualSuretyClaims.com

TEXAS
IMPORTANT NOTICE

To obtain information or make a complaint:

You may call toll-free for information or to make a complaint at:
206-473-6210

You may also write to:
Liberty Mutual Surety Claims
P.O. Box 34526
Seattle, WA 98124

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at 1-800-252-3439.

You may write the Texas Department of Insurance Consumer Protection (111-1A)
P. O. Box 149091
Austin, TX 78714-9091

Web: http://www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should first contact the agent or call 1-800-843-6446. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

TEXAS
AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis para informacion o para someter una queja al:
206-473-6210

Usted tambien puede escribir a:
Liberty Mutual Surety Claims
P.O. Box 34526
Seattle, WA 98124

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al 1-800-252-3439.

Puede escribir al Departamento de Seguros

P. O. Box 149091
Austin, TX 78714-9091

Web: http://www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS

Si tiena una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente o primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI)

UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

Liberty Mutual
SURETY

Interchange Corporate Center
450 Plymouth Road, Suite 400
Plymouth Meeting, PA. 19462-1644
Ph. (610) 832-8240

PERFORMANCE BOND

Bond Number: **022234166**

KNOW ALL MEN BY THESE PRESENTS, that we **Hellas Construction, Inc.**

Liberty Mutual Insurance Company, as principal (the "Principal"), and LIBERTY MUTUAL INSURANCE COMPANY, a Massachusetts stock insurance company, as surety (the "Surety"), are held and firmly bound unto **McAllen Independent School District**, as obligee (the "Obligee"), in the penal sum of **Three Hundred Twenty-five Thousand Seven Hundred Forty-six And No/100** Dollars ($ **$325,746.00**), for the payment of which sum well and truly to be made, the Principal and the Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written agreement, dated the **14th** day of **February**, **2023**, entered into a contract (the "Contract") with the Obligee for **Request for Cooperative Quote 2023-1026 McAllen High School Football Field Sports, Lighting (Owner Contract No: 2023-156), McAllen, TX**

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly and faithfully perform the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

PROVIDED AND SUBJECT TO THE CONDITIONS PRECEDENT:

1. Whenever the Principal shall be, and declared by the Obligee to be in default under the Contract, the Obligee having performed the Obligee's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

   1.1 Arrange for the Principal, with consent of the Obligee, to perform and complete the Contract; or

   1.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

   1.3 Obtain a bid or bids from alternative contractors to complete the Contract in accordance with its terms and conditions, and upon determination by the Surety of the lowest responsible bidder, or if the Obligee elects, upon determination by the Obligee and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Obligee, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding the amount set forth in the first paragraph of this bond. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the Obligee to the Principal under the Contract and any amendments thereto, less the amount properly paid by the Obligee to the Principal; or

   1.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

      a. After investigation, determine the amount for which it may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee; or

      b. Deny liability in whole or in part and notify the Obligee citing reasons therefore.

2. Notwithstanding any other provision of this bond or the Contract, or otherwise, the Surety is not responsible for and shall not be held liable to the Obligee for any hazardous waste removal and the Surety shall not be held liable to, or in any other respect be responsible to, the Obligee by way of indemnity, claims or otherwise, or to any public authority or to any other person, firm or corporation, for or on account of any fines or claims by any public authority or for bodily injuries or property damage to any person or thing, including, but not limited to, injury or damage due to the release or threat of release of hazardous substances of any kind or damage to real estate or to the environment or clean-up costs or other damages of whatever kind or nature arising out of any act of commission or omission by the Principal, the Principal's agents, servants, employees, subcontractors or suppliers or any other person in connection with the performance of the Contract. This limitation applies regardless of when any such fine is assessed, claim is made, or injury, damage, release or threat of release occurs and without regard to any term or condition of the Contract.

3. The Surety hereby waives notice of any alteration or extension of time made by the Obligee.

4. Any suit under this bond must be instituted before the expiration of one (1) year from the date on which the Principal ceased to work on the Contract. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

5. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.

6. Any claims must be presented in writing to Liberty Mutual Insurance Company to the attention of the Surety Law Department at the above address.

7. Notwithstanding anything to the contrary in any of the Contract documents, under no circumstances shall the Surety be liable for any warranty obligations that exceed 1 year from the date of substantial completion as defined in the Contract documents.

DATED as of this **14th** day of **February**, **2023**.

WITNESS / ATTEST

Hellas Construction, Inc.
(Principal)

By: _____ (Seal)
Name: Saulo Hernandez
Title: Director of Estimating

LIBERTY MUTUAL INSURANCE COMPANY
(Surety)

By: _____ (Seal)
Attorney-in-Fact
Ginger Hoke

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Discussion and Possible Action on Bid No. 2023-1027 Sale of Real Property James Bonham Elementary School and Approval of Resolution No. 2023-166

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Board of Trustees authorized Administration to sell certain tracts of real property that are no longer needed for facilities and education purposes, including Lot 67 and Lot 70, recorded in Volume 1123, Page 967 Deed Records, Hidalgo County, Texas, more commonly known as, James Bonham Elementary School.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Two hundred ninety-eight (298) vendors invited to submit for the sale of real property at James Bonham Elementary School, which included the options to include value-added services; and one (1) bidder responded. On February 9, 2023, the evaluation committee, comprised of Alexandra Molina, Executive Director of Child Nutrition & Purchasing Services; Krystal Mercado, Senior Buyer; and Alejandra Gonzalez, Assistant Superintendent of District Operations, evaluated the bid, and is recommending that the Board of Trustees accept the bid and award the Boys and Girls Club of McAllen.

LEGAL REVIEW:

The Resolution has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

The proposed bid is for a cash value of $1,000,000.00 plus $1,044,622.00 in value-added services, for a total of $2,044,622.00. The District will oversee the sale proceeds from the sale of the property, if approved by the Board of Trustees.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board award Bid No. 2023-1027 Sale of Real Property James Bonham Elementary School to McAllen Boys and Girls Club of McAllen and Approve Resolution No. 2023-166.

SUBMITTED BY: _____ **SUPERVISOR:** Alejandra Gonzalez (Feb 10, 2023 13:59 CST)

For further information contact:
Name: Alejandra Gonzalez
Office: (956) 688-5445
email: Alejandra.gonzalez@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

2023-1027 Addendum 2
Boys & Girls Club of McAllen
boys & Girls Club of McAllen, Inc
Supplier Response

Event Information

Number: 2023-1027 Addendum 2
Title: Sale of Real Property (Bonham Elementary School) RE-BID
Type: Request for Proposal
Issue Date: 12/14/2022
Deadline: 2/3/2023 09:00 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: Krystal Mercado, Senior Buyer
Address: Purchasing Services
Administration Office
2000 N. 23rd Street
McAllen, TX 78501
Phone: (956) 657-4484
Email: krystal.mercado@mcallenisd.net

Boys & Girls Club of McAllen Information

Contact: Dalinda Alcantar
Address: 2620 West Galveston
McAllen, TX 78501
Phone: (956) 682-5791
Email: dalcantar@bgcmcallen.net
Web Address: www.bgcmcallen.net

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

Dalinda Gonzalez-Alcantar
Signature

dalcantar@bgcmcallen.net
Email

Submitted at 2/2/2023 11:16:35 AM (CT)

Requested Attachments

Completed W9 Form — 2022 W9 Form.pdf

Please upload your completed W9 form.

Completed Conflict of Interest Questionnaire. — CIQ FORM FILLABLE R 2.1.2023.pdf

Please upload your completed CIQ.

Note: If no conflict, please indicate "N/A" on the form.

Completed Form 1295 Form or Exemption Statement — Form 1295 Certificate Boys & Girls Club of McAllen.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.

Copy of Earnest Money — Cashiers Check concerning earnest money - 2023.pdf

Upload a copy of your earnest money order/cashier's check ($10,000).

Assumed Name Certificate/Fictitious Name Documentation/Disregarded Entity Documentation — BGCM - Bonham - LOI February 1, 2023.pdf

Upload your Assumed Name Certificate/Fictitious Name Documentation/Disregarded Entity Documentation (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)**.

N/A

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.**

Boys & Girls Club of McAllen, Inc

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).

Not applicable

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.

A. Principal place of business is in TX

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.

2620 West Galveston
McAllen, TX 78601

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	**Buyer Information** **Item Attributes** **1. Name** Boys & Girls Club of McAllen, Inc **2. Contact Person** Dalinda Gonzalez-Alcantar **3. Title** CEO **4. Address/City/State/Zip Code** 2620 West Galveston McAllen, TX 78501

5. Email Address

dalcantar@bgcmcallen.net

2 ***Line deleted as part of an Addendum***

3

Package Header

Bid Amount/Value Added Services

Total: $2,044,622.00

Item Notes: **Minimum Bid Amount - $ 1,480,000.00**

Please note that the sum of Line Items (#3.1-#3.6) must be equal to or greater than the minimum bid amount.

Package Items

3.1 Cash

Price: $1,000,000.00 Total: $1,000,000.00

3.2 #1 Value Added Service

Price: $728,622.00 Total: $728,622.00

Supplier Notes: Boys & Girls Club of McAllen has chosen McAllen ISD as their sole out of school time food service provider to include the following: ANNUAL breakdown: 615 members x 187 days x $4.33 per dinner = $497,971.65 , 700 summer campers x 50 days x $2.26 per breakfast = $79,100 , 700 summer campers x 50 days x $4.33 per lunch = $151,550

3.3 #2 Value Added Service

Price: $145,500.00 Total: $145,500.00

Supplier Notes: Boys & Girls Club of McAllen incurs $145,500 in annual costs associated with the Elevate athletic program. The following costs are specifically associated with Elevate's increased capacity: Full-time Elevate Athletic Administrative Assistant- 29,000 , part-time Elevate coordinator- $17,500, 50% registration fee discount for 1,800 Elevate partnership participants- $54,000 , and a waived $25 annual membership fee for 1,800 Elevate partnership participants at $45,000 . Services are in line with McAllen ISD's strategy 5, parternships with business/civic education organizations.

3.4 #3 Value Added Service

Price: $170,500.00 Total: $170,500.00

Supplier Notes: Boys & Girls Club of McAllen's increased middle school out of school time service valued at an annual cost of $170,500 which includes the following: Fossum all-inclusive after school program provider valued at $36,000, Cathey all-inclusive after school program provider valued at $36,000 , expanded mental health services at middle school campuses through a part-time professional social worker valued at $15,500 and $85,000 for expanded out of school time services for children and teens south of the expressway . Services are in line with McAllen ISD's strategic plan including learner outcomes, emotional intelligence, and strategic partnerships with business/civic education organizations.

3.5 #4 Value Added Service

Price: *No response* Total: *No response*

3.6 #5 Value Added Service

Price: *No response* Total: *No response*

Response Total: $2,044,622.00

THE BOARD OF TRUSTEES OF
MCALLEN INDEPENDENT SCHOOL DISTRICT

RESOLUTION AUTHORIZING SALE OF REAL PROPERTY

WHEREAS, the Board of Trustees of the McAllen Independent School District (the "District") approved and adopted a resolution authorizing the sale or exchange, pursuant to §272.001(a) of the Texas Local Government Code, of the real property described in attached **Exhibit "A"**(the "Property")

WHEREAS, on February 13, 2023, the Board of Trustees accepted the bid of Two Million Forty-Four Thousand Six Hundred Twenty-Two Dollars ($2,044,622.00) consisting of cash and value added services to the District and approved the sale of the Property to Boy's and Girls Club of McAllen, Inc.; and

Be it Resolved,

1. That the findings and recitals in the preamble of this Resolution are hereby found to be true and correct and are hereby approved and adopted.

2. That the Board of Trustees authorizes J.A. Gonzalez, Ed.D, Superintendent to negotiate and execute the Real Estate Sales Contract, attached herein as **Exhibit "B".**

2. That the Board of Trustees authorizes Tony Forina, President of the Board of Trustees, to execute the deed and other closing documents necessary to effectuate the conveyance of the Property.

3. That it is hereby found, determined and declared that sufficient written notice of the date, time, place and subject of the meeting of the Board of Trustees of the District at which this Resolution was adopted was posted at a place convenient and readily accessible at all times to the general public for the time required by law preceding this meeting, as required by chapter 551, Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this Resolution and the subject matter thereof has been discussed, considered and formally acted upon. The Board of Trustees further ratifies, approves and confirms such written notice and posting thereof.

FINALLY PASSED AND ADOPTED this ___day of _____, 2023

ATTEST:

By: _____
Marco Suarez, Secretary
McAllen ISD Board of Trustees

By:_____
Tony Forina, President
McAllen ISD Board of Trustees

CERTIFICATE FOR RESOLUTION

I hereby certify that the foregoing Resolution was presented to the Board of Trustees of the District during a meeting on _____, 2023. A quorum of the Board of Trustees being then present, it was then duly moved and seconded that the Resolution be adopted, and such Resolution was then adopted according to the following vote:

Ayes: _____
Nays: _____
Abstentions: _____

To certify which, witness my hand this ___ day of _____, 2023.

_____
Tony Forina, President
McAllen ISD Board of Trustees

THE STATE OF TEXAS §
§ ACKNOWLEDGMENT
COUNTY OF HIDALGO §

BEFORE ME, a Notary Public, on this day personally appeared Tony Forina, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he is the President of the Board of Trustees of the McAllen Independent School District; that he was authorized to execute such instrument pursuant to resolution of the Board of Trustees adopted on February 13, 2023; and that said instrument is executed as the free and voluntary act and deed of such governmental unit for the purposes expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ____ day of _____, 2023.

_____
Notary Public, State of Texas

Exhibit A to Resolution Property

METES AND BOUNDS DESCRIPTION
13.78 ACRES OF LAND OUT OF
MCALLEN SECOND SUBURBAN
CITRUS GROVES SUBDIVISON
HIDALGO COUNTY, TEXAS

LAND SURVEYORS

LLC

Job No. 211111
13.78 acres of land
Sheet No.: 1 of 2

A tract of land containing 13.78 acres of land, situated in Hidalgo County, Texas, being part or portion of **LOT 67 and LOT 70, MCALLEN SECOND SUBURBAN CITRUS GROVES SUBDIVISION,** Hidalgo County, Texas, map reference: Volume 5 Page 27 Map Records, Hidalgo County, Texas, said 13.78 acre being that tract of land deeded to McAllen Independent School District recorded in Volume 1123 Page 967 Deed Records, Hidalgo County, Texas, said 13.78 acres being more particularly as follows;

COMMENCING for reference at the Northeast corner of said Lot 70, within Jordan Road, and 23rd Street, **THENCE** N 81° 21' 24" W, along the North line of said Lot 70 within said Jordan Road, a distance of 507.20 feet, to the northwest corner of a tract of land deeded to Juan Robert Ramon, recorded in Document Number 2553732 Deed Records, Hidalgo County, Texas, for the **POINT OF BEGINNING,** and the Northeast corner of this tract;

THENCE S 08° 38' 36" W, along the common line of said School District tract and said Ramon tract, pass at a distance of 40.00 feet, an iron pipe found on the south right-of-way line of said Jordan Street, continuing a total distance of 659.54 feet to a ½" iron rod with a plastic cap stamped "CVQ LS" set on the south line of said Lot 70, for the Southeast corner hereof;

THENCE N 81° 21' 24" W, along the south line of said Lot 70 and Lot 67, pass at a distance of 268.66 feet a 2" iron pipe found, continuing a total distance of 698.96 feet, to a ½" iron rod with a plastic cap stamped "CVQ LS" set for a corner hereof;

THENCE N 22° 56' 38" W, along said Lot 67, a distance of 293.06 feet, to an iron pipe found, for a corner hereof;

THENCE N 81° 21' 24" W, along the south line of said Lot 67, pass at a distance of 99.56 feet, the apparent east right-of-way line of a 40.00 foot road, continuing a total distance of 139.56 feet, to the west line of said Lot 67, for the Southwest corner hereof;

THENCE N 08° 38' 36" E, along the west line of said Lot 67, a distance of 409.90 feet, for the Northwest corner hereof;

THENCE S 81° 21' 24" E, along the north line of said Lot 70, within said Jordan Road, a distance of 992.02 feet, to the **POINT OF BEGINNING,** containing 13.78 acres of land, more or less.

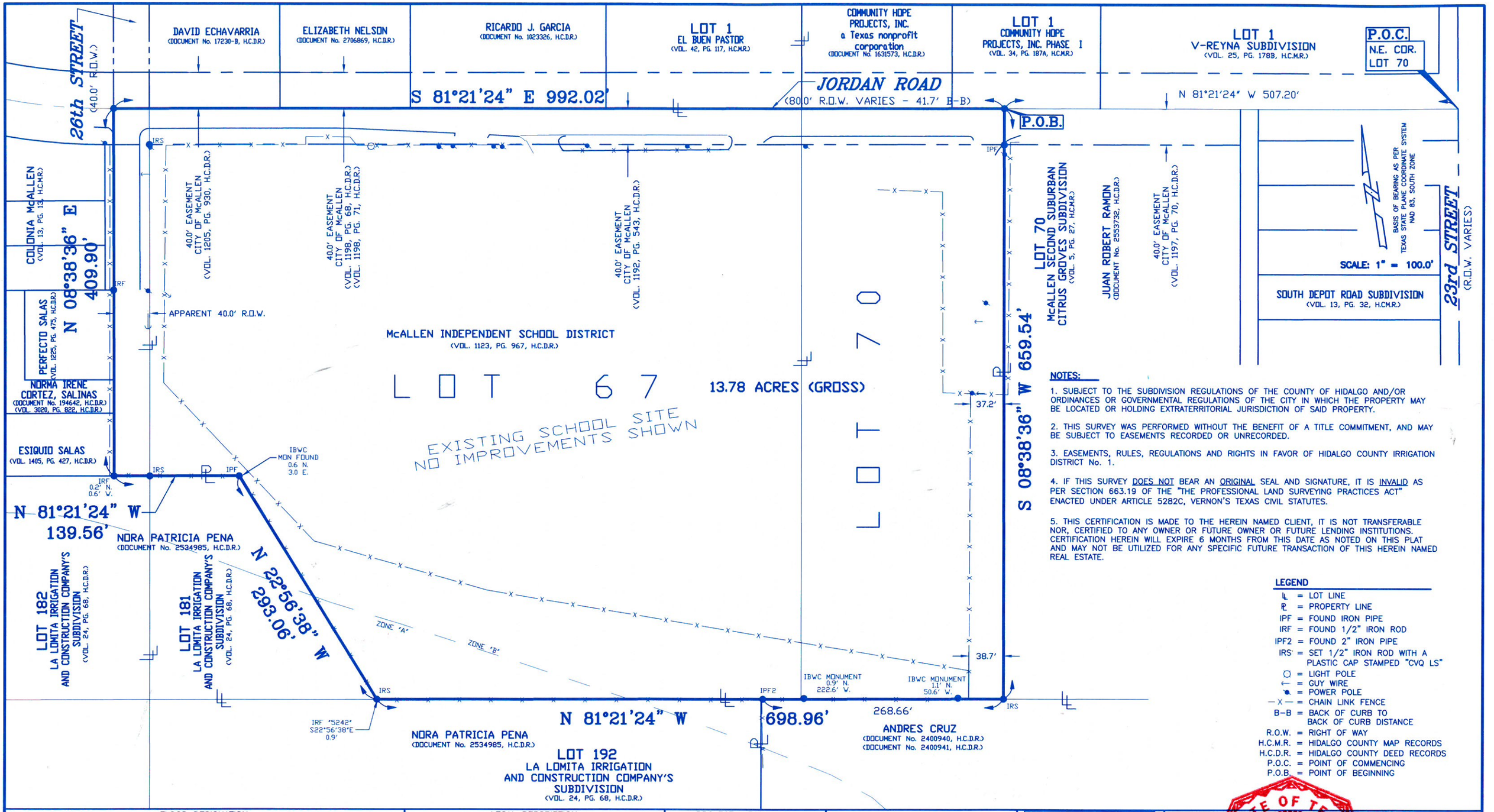
Bearing basis as per TEXAS STATE PLANE COORDINATES SYSTEM NAD 1983, South Zone.

THE ABOVE DESCRIPTION WAS SURVEYED ON THE GROUND UNDER MY DIRECTION ON DECEMBER 2, 2021.

STATE OF TEXAS
REGISTERED
JORGE RODRIGUEZ
5303
PROFESSIONAL
LAND SURVEYOR

Jorge Rodriguez, R.P.L.S. No. 5303
CVQ Land Surveyors, LLC
T.B.P.E.L.S. Firm No. 10119600

P.O. Box 5066 • McAllen, Texas 78502 • Phone (956) 618-1551 • Fax (956) 618-1547



NOTES:

1. SUBJECT TO THE SUBDIVISION REGULATIONS OF THE COUNTY OF HIDALGO AND/OR ORDINANCES OR GOVERNMENTAL REGULATIONS OF THE CITY IN WHICH THE PROPERTY MAY BE LOCATED OR HOLDING EXTRATERRITORIAL JURISDICTION OF SAID PROPERTY.

2. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE COMMITMENT, AND MAY BE SUBJECT TO EASEMENTS RECORDED OR UNRECORDED.

3. EASEMENTS, RULES, REGULATIONS AND RIGHTS IN FAVOR OF HIDALGO COUNTY IRRIGATION DISTRICT No. 1.

4. IF THIS SURVEY DOES NOT BEAR AN ORIGINAL SEAL AND SIGNATURE, IT IS INVALID AS PER SECTION 663.19 OF THE "THE PROFESSIONAL LAND SURVEYING PRACTICES ACT" ENACTED UNDER ARTICLE 5282C, VERNON'S TEXAS CIVIL STATUTES.

5. THIS CERTIFICATION IS MADE TO THE HEREIN NAMED CLIENT, IT IS NOT TRANSFERABLE NOR, CERTIFIED TO ANY OWNER OR FUTURE OWNER OR FUTURE LENDING INSTITUTIONS. CERTIFICATION HEREIN WILL EXPIRE 6 MONTHS FROM THIS DATE AS NOTED ON THIS PLAT AND MAY NOT BE UTILIZED FOR ANY SPECIFIC FUTURE TRANSACTION OF THIS HEREIN NAMED REAL ESTATE.

LEGEND

℄	= LOT LINE
ℙ	= PROPERTY LINE
IPF	= FOUND IRON PIPE
IRF	= FOUND 1/2" IRON ROD
IPF2	= FOUND 2" IRON PIPE
IRS	= SET 1/2" IRON ROD WITH A PLASTIC CAP STAMPED "CVQ LS"
○	= LIGHT POLE
←	= GUY WIRE
●	= POWER POLE
—X—	= CHAIN LINK FENCE
B-B	= BACK OF CURB TO BACK OF CURB DISTANCE
R.O.W.	= RIGHT OF WAY
H.C.M.R.	= HIDALGO COUNTY MAP RECORDS
H.C.D.R.	= HIDALGO COUNTY DEED RECORDS
P.O.C.	= POINT OF COMMENCING
P.O.B.	= POINT OF BEGINNING

FLOOD DESIGNATION

The flood designation for this property is "Zone B" which are "Areas between limits of the 100-year flood and the 500-year flood; or certain areas subject to 100-year flooding with average depths of less than one foot or where the contributing drainage areas less than one square mile; or areas protected by levees from the base flood" (Medium shading). And "Zone A" which are areas of 100-year flood; base flood elevations and flood hazard factors not determined. As per F.E.M.A.s Flood Insurance Rate Map Panel No.:

480343 0010 C, Map Revised: November 2, 1982

Flood Zone is determined by graphic plotting only. We do not assume responsibility for exact determination.

LEGAL DESCRIPTION

This plat is a true and correct representation of a survey made on the ground of the property located at: 2400 JORDAN ROAD, McAllen, Hidalgo County, Texas, described as follows: 13.78 ACRES OUT OF LOTS 67 AND 70, McALLEN SECOND SUBURBAN CITRUS GROVES SUBDIVISION, Hidalgo County, Texas, according to the map or plat thereof recorded in Volume 5, Page 27, Map Records, Hidalgo County, Texas.

PROJECT INFORMATION

SURVEYED DATE:	12/02/2021
JOB NO.:	211111
DRAWN BY:	GTG
CHECKED BY:	J.R.
REVISIONS:	
	298

JAVIER HINOJOSA ENGINEERING
CONSULTING ENGINEERS
416 E. DOVE AVENUE McALLEN, TEXAS 78504
PHONE (956) 668-1588
T.B.P.E.L.S. FIRM No. F-1295

LAND SURVEYORS LLC
517 BEAUMONT AVE.
McALLEN, TEXAS 78501
Ph. (956) 618-1551
FAX (956) 618-1547
www.cvqls.com
TBPELS FIRM No. 10119600

SURVEYOR'S CERTIFICATION

I, Jorge Rodriguez, a Registered Professional Land Surveyor, do hereby certify that the above foregoing plat to be a true and correct representation of the land as surveyed, on the ground on December 2, 2021 under my direction.

STATE OF TEXAS
JORGE RODRIGUEZ
5303
PROFESSIONAL LAND SURVEYOR

Jorge Rodriguez
R.P.L.S. No. 5303
STATE OF TEXAS

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ATTACHMENT B
REAL ESTATE SALES CONTRACT

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REAL ESTATE SALES CONTRACT

This contract to buy and sell real property is between Seller and Buyer as identified below, and is effective on the date ("Effective Date") of the last of the signatures by Seller and Buyer as parties to this contract.

Seller: THE BOARD OF TRUSTEES OF THE
MCALLEN INDEPENDENT SCHOOL DISTRICT
2000 N. 23rd
McAllen, Hidalgo County, Texas 78501
T: (956) 618-6000

Seller's Attorney: Blake Henshaw
WALSH, GALLEGOS TREVIÑO KYLE & ROBINSON, P.C.
10375 Richmond Ave. Suite 1357
Houston, Texas 77042
Phone: 713-789-6864
Fax: 713-789-9318

Buyer: _____

Address: _____

Property: The property shall mean the real property as described in Exhibit A (the "Property"), surface only, together with all improvements to the Property existing as of the Closing Date. The Property shall not include any personal property not permanently affixed to the Land.

Title Company: _____
Address: _____

Purchase Price: The purchase price for the Property shall be the amount set forth in the Buyer's Bid, to be paid in cash or cash equivalent at the Closing. Buyer's Bid is attached as Exhibit D. The purchase price is _____.

Earnest Money: The amount of the Earnest Money is TEN THOUSAND AND NO/100 ($10,000.00).

Independent Consideration: ONE HUNDRED and No/100 Dollars ($100.00) of the Earnest Money shall be independent consideration ("Independent Consideration") for the option and right to terminate this Contract granted to Buyer in **Section G(3)** herein, which Independent Consideration shall be non-refundable to Buyer, and shall be applied to the Total Sales Price at Closing.

County for Performance: This Contract shall be performed in Hidalgo County, Texas.

A. Deadlines and Other Dates

All deadlines in this contract expire at 5:00 P.M., Central Standard Time, on the day indicated. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence of this agreement.

1. Earnest Money Deadline: Earnest Money must be tendered with the Buyer's Bid for the Property, and must be in the amount and form set forth above and in the Bid Package. The Earnest Money deposit of the bidder approved by the Board of Trustees shall be tendered to the Title Company within two (2) business days after the Effective Date.

2. Delivery of Title Commitment: Ten (10) days after the Effective Date.

3. Delivery of legible copies of instruments referenced in the Title Commitment: Fifteen (15) days after the Effective Date.

4. Delivery of Title Objections: Five (5) days after delivery of the Title Commitment, Survey, and legible copies of the instruments referenced in them.

5. Delivery of Seller's Records specified in Exhibit C: Ten (10) days after the Effective Date.

6. End of Inspection Period: Twenty-Five (25) days after the Effective Date.

7. Closing Date: Thirty (30) days after the Effective Date.

8. Closing Time: 9:00 a.m. unless otherwise agreed by Seller and Buyer.

B. Closing Documents

1. At closing, Seller will deliver the following items:
Special Warranty Deed in the form set forth in the Bid Package.
Evidence of Seller's authority to close this transaction.
Lien release, if any, as required by paragraph K (2)(d).

2. At closing, Buyer will deliver the following items:
Purchase Price in cash or cash equivalent.
Evidence of Buyer's authority to consummate this transaction.
Deceptive Trade Practices Act waiver.
Lien release, if any, as required by paragraph K (2)(d).

The documents listed in this section B are collectively known as the "Closing Documents."

C. Exhibits

The following exhibits are attached, and are incorporated by reference to form a part of this contract:

Exhibit A – Legal Description of the Property
Exhibit B – Representations; As Is, Where Is; Environmental Matters

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Exhibit C – Seller's Records
Exhibit D – Buyer's Bid
Exhibit E – Form of Deed

D. Purchase and Sale of Property

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract. The Form of Deeds in Exhibit E will be used to convey the Property.

E. Interest on Earnest Money

Seller may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money.

F. Title and Survey

1. ***Review of Title.*** The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.

2. ***Title Commitment; Title Policy.*** "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Land. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.

3. ***Survey.*** "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Buyer and Title Company, dated after the Effective Date, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for a Category 1A Survey.

4. ***Delivery of Title Commitment.*** Seller must deliver the Title Commitment to Buyer by the deadline stated in section A.2. Seller must deliver legible copies of the instruments referenced in the Title Commitment by the deadline stated in section A.3.

5. ***Title Objections.*** Buyer has until the deadline stated in section A.4 ("Title Objection Deadline") to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("Title Objections"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions." If Buyer notifies Seller of any Title Objections, Seller has five (5) days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five (5) days after the deadline for the giving of Seller's Cure Notice, notify Seller that either this contract is terminated or Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the

Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice.

G. Inspection Period

1. ***Review of Seller's Records.*** Seller will deliver to Buyer copies of Seller's records that seller has possession as specified in Exhibit C, or otherwise make those records available for Buyer's review, by the deadline stated in section A.5.

2. ***Entry onto the Property.*** Buyer may enter onto the Property prior to closing for purposes of conducting a boundary or environmental survey, or otherwise to inspect the Property, subject to the following:

a. Buyer must deliver evidence to Seller that Buyer has insurance for its proposed survey or inspection activities, in amounts and with coverages that are substantially the same as those maintained by Seller or in such lesser amounts or with such lesser coverages as are reasonably satisfactory to Seller;

b. Buyer may not unreasonably interfere with existing operations or occupants of the Property, if any;

c. Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller may be present during the tests;

d. if the Property is altered because of Buyer's inspections, Buyer must return the Property to its pre-inspection condition promptly after the alteration occurs;

e. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within three (3) days of their preparation or receipt by Buyer; and

f. Buyer must abide by any other reasonable entry rules imposed by Seller.

3. ***Buyer's Right to Terminate.*** Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period. Upon such termination by Buyer, the earnest money shall be paid to Seller and Seller shall have no further obligation to Buyer.

4. ***Buyer Indemnity and Release of Seller***

a. ***Indemnity.*** **Buyer will indemnify, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, including, but not limited to, claims alleged to have arisen in whole or in part as a result of Seller's negligence.**

b. ***Release.*** **Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property, including, but not limited to, claims alleged to have arisen in whole or in part as a result of Seller's negligence.**

H. Representations

The parties' representations stated in Exhibit B are true and correct as of the Effective Date and must be true and correct on the Closing Date.

I. Condition of the Property until Closing; Cooperation; No Recording of Contract

1. ***Maintenance and Operation.*** Until closing, Seller will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b) operate the Property in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Property. Until the end of the Inspection Period, Seller will not enter into, amend, or terminate any contract that affects the Property other than in the ordinary course of operating the Property and will promptly give notice to Buyer of each new, amended, or terminated contract, including a copy of the contract, in sufficient time so that Buyer may consider the information before the end of the Inspection Period. If Seller's notice is given within three (3) days before the end of the Inspection Period, the Inspection Period will be extended for three (3) days. After the end of the Inspection Period, Buyer may terminate this contract if Seller enters into, amends, or terminates any contract that affects the Property without first obtaining Buyer's written consent.

2. ***Casualty Damage.*** Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before closing. Buyer may terminate this contract if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within five (5) days after receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than five (5) days before closing). If Buyer does not terminate this contract, Seller will convey the Property to Buyer in its damaged condition.

3. ***Condemnation.*** Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within five (5) days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than five (5) days before closing). If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

4. ***Claims; Hearings.*** Seller will notify Buyer promptly of any written notice claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Property.

5. ***Cooperation.*** Seller will cooperate with Buyer (a) before and after closing, to transfer the applications, permits, and licenses held by Seller and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.

6. ***No Recording.*** Buyer may not file this contract or any memorandum or notice of this contract in the real property records of any county. If, however, Buyer records this contract or a memorandum or notice, Seller may terminate this contract and record a notice of termination.

J. Termination

1. ***Disposition of Earnest Money after Termination***. Buyer and Seller agree that if this contract is terminated by either party prior to closing, Buyer shall not be entitled to the Earnest Money. Buyer hereby authorizes the Title Company to deliver the Earnest Money to Seller upon receipt by Title Company of written notice from Seller that the contract is terminated.

2. ***Duties after Termination.*** If this contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that

Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract.

K. Closing

1. ***Closing.*** This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

a. ***Closing Documents.*** The parties will execute and deliver the Closing Documents.

b. ***Payment of Purchase Price.*** Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price.

c. ***Disbursement of Funds; Recording; Copies.*** Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.

d. ***Possession.*** Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing.

2. ***Transaction Costs***

a. ***Seller's Costs.*** Seller will pay the costs to prepare the deed; the costs to obtain, deliver, and record releases of all liens to be released at closing; the costs to record all documents to cure Title Objections agreed to be cured by Seller; the costs to deliver copies of the instruments described in section A.3; and Seller's expenses and attorney's fees.

b. ***Buyer's Costs.*** Buyer will pay will pay the basic charge for the Title Policy; the escrow fee charged by Title Company; the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense; the additional premium for the "survey/area and boundary deletion" or other changes in the Title Policy, if such changes and deletions are requested by Buyer; Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession; the costs to obtain the Survey; the costs of work required by Buyer to have the survey reflect matters other than those required under this contract; the costs to obtain financing of the Purchase Price, including the incremental premium costs of the mortgagee's title policies and endorsements and deletions required by Buyer's lender; and Buyer's expenses and attorney's fees.

c. ***Ad Valorem Taxes.*** Seller represents that it is entitled to an exemption from ad valorem taxes during the time it owned the Property. If this sale or Buyer's use of the Property results in the assessment of any ad valorem taxes for the Property for the calendar year of closing, all such taxes and any associated costs will be paid by the Buyer. Buyer shall be responsible for notifying all taxing units having jurisdiction over the Property of the change of ownership, and Buyer shall be responsible for any and all taxes, late fees or penalties assessed against the Property by reason of Buyer's failure to so note the change of ownership. Seller will, upon request, provide to Buyer proof of Seller's ownership of the Property prior to the date of closing, and will assist Buyer in demonstrating Seller's exemption from ad valorem taxes.

d. ***Brokers' Commissions.*** Seller, to the extent permitted by the laws and Constitution of the State of Texas, and Buyer each indemnify and agree to defend and hold the other party harmless from any loss, attorney's fees, and court and other costs arising out of a claim by any person or entity claiming by, through, or under the indemnitor for a broker's or finder's fee or

commission because of this transaction or this contract, whether the claimant is disclosed to the indemnitee or not. At closing, each party will provide the other party with a release of broker's or appraiser's liens from all brokers or appraisers for which each party was responsible.

3. ***Issuance of Title Policy.*** Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

L. Default and Remedies

1. ***Seller's Default.*** If Seller fails to perform any of its material obligations under this contract or if any of Seller's material representations are not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may as its sole and exclusive remedy terminate this contract by giving notice to Seller on or before the Closing Date and have the Earnest Money, less One Hundred and No/100 ($100.00) as independent consideration for the right granted by Seller to Buyer to terminate this contract, paid to Buyer.

2. ***Buyer's Default.*** If Buyer fails to perform any of its obligations under this contract ("Buyer's Default"), Seller may elect either of the following as its sole and exclusive remedy:

a. ***Termination; Damages.*** Seller may terminate this contract by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller as liquidated damages. If Buyer's Default occurs after Seller has incurred costs to perform its obligations under this contract and Seller terminates this contract in accordance with the previous sentence, Buyer will also reimburse Seller for the amount of the Seller's actual out-of-pocket expenses incurred to perform its obligations under this contract to the extent that those expenses exceed the Earnest Money. Buyer will make payment of this amount to the Seller within ten (10) days of Buyer's receipt of an invoice from Seller stating the amount of Seller's expenses in excess of the Earnest Money.

b. ***Specific Performance.*** Seller may enforce specific performance of Buyer's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

3. ***Damages.*** The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that the Earnest Money and the amounts provided above are reasonable forecasts of just compensation to the non-defaulting party for the harm that would be caused by a default.

M. Miscellaneous Provisions

1. ***Notices.*** Any notice required by or permitted under this contract must be in writing. Any notice required by this contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this contract. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given, if the attorneys have been identified by the parties.

2. ***Entire Contract.*** This contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer not incorporated in writing in this contract.

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3. ***Amendment.*** This contract may be amended only by an instrument in writing signed by the parties.

4. ***Prohibition of Assignment.*** Buyer may not assign this contract or any of Buyer's rights under it without Seller's prior written consent, and any attempted assignment is void. This contract binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

5. ***Survival.*** The obligations of this contract that cannot be performed before termination of this contract or before closing will survive termination of this contract or closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents will control.

6. ***Choice of Law; Venue.*** This contract will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the County in which the Property is located.

7. ***Waiver of Default.*** It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays taking any action with respect to the default.

8. ***No Third-Party Beneficiaries.*** There are no third-party beneficiaries of this contract.

9. ***Severability.*** The provisions of this contract are severable. If a court of competent jurisdiction finds that any provision of this contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

10. ***Ambiguities Not to Be Construed against Party Who Drafted Contract.*** The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

11. ***No Special Relationship.*** The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

12. ***Counterparts.*** If this contract is executed in multiple counterparts, all counterparts taken together will constitute this contract.

13. ***Waiver of Consumer Rights.*** **BUYER WAIVES ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41, *et seq.,* OF THE TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, BUYER VOLUNTARILY CONSENTS TO THIS WAIVER.**

N. ***Execution.*** This agreement is entered into by and between the undersigned parties, and shall be effective on the date ("Effective Date") of the last of the signatures by Seller and Buyer.

SELLER:
THE BOARD OF TRUSTEES OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT
307

DRAFT

By: EXHIBIT ONLY
President, Board of Trustees or Delegee

Date: _____

BUYER:

By: EXHIBIT ONLY

_____

Date: _____

Title Company acknowledges receipt of Earnest Money in the amount of $ _____ and a copy of this contract executed by both Buyer and Seller.

_____ **TITLE COMPANY**

_____

_____

By: _____
Name: _____
Title _____
Date _____

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Exhibit A to Real Estate Sales Contract
Description of the Property

Legal Description

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Exhibit B to Real Estate Sales Contract
Representations; As Is, Where Is; Environmental Matters

A. Seller's Representations to Buyer. Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. ***Authority.*** Seller is an independent school district duly organized, validly existing, and in good standing under the laws of the State of Texas with authority to convey the Property to Buyer. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by an authorized representative of Seller.

2. ***Litigation.*** There is no litigation pending or, to the best of Seller's knowledge, threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this contract.

3. ***Violation of Laws.*** Seller has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.

4. ***Licenses, Permits, and Approvals.*** Seller has not received written notice that any license, permit, or approval necessary to operate the Property in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal. Provided, however, that Seller's governmental exemption for *ad valorem* taxes is not transferable to Buyer, and Buyer will be responsible for all taxes and related charges arising from its purchase of the Property.

5. ***Condemnation; Zoning; Land Use.*** Seller has not received written notice of any condemnation, zoning, or land-use proceedings affecting the Property.

6. ***No Other Obligation to Sell the Property or Restriction against Selling the Property.*** Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.

7. ***No Liens.*** On the Closing Date, the Property will be free and clear of any valid mechanic's and material man's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, material man's, or other liens against the Property other than work or materials to which Buyer has given its consent.

8. ***No Other Representation.*** Except as stated above, Seller makes no representation with respect to the Property.

9. ***No Warranty.*** Seller has made no warranty in connection with this contract.

B. Buyer's Representations to Seller

Buyer represents to Seller that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. Receipt of Bid Package. Buyer represents to Seller that Buyer has received and reviewed the Bid Package for the Property, consisting of the following items:

a. Notice of Sale of Real Property
b. Instructions to Bidders
c. Bid Form
d. Special Warranty Deed
e. This Contract

2. Consultation with Attorney. Buyer represents to Seller that Buyer is aware that this contract has important legal consequences, and that Buyer is entitled to consult an attorney of its choosing prior to executing this contract. Buyer further represents that to the extent it has elected not to consult an attorney, Buyer has done so of its own free will and act.

C. PROPERTY SOLD "AS IS, WHERE IS;" NO WARRANTIES

NOTICE: THE PROPERTY WILL BE CONVEYED TO BUYER IN AN "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS. ALL WARRANTIES, EXCEPT THE LIMITED WARRANTY OF TITLE IN THE CLOSING DOCUMENTS, ARE EXPRESSLY DISCLAIMED.

BUYER REPRESENTS AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESSED OR IMPLIED, OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE CONDITION OF THE PROPERTY OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE COMPLIANCE WITH ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (D) THE SOIL CONDITIONS, WATER, DRAINAGE, TOPOGRAPHICAL FEATURES OR OTHER CONDITIONS OF THE PROPERTY OR WHICH AFFECT THE PROPERTY; (E) ANY CONDITIONS RELATING TO OR ARISING FROM ANY ARCHEOLOGICAL OR HISTORIC SITE, CEMETERY, BURIAL GROUND, ENDANGERED SPECIES HABITAT, OR OTHER SUCH CONDITION WHICH MAY AFFECT THE PROPERTY; (F) AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION OR COMPOSITION OF THE PROPERTY; (G) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (H) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (I) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PROPERTY; AND (J) ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES BY GRANTOR WHATSOEVER.

Buyer further represents and agrees that, having been given the opportunity to inspect the Property, Buyer is relying solely on its own investigation of the Property and not on any information provided by Seller. Buyer further acknowledges and agrees that any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and

makes no representations as to the accuracy or completeness of such information. Seller will not be liable or bound in any manner by any verbal or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. Buyer further represents and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "as is" condition and basis with all faults. It is understood and agreed that the purchase price has been adjusted by prior negotiation to reflect that all of the Property is sold by Seller and purchased by Buyer subject to the foregoing.

The provisions of this Section C regarding the Property will be included in the Deed with appropriate modification of terms as the context requires.

D. ENVIRONMENTAL MATTERS

ASBESTOS AND/OR ASBESTOS-CONTAINING MATERIALS AND OTHER HAZARDOUS MATERIALS MAY BE PRESENT ON THE PROPERTY, AND BUYER ACKNOWLEDGES THAT IT MAY PERFORM AN ENVIRONMENTAL SURVEY OF THE PROPERTY PRIOR TO BIDDING.

AFTER CLOSING, AS BETWEEN BUYER AND SELLER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS OCCURRING BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF SELLER'S OWN NEGLIGENCE OR THE NEGLIGENCE OF SELLER'S REPRESENTATIVES. BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON SELLERS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING BUT NOT LIMITED TO CLAIMS ALLEGED TO HAVE ARISEN AS A RESULT OF SELLER'S OWN NEGLIGENCE. BUYER FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF SELLER AND IN THE NAME OF SELLER, ANY CLAIM OR LITIGATION BROUGHT IN CONNECTION WITH ANY SUCH ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

The provisions of this Section D regarding the Property will be included in the Deed with appropriate modification of terms as the context requires.

Exhibit C to Real Estate Sales Contract
Seller's Records

To the extent that Seller has possession of the following items pertaining to the Property, Seller will deliver or make the items or copies of them available to Buyer by the deadline stated in section A.5:

Land

Environmental Reports

Prior Surveys

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Exhibit D to Real Estate Sales Contract
Buyer's Bid

[Insert after accepted by Board of Trustees]

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Exhibit E to Real Estate Sales Contract

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Date: _____

Grantor: BOARD OF TRUSTEES OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT

Grantor's Mailing Address: 2000 N. 23rd St.
McAllen, Hidalgo County, TX 78501

Grantee: _____

Grantee's Mailing Address: _____

Consideration: TEN AND NO/100 DOLLARS ($10.00) and other valuable consideration.

Property (including improvements):

Reservations from and Exceptions to Conveyance and Warranty:

Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; all rights, obligations, and other matters arising from and existing by reason of any water or utility district; and taxes for 2022, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

THE PROPERTY IS SOLD AND CONVEYED TO AND ACCEPTED BY GRANTEE IN ITS PRESENT CONDITION, AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, OTHER THAN THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN, AND GRANTEE EXPRESSLY ACKNOWLEDGES THAT THE SALES PRICE REFLECTS SUCH CONDITION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING,

EXCEPT FOR THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN, THE SALE OF THE PROPERTY IS WITHOUT ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, AGREEMENT, STATEMENT OR EXPRESSION OF OPINION (OR LACK THEREOF) OF OR WITH RESPECT TO: (A) THE CONDITION OF THE PROPERTY OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE COMPLIANCE WITH ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (D) THE SOIL CONDITIONS, WATER, DRAINAGE, TOPOGRAPHICAL FEATURES OR OTHER CONDITIONS OF THE PROPERTY OR WHICH AFFECT THE PROPERTY; (E) ANY CONDITIONS RELATING TO OR ARISING FROM ANY ARCHEOLOGICAL OR HISTORIC SITE, CEMETERY, BURIAL GROUND, ENDANGERED SPECIES HABITAT, OR OTHER SUCH CONDITION WHICH MAY AFFECT THE PROPERTY; (F) AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION OR COMPOSITION OF THE PROPERTY; (G) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (H) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (I) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PROPERTY; AND (J) ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES BY GRANTOR WHATSOEVER. GRANTEE HAS MADE ITS OWN PHYSICAL INSPECTION OF THE PROPERTY AND HAS SATISFIED ITSELF AS TO THE CONDITION OF THE PROPERTY FOR GRANTEE'S INTENDED USE. GRANTOR MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO THE NATURE OR QUANTITY OF THE INTERESTS THEY OWN IN ANY OIL, GAS AND OTHER MINERALS.

AFTER CLOSING, AS BETWEEN GRANTEE AND GRANTOR, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF GRANTEE, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. **GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF GRANTOR'S OWN NEGLIGENCE OR THE NEGLIGENCE OF GRANTOR'S REPRESENTATIVES.** GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON GRANTORS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

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GRANTEE FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF GRANTOR AND IN THE NAME OF GRANTOR, ANY CLAIM OR LITIGATION BROUGHT IN CONNECTION WITH ANY SUCH ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

Grantor, for the Consideration and subject to the Reservations From Conveyance and Exceptions to and Warranty, GRANTS, SELLS, ASSIGNS and CONVEYS to Grantee the Property (together with all and singular the rights and appurtenances thereto, including any right, title, and interest of Grantor in and to adjacent streets, alleys, waterways, and rights of way, and any authorizations, licenses, permits, possessory rights, and rights of use pertaining in any way to the Property or any portion thereof, including any improvements), TO HAVE AND HOLD IT to Grantee, Grantee's successors or assigns forever. Grantor binds Grantor and Grantor's successors to warrant and forever defend all and singular the Property to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, when the claim is by, through, or under Grantor but not otherwise, except as to the Reservations From and Exceptions to Conveyance and Warranty.

Grantor, for the consideration and subject to the reservations from conveyance and exceptions to conveyance and warranty, grants, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, their heirs, beneficiaries, successors and assigns forever; and it does hereby bind itself and its successors to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, their heirs, beneficiaries, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, when the claim is by, through or under Grantor but not otherwise.

When the context requires, singular nouns and pronouns include the plural.

BOARD OF TRUSTEES OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT

By: *EXHIBIT ONLY - NOT FOR SIGNATURE*
Board President

THE STATE OF TEXAS §
§ ACKNOWLEDGMENT
COUNTY OF HIDALGO §

BEFORE ME, a Notary Public, on this day personally appeared_____, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon her oath stated he/she is the President of the Board of Trustees of the McAllen Independent School District; that she was authorized to execute such instrument pursuant to resolution of the Board of Trustees adopted on _____, 20__; and acknowledged that said instrument is executed as the free and voluntary act and deed of such governmental unit for the purposes and consideration expressed therein.

EXHIBIT ONLY - NOT FOR SIGNATURE

NOTARY PUBLIC, STATE OF TEXAS

Return to Grantee's Address:

_____

_____

_____

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EXHIBIT A R C RC
LEGAL DESCRIPTION OF THE PROPERTY

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EXHIBIT B
REPRESENTATIONS ENVIRONMENTAL MATTERS

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EXHIBIT B
REPRESENTATIONS ENVIRONMENTAL MATTERS

Representations; As Is, Where Is; Environmental Matters

A. Seller's Representations to Buyer

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. ***Authority.*** Seller is an independent school district duly organized, validly existing, and in good standing under the laws of the State of Tex

2. ***Litigation.*** There is no litigation pending or, e best of Seller's knowledge, threatened against Seller that might affect the Pro erty or Seller's ability to perform its obligations under this contract.

3. ***Violation of Laws.*** Seller has not r eived written notice violation of any law, ordinance, regulation, or requirements aff ting the Property or eller's use of the Property.

4. ***Licenses, Permits, and Ap ovals.*** Seller has not received written notice that any license, permit, or approval necess y t operate the P operty in the manner in which it is currently operated will not be renewe on expiration or th t any material condition will be imposed in order to obtain their renew l. Provided, howev , that Seller's governmental exemption for *ad valore* es is not tra sferable to Buyer, an Buyer will be responsible for all taxes and relat charges rising from its rchase f the Property.

5. ***Condemnation Zoning; Land Use.*** ller has not received written notice of any condemnation, zoning, or and-u e proceeding affecting the property.

6. ***No ns.*** On the Cl ng Date, the Pro erty will be free and clear of any valid mechan s and material man's liens and other liens and encumbrances of any nature except th Permitted Exceptions, nd no work or materials will have been furnished to the Property tha might give rise to me hanic's, material man's, or other lien against the Property other an work or materials to which Buyer has given its consent.

7. ***No Other Represen ion.*** Except as stated above, Seller makes no representation with r spect t he Property.

8. ***No Warranty.*** Se as made no warranty in connection with this contract.

B. Buyer's Representations to Seller

Buyer represents to Seller that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. Receipt of Bid Package. Buyer represents to Seller that Buyer has received and reviewed the Bid Package for the property, consisting of the following items:

a. Notice of Sale of Real Property
b. Instructions to Bidders
c. Bid Form
d. This Contract
e. Special Warranty Deed

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2. Consultation with Attorney.

Buyer represents to Seller that Buyer is aware that this contract has important legal consequences, and that Buyer is entitled to consult an attorney of its choosing prior to executing this contract. Buyer further represents that to the extent it has elected not to consult an attorney; Buyer has done so of its own free will and act.

C. PROPERTY SOLD "AS IS, WHERE IS;" NO WARRANTIES

NOTICE: THE PROPERTY WILL BE CONVEYED TO BUYER IN AN "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS. ALL WARRANTIES, EXCEPT THE LIMITED WARRANTY OF TITLE IN THE CLOSING DOC ENTS, ARE EXPRESSLY DISCLAIMED.

SELLER NOTIFIES BUYER OF PRESENCE OF ASBESTOS CONTAINING MATERIAL LOCATED IN THE MASTIC IN T E FLOOR T LE, AIR CONDITIONING JACKETED LINES, GLAZING PANELS INSULATION OF WATER LINES AND PLASTER. SELLER WILL PRO IDE BUYER WITH ALL AVAILABLE RECORDS AND REPORTS PERTAINING TO ASBESTOS – CONTAINING MATERIALS IN THE PROPERTY IN THE POSSESSION OF HE SELLER. BUYER IS AWARE OF BUYERS RESPONSIBILITY TO ENSURE COMPLIANCE WITH 15 U.S.C. S CT ONS 2641 HROUGH 2656 AND 29 C.F.R. SECTIONS 1910.1001 ET. SEQ. AND 926.1101 ET. SEQ

BUYER REPRESENTS AND AG EES THAT SELLE HAS NOT MADE, DOES NOT MAKE AND SP IFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS WARRANTIES, PR M ES, COV NANTS, AGREEMENTS OR GUARANTEES OF A Y KIND OR C ARACTER WHATSOEVER, WHETHER EXPRESSED OR IMPLIED OR WRITTEN, PA T, PRESENT OR FUTURE, OF, AS TO, CONCERNIN WITH RE CT TO (A) TH CONDITION OF THE PROPERTY OR ANY ASP T THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPR SENTATIONS OR WARRANTIES RELATED TO SUITABILITY FOR HABITAT ON, MERCHANTABILITY OR FITNESS FOR A PARTICULAR SE OR PURPOSE; (B THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) T E COMPLIANCE WITH ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVE NMENTA AUTHORITY OR BODY; (D) THE SOIL CONDITIONS, WATER, DRAINAGE, OPOG APHICAL FEATURES OR OTHER CONDITIONS OF THE PROPERTY OR WH H AFFECT THE PROPERTY; (E) ANY CONDITIONS RELATING TO OR ARISING FROM ANY ARCHEOLOGICAL OR HISTORIC SITE, CEMETERY, BURIAL GROUND, ENDANGERED SPECIES HABITAT, OR OTHER SUCH CONDITION WHICH MAY AFFECT THE PROPERTY; (F) AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION OR COMPOSITION OF THE PROPERTY; (G) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (H) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; (I) IN ADDITION TO THIS ASBESTOS DISCLOUSURE OF SELLER TO BUYER CONTAINED IN THIS SECTION C; ANY OTHER ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW OR

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HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PROPERTY; AND (J) ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES BY GRANTOR WHATSOEVER.

Buyer further represents and agrees that, having been given the opportunity to inspect the property, Buyer is relying solely on its own investigation of the property and not on any information provided by Seller. Buyer further acknowledges and agrees that any information provided or to be provided with respect to the property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. Seller will not be liable or bound in any manner by any verbal or written statements, representations or information pertaining to the property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. Buyer further represents and agrees that to the maximum extent permitted by law, the sale of the property as provided for herein is made on an "as is" condition and basis with all faults. It is understood and agreed that the purchase price has been adjusted by prior negotiation to reflect that all of the property is sold by Seller and purchased by Buyer subject to the foregoing.

The provisions of this Section C regarding the Property will be included in the Deed with appropriate modification of terms as the context requires.

D. ENVIRONMENTAL MATTERS

ASBESTOS AND/OR ASBESTOS-CONTAINING MATERIALS AND OTHER HAZARDOUS MATERIALS MAY BE PRESENT ON THE PROPERTY, AND BUYER ACKNOWLEDGES THAT IT MAY PERFORM AN ENVIRONMENTAL SURVEY OF THE PROPERTY PRIOR TO BIDDING.

AFTER CLOSING, AS BETWEEN BUYER AND SELLER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS OCCURRING BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER FROM LIABILITY FOR ANY PATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF SELLER'S OWN NEGLIGENCE OR THE NEGLIGENCE OF SELLER'S REPRESENTATIVES. BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD

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OTHERWISE IMPOSE ON SELLERS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING BUT NOT LIMITED TO CLAIMS ALLEGED TO HAVE ARISEN AS A RESULT OF SELLER'S OWN NEGLIGENCE. BUYER FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF SELLER AND IN THE NAME OF SELLER, ANY CLAIM OR LITIGATION BROUGHT IN CONNECTION WITH ANY SUCH ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

The provisions of this Exhibit B regarding the Property will be included in the Deed with appropriate modification of terms as the context requires.

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EXHIBIT C
BUYERS BID

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EXHIBIT D
FORM OF SPECIAL WARRANTY DEED

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EXHIBIT D TO REAL ESTATE SALES CONTRACT
Special Warranty Deed

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

Date: _____

Grantor: BOARD OF TRUSTEES OF THE M LLEN INDEPENDENT SCHOOL DISTR

Grantor's Mailing Address: 2000 N. 23rd, St.
McAllen, Hidalgo County exas 78501

Grantee: _____

Grantee's Mailing Address _____ _____

, County, Texas

Consideration: TEN AND NO 0 D LARS ($1 .00) and other valuable consideration. Property

(including improvements):

Reservations from ance:

For Gr or and Grantor's succes rs and assigns forever, a reservation of all oil, gas, and other minerals in and u er and that may be produc d from the Property. If the mineral estate is subject to existing production or an exis ng lease, this reservation i ludes the production, the lease, and all benefits from it.

Fee Simple Determ able Cond on:

Grantee is purchasing th P perty with the full knowledge that part of the consideration for this conveyance of the Property to Grantor, is Grantee's agreement that the Property shall never be used as an open-enrollment charter school as provided and/or described by Subchapter D, Title 2, Texas Education Code as may from time to time be amended.

Exceptions to Conveyance and Warranty: [*Permitted*

Exceptions]

Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; all rights, obligations, and other matters arising from

and existing by reason of any water or utility district; and taxes for 2021, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

THE PROPERTY IS SOLD AND CONVEYED TO AND ACCEPTED BY GRANTEE IN ITS PRESENT CONDITION, AS IS, WHERE IS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, OTHER THAN THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN, AND GRANTEE EXPRESSLY ACKNOWLEDGES THAT THE SALES PRICE REFLECTS SUCH CONDITION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT FOR THE LIMITED SPECIAL WARRANTY OF TITLE INCLUDED HEREIN AND E LIMITED WARRANTIES AND REPRESENTATIONS CONTAINED IN THE REAL EST E SALES CONTRACT BY AND BETWEEN GRANTOR AND GRANTEE, THE SALE O E PROPERTY IS WITHOUT ANY EXPRESS OR IMPLIED WARRANTY, REPRESENT ION, AGREEMENT, STATEMENT OR EXPRESSION OF OPINION (OR LACK THEREOF) OF OR WITH RESPECT TO: (I) THE CONDITION OF THE PROPERTY OR ANY PECT THERE F, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IM LIED REPRESENT TIONS OR WARRANTIES RELATED TO SUITABILITY FOR HABITATIO , MERCHANTABILIT OR FITNESS FOR A PARTICULAR USE OR PURPOSE;
(II) THE SOIL CONDITIONS, DRAINAGE, TOPOGRAPHICAL FEAT RES OR OTHER CONDITIONS OF THE PROPERTY R WHICH AFFECT THE PROPERTY; (III) ANY CONDITIONS RELATING TO OR ARISI G ROM ANY A CHEOLOGICAL OR HISTORIC SITE, CEMETERY, BURIAL GROUND, ENDANGERED SPECIE HABITAT, OR OTHER SUCH CONDITION WHICH MAY AFFECT THDRAFTE PROPER Y; (IV) AREA, SIZE, SHAPE, CONFIGURATION, LOCAT CAPACIT , QUANTITY, QU LITY, VALUE, CONDITION OR COMPOSITION OF THE P OPERTY INCLUDING BUT NOT LIMITED TO THE DISCLOSURES IN THE REAL ESTATE S S CONTRACT; (V) ANY ASBESTOS AND ALSO ENVIRONMENTAL, GEOLOGICAL, ME EOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD R THE ABSENC THEREOF HERETOFORE, NOW OR HEREAFTER A ING IN Y MANNER A Y OF THE PROPERTY; AND (IV) ALL OTHER EXPRESS OR IM LIED REPRESENTATIONS AND WARRANTIES BY GRANTOR HATSOEVER. GRAN EE HAS MADE ITS OWN PHYSICAL INSPECTION OF THE PRO ERTY AND HAS SA ISFIED ITSELF AS TO THE CONDITION OF THE PROPERTY FOR GRANTEE'S IN ENDED USE. GRANTOR MAKES NO EXPRESS OR IMP IED REPRESENTATIONS OR WARRANTIES AS TO THE NATURE OR QUANTITY OF HE INTE ESTS THEY OWN IN ANY OIL, GAS AND OTHER MINERALS. AFTER CL SING, S BETWEEN GRANTEE AND GRANTOR, THE RISK OF LIABILITY OR EXPE SE OR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE OSING, WILL BE THE SOLE RESPONSIBILITY OF GRANTEE, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF GRANTOR'S OWN NEGLIGENCE OR THE NEGLIGENCE OF GRANTOR'S REPRESENTATIVES. GRANTEE INDEMNIFIES, HOLDS HARMLESS, AND RELEASES GRANTOR FROM ANY LIABILITY FOR

ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON GRANTORS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY. GRANTEE FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF GRANTOR AND IN THE NAME OF GRANTOR, ANY CLAIM OR LITIGATION BROUGHT IN CONNECTION WITH ANY SUCH ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

Grantor, for the consideration and subject to the reservations from conveyance and exceptions to conveyance and warranty, grants, and convey o Grantee the Property, together with all and singular the rights and appurtenances theret n anywise belonging unto the said Grantee, their heirs, beneficiaries, successors and a gn for so long as the Fee Simple Determinable Condition is met and if the Fee Simple Determ nable Condition is violated, the Property will automatically revert to and be owned Grantor with ut the necessity of any further act on the part of Grantor, it being Grantor's inte to convey a fee s mple determinable estate to Grantee; and Grantor does hereby bind itself a its successors to W RRANT AND FOREVER DEFEND all and singular the said premises unt the said Grantee, th ir heirs, beneficiaries, successors and assigns, against every person whomsoever lawfully claiming r to claim the same or any part thereof, except as to the res ations from and exceptions to conveyance and warranty, when the claim is by, through or under G nt but not othe ise.

When the context requires, sing lar nouns and pron uns include the plural.

BOARD OF TRUSTEES OF THE MCALLEN INDE E DENT SCHOOL

By: EX IBIT ONLY - NOT FOR SIGNATURE, President

THE STAT EXAS §
§ ACKNOWLEDGMENT
COUNT OF HIDALGO

BEFOR ME, a Notary Public, on his day personally appeared_____, known to me to e the person whose name is subscribed to the foregoing instrument, and having been worn, upo her oath stated that he/she is the President of the Board of Trustees f the cAllen Independent School District; that he/she was authorized to execute c nstrument pursuant to resolution of the Board of Trustees adopted on_____; and that said instrument is executed as the free and voluntary act and deed of such governmental unit for the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the____day of_____, 20 .

EXHIBIT ONLY - NOT FOR SIGNATURE
Notary Public, State of Texas

Return to Grantee's
Address:

_____
_____
_____

DRAFT

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Discussion and Possible Action on Competitive Sealed Proposal No. 2023-1031 David Crockett Annex Building Re-Roof

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited competitive proposals for a roof replacement at David Crockett Annex Building.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Eighty-five (85) contractors were invited to submit proposals, and three (3) contractors responded.
On February 8, 2023, the evaluation committee, comprised of Melissa Ortiz, Project Manager for Facilities Maintenance & Operations; Roel Moroles, Assistant Director of Facilities Maintenance & Operations; Alexandra Molina, Executive Director for Child Nutrition and Purchasing Services; Elizabeth Cabrera, Purchasing Services Coordinator; and Gracie Garza, Senior Buyer, evaluated the proposals and is recommending that the Board award this contract to the highest ranked contractor, CS Advantage USAA, Inc., from College Station, TX. Administration is recommending Alternates #1-5 for this project.

LEGAL REVIEW:

A draft copy of the AIA contract is attached.

BUDGETARY CONSIDERATIONS:

The total cost for this project is $672,000.00, including the contingency amount of $40,000.00. Funds for this project are available through the Capital Projects Fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees award Competitive Sealed Proposal No. 2023-1031 David Crockett Annex Building Re-Roof to CS Advantage USAA, Inc.

SUBMITTED BY: _____ **SUPERVISOR:** Alejandra Gonzalez (Feb 9, 2023 16:52 CST)

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

Vendor Names		CS ADVANTAGE USAA INC	Argio Roofing & Construction, LLC	AMERICAN CONTRACTING USA INC
Rank		1	2	3
Maximum points	100.00	97.50	84.35	83.22
Price	60	60	44.85	51.72
Alternate No. 1: Buildings D1 & D2		$204,000.00	$272,900.00	$236,639.00
Alternate No. 2: Building F		$125,000.00	$124,950.00	$169,563.00
Alternate No. 3: Building E		$125,000.00	$128,135.00	$170,633.00
Alternate No. 4: Building B		$89,000.00	$86,000.00	$114,627.00
Alternate No. 5: Building C		$89,000.00	$87,500.00	$118,130.00
Alternate No. 6: Roofing alternate for D1 only - not considered		N/A	N/A	N/A
Contingency		$40,000.00	$40,000.00	$40,000.00
Total for Alternates		**$672,000.00**	**$739,485.00**	**$849,592.00**
Offeror's experience and reputation	18	16.5	17.5	10.5
Three (3) K-12 Reference forms (L13)	1.5	0.5	1	0
Rating of 2 or better; plus similar scope and size (0.5 pts for scope;0.5 pts for size)		*1 out of 3*	*2 out of 3*	*none provided*
Three (3) Supplier Reference Letters (LI23)	1.5	1	1.5	1.5
		2 out of 3		
Claims, judgments, arbitration proceedings or suits (LI14)	1	1	1	1
Three (3) K-12 projects (L15)	12	12	12	8
				2 scope
Two (2) Non K-12 projects (L16)	2	2	2	0
Quality of the offeror's goods or services	3	3	3	3
Repeat business for similar scope/size (LI17)	2	2	2	2
MISD projects	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	0
Offeror's safety record	6	6	6	6
"OSHA Form 300 Log (LI25)	1.5	1.5	1.5	1.5
Safety program manual and/or procedures. (LI26)	1	1	1	1
Drug/alcohol prevention policy and/or procedures. (LI27)	1	1	1	1
"Workers Compensation Experience Rating" (LI24)	1.5	1.5	1.5	1.5
Frequency of safety inspections (LI18)	1	1	1	1
Offeror's Proposed Personnel	8	8	8	8
Staff experience (industry) (LI20)	4	4	4	4
Staff experience (firm) (LI20)	4	4	4	4
Whether the offeror's financial capability is appropriate to the size and scope of the project	2	2	2	2
Financial Statement (LI29)	1	1	1	1
Surety Letter (LI28)	1	1	1	1
Any other relevant factors specifically listed in the CSP	2	2	2	2
On-time project completion (LI 13, 15, 16)	1	1	1	1
Projects currently in progress (LI21)	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 TWO THOUSAND TWENTY-____
(In words, indicate day, month and year.)

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

McAllen Independent School District, a public school district and political subdivision of the State of Texas
2000 North 23rd Street
McAllen, Texas 78501

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

_____, a _____ of the State of _____
[Address]
[Address continued]
Phone: _____
Fax: _____
E-mail: _____

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

_____
_____
_____

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

_____, a _____ of the State of _____
[Address]
[Address continued]
Phone: _____
Fax: _____
E-mail: _____

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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NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

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ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contract Documents consist of this Agreement, General Conditions of the Contract, Supplementary Conditions, other Conditions, and Project Manual to the extent they are consistent with other portions of the Contract Documents, 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. The order of precedence of the Contract Documents shall be as set out in Section 1.2.4 of the AIA Document A201-2017.

§ 1.2 The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or construction Change Directive modifying the Contract Sum, or to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorities to sign documents on behalf of the Board of Trustees, following appropriate Board action: Superintendent or other Board designee.

§ 1.3 The Board designates the authorized representatives identified in Paragraph 8.2 to act on its behalf in other respects.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

[ ] The date of this Agreement.

[ ] A date set forth in a notice to proceed issued by the Owner.

[X] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

The commencement date will be the first business day after the Contractor's receipt of the written notice to proceed. The notice to proceed shall not be issued by Architect until the Agreement has been signed by the Contractor, approved by the Owner's Board of Trustees, signed by the Owner's authorized representative, and Owner and Architect have received all required payment and performance bonds and insurance, in compliance with Article 11 of the AIA document A201-2017

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

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

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall 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:

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Final Completion shall be thirty (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 _____AND __/100 DOLLARS ($_____), subject to additions and deductions as provided in the Contract Documents.

§ 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

§ 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.)

If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work: FIVE HUNDRED AND 00/100 DOLLARS ($500.00).

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

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

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 The Contractor shall submit monthly Applications for Payment to the Architect not later than the last day of each month, on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. The Architect will have seven business days to approve the Contractor's Application and submit its Certificate for Payment to the Owner. The Architect may require from the Contractor any additional information required by the Contract Documents and deemed necessary to substantiate the Application for Payment. The Owner shall pay to the Contractor, the certified undisputed amounts in the Payment Application to the Contractor not later than 30 days from the Owner's receipt of the Certificate of Payment from the Architect if the Owner's Board meets twice a month or more, and 45 days from the Owner's receipt of the Certificate of Payment from the Architect if the Owner's Board meets only once per month.

§ 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 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 Architect may require. This schedule of values 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 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 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 If approved in advance by the Owner, 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, 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.

§ 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 A201–2017;

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.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 A201–2017, 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 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.)

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) and Ten Percent (10%) if the amount is less than Four Hundred Thousand Dollars ($400,000)

§ 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.)
N/A

§ 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.)

After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon approval of its Board of Trustees and acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 5.1.7.3
(Paragraphs deleted)
Retainage is not due to the Contractor until thirty-one (31) days after Final Payment for the Work as set out in Section 9.10 of AIA Document A201-2017.

§ 5.1.8 [Paragraph Deleted.]

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

§5.10 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.

§5.11 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 of completing incomplete Work and the value of unsettled claim.

§ 5.2 Final Payment

§ 5.2.1 Final payment, shall not be made by the Owner to the Contractor until:

.1 the Contractor has fully performed the Contract except for the Contractor'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 all conditions precedent to final payment have been fulfilled including those listed in Section 9.10.2 of the AIA Document A201–2017;

.3 Contractor has submitted a signed document indicating consent of its Surety to Final Payment;

.4 Contractor has provided the following documents:

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.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, if required;

.4 Contractor's warranties;

.5 Maintenance and Instruction Manuals;

.6 Owner's Final Completion Certificate;

.5 a final Certificate for Payment has been issued by the Architect; and

.6 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 thirty-one (31) days after the issuance of the Architect's final Certificate for Payment.

§ 5.3 Interest

(Paragraphs deleted)

Undisputed payments remaining unpaid under the Contract on the 31st day after the date the Owner receives a properly documented Certificate of Payment from the Architect are considered overdue and in accordance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251, shall bear interest from that date until the date that the Owner mails or electronically transmits payment, including accrued interest to that date.

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

(Paragraphs deleted)

A201–2017.

§ 6.2 Binding Dispute Resolution

For any Claim 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 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.

This Agreement is 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.

§ 6.3 When Owner has an applicable claim for construction defects, Owner shall comply with the provisions of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Contractor's or Architect's opportunity to cure.

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 A201–2017.

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§ 7.1.1
(Paragraphs deleted)
[Paragraph 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 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 Treviño
Executive Director of Facilities, Maintenance, and Operations
McAllen Independent School District
2000 N. 23rd St.
McAllen, Texas 78501-6126
Phone: 956-618-6000
Fax: _____
E-mail: ruben.trevino@mcallenisd.net

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

[Name]
[Title]
_____
[Address]
[Address continued]
Phone: _____
Fax: _____
E-mail: _____

§ 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 Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A201™–2017, General Conditions of the Contract for Construction, and elsewhere in the Contract Documents. The Contractor's insurance certificates are attached hereto as Exhibit D.

§ 8.5.2 The Contractor shall provide bonds as set forth in Article 11 of the AIA Document A201™–2017, General Conditions of the Contract of Construction, and elsewhere in the Contract Documents. The original bonds required herein are attached to the this Agreement as Exhibit C, upon execution of the Agreement.

§ 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
(Paragraphs deleted)
in any other format agreed to by the Owner, Contractor and Architect in writing.

§ 8.7 Other provisions:

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§ 8.7.1 Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at $100,000 or more and if the Contractor has at least ten (10) full time employees, then the Contractor, by its execution of this Agreement represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 8.7.2 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

§ 8.7.3 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 Agreement.

§ 8.7.4 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars ($1,000,000.00) or more, the Contractor agrees to : (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the contract, either: (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

§ 8.7.5 Contractor shall take all actions and shall comply with all federal, state, and local legal requirements.

§ 8.7.6 Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at $100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies and will not boycott energy companies during the term of this Agreement. This provision does not apply to sole proprietorships.

§ 8.7.7 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at $100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the Owner that the Contractor 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. This provision does not apply to sole proprietorships.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

.2 [Subsection Deleted.]

.3 AIA Document A201™–2017, 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.)

.5 Drawings. The Drawings are those prepared by _____ dated _____ and which are listed in the Index of Drawings attached hereto as **Exhibit E**, which are incorporated herein by reference.

Number	Title	Date

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.6 Specifications. The Specifications are those prepared by _____dated _____ and which are listed in the Table of Contents attached hereto as **Exhibit F**, which are incorporated herein by reference.

Section	Title	Date	Pages

.7 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.

.8 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

[ ] The Sustainability Plan:

Title	Date	Pages

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Not Applicable			

NOTE: Any Supplementary Conditions or other Conditions of this Contract listed above, the Project Manual or other terms or conditions attempted to be incorporated into this Contract, which contradict or conflict with the terms of this document or the terms and conditions set out in the AIA Document A201™–2017, General Conditions of the Contract for Construction shall be void and subordinate to the terms set out in the AIA Document A201™–2017, General Conditions of the Contract for Construction.

.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.)

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EXHIBIT A	**MODIFIED AIA DOCUMENT A201-2017, 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	**DRAWINGS**
EXHIBIT F	**SPECIFICATIONS**

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

MCALLEN INDEPENDENT SCHOOL DISTRICT		_____
OWNER *(Signature)*		**CONTRACTOR** *(Signature)*
Tony Forina, Board President, Board of Trustees, McAllen Independent School District		
(Printed name and title)		*(Printed name and title)*

DRAFT

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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 _____ day of _____ in the year TWO THOUSAND TWENTY-_____

...

McAllen Independent School District, a public school district and political subdivision of the State of Texas
2000 North 23rd Street
McAllen, Texas 78501

...

(Name, legal status, address and other information)

_____, a _____ of the State of _____
[Address]
[Address continued]
Phone: _____
Fax: _____
E-mail: _____

...

_____
_____
_____

...

_____, a _____ of the State of _____
[Address]
[Address continued]
Phone: _____
Fax: _____
E-mail: _____

PAGE 2

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EXHIBIT A	~~INSURANCE AND BONDS~~MODIFIED AIA DOCUMENT A201-2017, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
EXHIBIT B	CONTRACTOR'S PROPOSAL
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EXHIBIT D	CONTRACTOR'S INSURANCE CERTIFICATES
EXHIBIT E	DRAWINGS
EXHIBIT F	SPECIFICATIONS

NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

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PAGE 3

~~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. 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.~~**§ 1.1** The Contract Documents consist of this Agreement, General Conditions of the Contract, Supplementary Conditions, other Conditions, and Project Manual to the extent they are consistent with other portions of the Contract Documents, 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. The order of precedence of the Contract Documents shall be as set out in Section 1.2.4 of the AIA Document A201-2017.

§ 1.2 The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or construction Change Directive modifying the Contract Sum, or to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorities to sign documents on behalf of the Board of Trustees, following appropriate Board action: Superintendent or other Board designee.

§ 1.3 The Board designates the authorized representatives identified in Paragraph 8.2 to act on its behalf in other respects.

...

[**X**] Established as follows:

...

The commencement date will be the first business day after the Contractor's receipt of the written notice to proceed. The notice to proceed shall not be issued by Architect until the Agreement has been signed by the Contractor, approved by the Owner's Board of Trustees, signed by the Owner's authorized representative, and Owner and Architect have received all required payment and performance bonds and insurance, in compliance with Article 11 of the AIA document A201-2017

...

[ ] By the following date:

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

PAGE 4

§ 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 ~~($)~~, _____ AND __/100 DOLLARS ($_____), subject to additions and deductions as provided in the Contract Documents.

...

If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a

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penalty, the following per diem amounts commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work: FIVE HUNDRED AND 00/100 DOLLARS ($500.00).

PAGE 5

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.

...

§ 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:~~

month.

§ 5.1.3 ~~Provided that an Application for Payment is received by~~ The Contractor shall submit monthly Applications for Payment to the Architect not later than the ~~day of a month, the Owner shall make payment of the amount certified~~ last day of each month, on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. The Architect will have seven business days to approve the Contractor's Application and submit its Certificate for Payment to the Owner. The Architect may require from the Contractor any additional information required by the Contract Documents and deemed necessary to substantiate the Application for Payment. The Owner shall pay to the Contractor, the certified undisputed amounts in the Payment Application 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.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~30 days from the Owner's receipt of the Certificate of Payment from the Architect if the Owner's Board meets twice a month or more, and 45 days from the Owner's receipt of the Certificate of Payment from the Architect if the Owner's Board meets only once per month.

...

.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;

.2 ~~That~~ If approved in advance by the Owner, 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

PAGE 6

.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;~~ A201–2017, or amounts certified by the Architect and disputed by the Owner; and

...

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) and Ten Percent (10%) if the amount is less than Four Hundred Thousand Dollars ($400,000)

...

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N/A

...

After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon approval of its Board of Trustees and acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 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 is not due to the Contractor until thirty-one (31) days after Final Payment for the Work as set out in Section 9.10 of AIA Document A201-2017.

§ 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.~~[Paragraph Deleted.]

...

§5.10 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.

§5.11 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 of completing incomplete Work and the value of unsettled claim.

§ 5.2.1 Final payment, ~~constituting the entire unpaid balance of the Contract Sum, shall~~ shall not be made by the Owner to the Contractor ~~when~~until:

.1 the Contractor has fully performed the Contract except for the Contractor'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 all conditions precedent to final payment have been fulfilled including those listed in Section 9.10.2 of the AIA Document A201–2017;

.3 Contractor has submitted a signed document indicating consent of its Surety to Final Payment;

.4 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, if required;

.4 Contractor's warranties;

.5 Maintenance and Instruction Manuals;

.6 Owner's Final Completion Certificate;

.5 a final Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

.6 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

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§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than ~~30~~ thirty-one (31) days after the issuance of the Architect's final Certificate for ~~Payment, or as follows:~~

Payment.
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.~~
~~*(Insert rate of interest agreed upon, if any.)*~~

~~%~~ Undisputed payments remaining unpaid under the Contract on the 31st day after the date the Owner receives a properly documented Certificate of Payment from the Architect are considered overdue and in accordance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251, shall bear interest from that date until the date that the Owner mails or electronically transmits payment, including accrued interest to that date.

...

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document ~~A201–2017, 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.)*~~

A201–2017.

...

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:

...

[X] Litigation in a court of competent jurisdiction

...

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.

This Agreement is 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.

§ 6.3 When Owner has an applicable claim for construction defects, Owner shall comply with the provisions of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Contractor's or Architect's opportunity to cure.
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§ 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.)*~~

[Paragraph Deleted.]

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...

Mr. Ruben Treviño
Executive Director of Facilities, Maintenance, and Operations
McAllen Independent School District
2000 N. 23rd St.
McAllen, Texas 78501-6126
Phone: 956-618-6000
Fax:
E-mail: ruben.trevino@mcallenisd.net

...

[Name]
[Title]

[Address]
[Address continued]
Phone:
Fax:
E-mail:

...

§ 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,~~ A201™–2017, General Conditions of the Contract for Construction, and elsewhere in the Contract Documents. 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,~~ Article 11 of the AIA Document A201™–2017, General Conditions of the Contract of Construction, and elsewhere in the Contract Documents. The original bonds required herein are attached to the this Agreement as Exhibit C, upon execution of the Agreement.

§ 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.)*~~

in any other format agreed to by the Owner, Contractor and Architect in writing.
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§ 8.7.1 Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at $100,000 or more and if the Contractor has at least ten (10) full time employees, then the Contractor, by its execution of this Agreement represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 8.7.2 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

§ 8.7.3 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 Agreement.

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§ 8.7.4 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars ($1,000,000.00) or more, the Contractor agrees to : (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the contract, either: (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

§ 8.7.5 Contractor shall take all actions and shall comply with all federal, state, and local legal requirements.

§ 8.7.6 Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at $100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies and will not boycott energy companies during the term of this Agreement. This provision does not apply to sole proprietorships.

§ 8.7.7 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at $100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the Owner that the Contractor 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. This provision does not apply to sole proprietorships.

...

.2 ~~AIA Document A101™–2017, Exhibit A, Insurance and Bonds~~ [Subsection Deleted.]

...

.5 Drawings. The Drawings are those prepared by _____ dated _____ and which are listed in the Index of Drawings attached hereto as **Exhibit E**, which are incorporated herein by reference.

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.6 Specifications. The Specifications are those prepared by _____ dated _____ and which are listed in the Table of Contents attached hereto as **Exhibit F**, which are incorporated herein by reference.

...

Not Applicable

NOTE: Any Supplementary Conditions or other Conditions of this Contract listed above, the Project Manual or other terms or conditions attempted to be incorporated into this Contract, which contradict or conflict with the terms of this document or the terms and conditions set out in the AIA Document A201™–2017, General Conditions of the Contract for Construction shall be void and subordinate to the terms set out in the AIA Document A201™–2017, General Conditions of the Contract for Construction.

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EXHIBIT A	**MODIFIED AIA DOCUMENT A201-2017, 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	**DRAWINGS**
EXHIBIT F	**SPECIFICATIONS**

MCALLEN INDEPENDENT SCHOOL DISTRICT		_____

...

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

DRAFT

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AIA® Document A201® – 2017

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, a public school district and political subdivision of the State of Texas
2000 North 23rd Street
McAllen, Texas 78501

THE ARCHITECT:
(Name, legal status and address)

_____, a _____ of the State of _____
[Address]
[Address continued]
Phone: _____
E-mail: _____

THE CONTRACTOR/CONSTRUCTION MANAGER

_____, a _____ of the State of _____
[Address]
[Address continued]
Phone: _____
E-mail: _____

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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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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, Project Manual and the Bid or Proposal Documents prepared and submitted by the Owner and the Contractor's Bid or Proposal submitted by the Contractor, to the extent they do not conflict with the terms of this Agreement, and 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, 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 or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

§ 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. After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written 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, (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 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.

§ 1.1.4 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.

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

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§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Miscellaneous Other Words

§ 1.1.10.1 Business Day

The term "business day" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner's Superintendent of Schools for inclement weather or other reason. Days on which the Administration Building is normally closed are Thanksgiving Break, Winter Break, Spring Break, and Summer Break, as well as other federal, state or local days specified in the calendar approved by the Owner's Board of Trustees on an annual basis. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or special events.

§ 1.1.10.2 Calendar Day

A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

§ 1.1.10.3 Holidays

Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

§ 1.1.10.4 Work Day

Work days include all calendar days except Holidays, Saturdays and Sundays.

§ 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.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

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

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

§ 1.2.4 Precedence Of The Contract Documents

The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

.1 Contract Modifications signed by Contractor and Owner.
.2 Addenda, with those of later date having precedence over those of earlier date.
.3 General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.

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.4 Agreement – AIA Document A101-2017 or A133-2019, as modified by the Owner for the Project.
.5 Specifications and Drawings.
.6 Bid/Proposal Documents including the Project Manual, Contractor's Bid or Proposal Documents (to the extent such Bid or Proposal submitted by the Contractor is part of the Contract Documents and is not inconsistent with other portions of the Contract Documents)

§ 1.2.5 Relation Of Specifications And Drawings
Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above-mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.5.1 Drawings and Specifications are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above-mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.5.2 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

§ 1.2.5.3 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall apply.

§ 1.2.5.4 Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

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

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service
§ 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice
§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given in person, by

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mail, by courier, or by electronic transmission if a method for electronic transmission (e-mail or facsimile) or other commercially reasonable means and will under any of these circumstances, be effective when actually received. Any address for notice may be changed by written notice delivered as provided in this Section 1.6.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or such other form agreed to by the parties, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance [Paragraph Deleted.]

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the Board of Trustees of the McAllen Independent School District and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Except as otherwise provided in Section 4.2.1, the Architect does not have the authority to bind the Owner. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

§ 2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work.

§ 2.2.2 [Paragraph Deleted.]

§ 2.2.3 [Paragraph Deleted.]

§ 2.2.4 [Paragraph Deleted.]

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 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.

§ 2.3.2 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.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site, but shall have no duty to do so. Notwithstanding the foregoing, if the Owner provides such survey, the Contractor shall remain responsible to independently investigate the physical characteristics, legal limitations, and utility locations for the Project site. In the event that the Contractor

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damages any utilities during construction, the Contractor shall immediately repair the same at its sole cost and expense.

§ 2.3.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 2.3.6 The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

§ 2.3.7 Owner's personnel or consultant may, but are not required to be present at the construction site during progress of the Work to assist the Architect in the performance of his duties, and to verify the Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and the equipment used in the performance of the Work for purpose of verification of Contractor's Applications for Payment.

§ 2.3.8 The Owner (either directly or by contract with the Architect) may 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.

§ 2.3.9 The Owner, (directly or by contract with the Architect), when such services are required, in the professional opinion of the Architect, 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.

§ 2.3.10 The Owner will contract for, independently of the Contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for the acceptance of the Work by the Owner as required by the Texas Government Code, Section 2269.058.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is defective or not in accordance with the requirements of the Contract Documents as required by Section 12.2, fails to timely carry out Work in accordance with the Contract Documents or is in default of any of its material obligations hereunder, 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.. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If the Contractor is in default in any of its material obligations hereunder, neglects to timely carry out the Work in accordance with the Contract Documents, or fails to correct nonconforming or defective Work as required by Section 12.2, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or such non-conforming or defective Work with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or such non-conforming or defective Work at the sole cost of the Contractor. The Architect may, pursuant to Section 9.5.1, withhold or nullify the Contractor's Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such default or such non-conforming or defective Work, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure to correct such non-conforming or defective Work. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5.2 Nothing contained in this Section 2.5 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

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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 authorized to do business in the state of Texas and lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative, or in the case of a Construction Manager-at-Risk, the Construction Manager-at-Risk, or its authorized representative.

§ 3.1.2 The Contractor shall perform the Work in a good and workmanlike manner and accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Owner's consultants, if applicable, conducted in accordance with the Contract Documents or 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. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, or for price escalations in the marketplace. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 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 2.3.4, 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 any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized 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. Contractor shall not perform any Work it knows involves an error, inconsistency, or omission without further instructions to Contractor or revised Construction Documents from the Architect. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the Work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 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 any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. 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 honor its warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner, in writing providing substantiation for its position.

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§ 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 submit Claims as provided in Article 15; however, nothing in this section shall provide the Contractor with an affirmative claim for damages for delay by Owner or Architect, as such a claim is prohibited under this Contract. 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, subject to Section 15.1.7, 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.

§ 3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor.

§ 3.2.6 The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays or disruptions to the Work. This limitation on damages is further subject to the limitations set forth in Section 15.1.7.

§ 3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

§ 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 assign a Superintendent who shall make decisions on behalf of the Contractor and its subcontractors. The Superintendent shall be on the Project, in this capacity, at all times while Work on the Project is in progress. 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be 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 propose alternative means, methods, techniques, sequences, or procedures.

§ 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 bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, *et seq.*, and shall require any applicable subcontractor to comply all such procedures. Trench

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excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

§ 3.3.5 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent Contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

§ 3.3.6 The Contractor shall review Subcontractor(s) safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g. a supplier) including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

§ 3.3.7 Contractor acknowledges that the Work may be performed in connection with an educational facility which is currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury.

§ 3.3.8 Representatives of the Owner, Contractor, and Architect shall meet periodically at mutually agreed upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

§ 3.3.9 The Contractor shall pay fees for public or private water, gas, electrical and other utility service at the site until Substantial Completion of the Work. In the event that the Work will be conducted at an Owner site, where utility services are existing on site and reasonably accessible to the Contractor, the Owner may elect, in writing, to provide and pay for utility service for the Project site. Agreement to pay for such utility service shall not absolve the Contractor from using utilities judiciously in connection with its performance of the Work. In all cases, the Contractor shall secure and arrange for all necessary utility connections.

§ 3.3.10 The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient workers and labor, eligible to work in accordance with state and federal law. Contractor shall

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appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for 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. Before ordering any material or doing any Work, Contractor shall verify all dimensions and check all conditions in order to assure Contractor that they are the same as those in the Drawings, Specifications, and other Construction Documents. Any inconsistency shall be brought to the attention of the Architect. In the event that discrepancies occur between ordered material and actual conditions and Architect was not notified beforehand, then costs to correct such discrepancies shall be borne by Contractor. In accordance with Texas Government Code §2269.054, these Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization. In accordance with Texas Government Code §2269.0541, these Contract Documents shall also not prohibit, require, discourage or encourage a person, or discriminate against a person bidding on this contract from entering into or declining to enter into, or adhering to, an agreement with a collective bargaining organization relating to this Project.

(Paragraph deleted)

§ 3.4.2 Prevailing Wages

§ 3.4.2.1 The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.2.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications and attached to the AIA Document A101-2017, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction.

§ 3.4.2.3 A Contractor or Subcontractor who violates the provisions of Sections 3.4.2.1 or 3.4.2.2 shall pay to Owner the sum of Sixty Dollars and No/100 ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 3.4.3 Substitutions

§ 3.4.3.1 If the Contract Documents (including the Instructions to Proposers and /or Offerors) specifically permit the submission by Contractor of requests for substitutions, Contractor may, within thirty (30) days after the Contract has been executed, make written request for the substitution of products in place of those specified in the Contract Documents to the Owner and the Architect. Any request for substitution shall be submitted to the Architect in writing, with appropriate shop drawings, product data, and certified test results substantiating the proposed product equivalence as required by this Section 3.4.3.1 and Section 3.4.3.2 and will be rejected if not so submitted.

§ 3.4.3.2 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and any modifications to the construction schedule; and (v) an affidavit stating that (a) the proposed substitution confirms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect; (c) the cost breakdown presented with Contractor's request is complete and includes all related costs, except for the Architect's redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent;(d) that the Contractor will coordinate and supervise the installation of the proposed substitute, making such changes as may be required for the Work to be complete in all respects; and (e) the Contractor will reimburse the Owner and for review or redesign services associated with any re-approval by applicable governmental authorities related to the substitution.

§ 3.4.3.3 By making requests for substitutions pursuant to Section 3.4.3 (and all subsections), the Contractor represents and certifies that: (1) Contractor has personally investigated the proposed substitute product and determined that it is

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equal or superior in all respects to the product specified; (2) Contractor will provide the same warranty for the substitution product that the Contractor would have provided for the product specified; (3) the cost breakdown presented with the request is complete and includes all related costs, except for the Architect's redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent; (4) Contractor will coordinate and supervise the installation of the proposed substitute, making such changes as may be required for the Work to be complete in all respects; and (5) will reimburse Owner and Architect for review or redesign services associated with any re-approval by applicable governmental authorities related to the substitution.

§ 3.4.3.4 Owner and the Architect may accept or reject any such request for substitution in their sole discretion, based on cost, time, or other considerations. Requests for substitutions submitted after such thirty (30) day period will not be considered unless a product becomes impossible to obtain due to circumstances beyond the Contractor's control.

§ 3.4.3.5 Regardless of acceptance or rejection of substitution, the Contractor shall be responsible for amounts paid by the Owner to the Architect, to evaluate the Contractor's proposed substitutions and any amounts paid to the Architect to make agreed upon changes in the Specifications and Drawings made necessary by the Owner's acceptance of such substitutions. The Owner shall be entitled to deduct such amounts from the Contract Sum.

§ 3.4.4 Responsibility for Subcontractors

§ 3.4.4.1 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, its subcontractors and vendors shall bear responsibility for compliance with all federal, state and local laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of his own conduct. THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES; NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES; CONTRACTOR'S FORCES NON-COMPLIANCE WITH CRIMINAL LAW; OR CONTRACTOR'S OR CONTRACTOR'S FORCES NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.4.4.2 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Work may be performed in connection with an operational educational facility or the Project site may be adjacent to a public-school campus. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb or disrupt Owner's normal operations or facilities. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working at or near an operational campus and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum.

§ 3.4.5 Criminal History Records Checks

§ 3.4.5.1 For purposes of this Section 3.4.5 (and all subsections), the following definitions shall be applicable:

.1 "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.

.2 "Covered Employees", shall mean, all employees of Contractor, as well as employees of Contractor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

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§ 3.4.5.2 Unless otherwise exempt from providing such information by any provision in Texas Education Code, Section 22.08341 (the "Statute"), the Contractor agrees, that prior to commencement of work under this Agreement, using the form promulgated by the Owner or such other form approved by the Owner, Contractor will arrange with the Owner to obtain any national criminal history record information ("CHRI") required pursuant to the Statute on all of Contractor's employees, independent contractors, agents, or Subcontractors, Contractor's Subcontractors of every tier ("Subcontractors"), Subcontractors' employees, independent contractors, agents, or sub-subcontractors, if any of these persons is a "Covered Employee" as defined in Section § 3.4.5.1 and shall reimburse the Owner for the costs and expenses associated with obtaining the required CHRI.

§ 3.4.5.3 For purposes of this Section 3.4.5 a person does **not** have the opportunity for direct contact with students if:

.1 the public work does not involve the construction, alteration, or repair of an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code ("Instructional Facility);

.2 for a public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first date the facility will be used for instructional purposes; or

.3 for a public work that involves an existing Instructional Facility:

(a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and

(b) the Contractor adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

§ 3.4.5.4 Any Covered Employee that has during the preceding thirty (30) years, been convicted of one of the following offenses, if at the time of the offense the victim was under eighteen (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 to (a) or (b) under federal law or the laws of another state ("Disqualifying Criminal History Offense") shall be disqualified and prohibited from performing any contract duties or services and neither the Contractor nor its Subcontractor may permit such person to provide services at an instructional facility. If a Covered Employee is determined by the Owner's review of the CHRI to have a Disqualifying Criminal History, Contractor will exclude that person from assignment to the Project. Contractor understands that it will not have access to the results of such criminal history records check, based on statewide regulations beyond the control of the Owner, and agrees to rely solely on the judgment of the Owner as to whether the Covered Employee must be excluded from the Project.

§ 3.4.5.5 Prior to commencement of its work on the Project the Contractor will provide written certification to the Owner that either: (1) Contractor and its Subcontractors of every tier, do not have any Covered Employees, as defined; (2) are otherwise exempt from compliance with the Statute; or (3) has complied with the statutory and contractual requirements stated in Section 3.4.5 of this Agreement (including all subparts), as of that date, and that it:

.1 has requested a Criminal History Records Check through the District on all Covered Employees, if any, of every tier, has provided the required information to the District to do so and reimbursed the District for same;

.2 has obtained written certification from its independent contractors, and Subconsultants (of any tier) that they have provided the required information to the Contractor, necessary to secure the information from the District and reimbursed the Contractor for same; and

.3 have excluded any Covered Employee reported by the District to have a Disqualifying Criminal History from assignment to the Project.

Further, Contractor agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses, during the performance of the Work, Contractor will immediately remove the Covered Employee from District's property or other location where students are regularly present, and notify the District of said removal within three (3) days of doing so. Contractor understands that any failure to comply with the requirements of this section may be grounds for termination of this Agreement, in accordance with Article 14, Termination.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further

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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. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with all applicable codes, generally accepted standards of construction practice for construction of projects similar to the Project. All materials shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. 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, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. No acceptance or payment by the Owner shall constitute a waiver of the foregoing and nothing herein shall exclude or limit any warranties implied by law. The warranties provided in this Section 3.5.1 are in addition to, and not in limitation of, any other warranties, remedies and/or guaranties set out in the Contract Documents or under applicable law.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. In such case, each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion (or, for Work to be completed or corrected after the date of Substantial Completion, the Warranty Commencement Date). Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the warranties under granted in the Contract Documents will expire, on each phase or building and will provide a copy of such Schedule to the Owner, as required in Subsection 3.5.6, as a condition precedent to Final Payment.

§ 3.5.4 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or such further reasonable proof as is required by the Architect.

§ 3.5.5 The Contractor agrees to assign to the Owner at the time of Final Completion of the Work any and all manufacturer's warranties relating to equipment, machinery, materials, equipment or components and labor incorporated into the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations. The warranties provided in this Section 3.5 or otherwise provided in the Contract Documents or by law, shall in no way limit or abridge the warranties provided by the suppliers of equipment and systems which are to comprise a portion of the Work. A complete set of all warranties required from contractors, manufacturers, or suppliers as appropriate, on the manufacturer's or supplier's approved forms, executed by Contractor as required, with a Warranty Commencement Date noted as required, and in the form required by Subparagraph 3.5.6 shall be submitted to the Architect for delivery to the Owner, as a condition precedent to Final Payment.

§ 3.5.6 Prior to receipt of Final Payment, Contractor shall: (1) obtain duplicate original warranties, executed by all subcontractors, and the warranties of suppliers and manufacturers, noting the Warranty Commencement Date on the face of each; (2) verify that the documents are in proper form and contain full information; (3) Co-sign warranties when required; (4) bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers; (5) label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the Title of the Project; name, address and telephone number of Contractor; and name of its responsible principal; (6) include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified; (7) include the Schedule of Warranty Commencement Dates required by Subparagraph 3.5.3; (8) separate each warranty with index tab sheets keyed to the Table of Contents listing; and (9)

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deliver warranties in the form described in this Subparagraph 3.5.6, to the Architect for review same prior to submission to the Owner.

§ 3.6 Taxes

The Contractor shall not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes. **CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.**

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall 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 legally required at the time proposals are received or negotiations concluded. The Owner shall be responsible for payment of TDLR Texas Accessibility submissions and inspection costs.

§ 3.7.2 In performing its obligations hereunder, the Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work and upon request by the Owner or Architect shall furnish evidence, satisfactory to the Owner, of such compliance.

§ 3.7.3 If the Contractor performs Work when Contractor knows or reasonably should have known it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, the Contract Documents, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. **THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ITS TRUSTEES, OFFICERS, REPRESENTATIVES, AGENTS AND EMPLOYEES FROM AND AGAINST ALL THIRD-PARTY CLAIMS, FINES, PENALTIES, OR LIABILITIES FROM, ARISING OUT OF, OR BASED UPON CONTRACTOR'S VIOLATION OF ANY LAWS, ORDINANCES, RULES, REGULATIONS, ORDERS OR DECREES**.

(Paragraphs deleted)

§ 3.7.4 Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract Sum, or both. The Contract Time and the Contract Sum contained herein (as proposed by Contractor), or GMP as applicable, shall be deemed to include all costs of and sufficient time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if the Contractor encounters conditions at the site that are subsurface or otherwise concealed physical conditions which were not known to the Contractor, and that differ materially from those indicated in the Contract Documents the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed, and in no event later than three (3) days after first observance of the conditions and report its findings to the Owner and Architect.

§ 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. 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

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continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Time arising from the existence of such remains or features may be made as provided in Article 15. In accordance with the terms of this Agreement, there will be no adjustment to the Contract Sum for delay arising out or related to the circumstances described in this Section 3.7.5.

§ 3.7.6 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 (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" 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 the construction process which require the issuance of a permit shall be at Contractor's sole cost.

§ 3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State 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 Instruments of Service related to Contract Closeout.

§ 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 within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

§ 3.8.4 When performing Work under Allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work on the basis of the best value for the Owner, as directed by the Architect following Owner's written approval of the cost proposal.

§ 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. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish a list to the Architect a list of all engineers, consultants, job-site superintendents, subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner. The Owner shall have the right, at any time, to require a change in any engineer, consultant, job-site superintendent, subcontractor or supplier if their performance is deemed unsatisfactory in its sole discretion.

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§ 3.9.3 The Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

§ 3.9.4 Owner shall be notified as soon as Contractor becomes aware, but in no event fewer than twenty-four (24) hours before the time of that the Superintendent is required to be present at the site, that the Superintendent will not be present at the site for any reason, except illness. If the reason is due to illness, then Owner shall be notified as soon as the Contractor obtains the information, but in no event later than the beginning of the day that the Superintendent will be absent from the site. In such event of such absence, the Contractor will designate a person as acting superintendent and Contractor promptly notify the Owner of the identity and contact information for the designated acting superintendent.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work, utilizing critical path method scheduling techniques. The Schedule shall not exceed the time limits set forth in the Contract Documents. The Schedule shall thereafter be updated on a monthly basis and submitted with each Application For Payment. The receipt of an updated schedule with each Application For Payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6. The schedule shall not interfere with the operation of Owner's existing facilities and operations without Owner's prior written approval.

§ 3.10.1.1 Each Schedule shall: (1) break the work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect and shall assign each scheduled activity a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project cash flow for the Project; (2) include activates representing manufacturing, fabrication, or ordering lead time for materials, equipment or other items for which the Architect is required to review submittals, shop drawings, product data, or samples; (3) with the exception of the initial schedule, shall indicate the activities, or portions thereof, which have been completed; (4) shall reflect the actual time for completion of such activities, and shall reflect any changes to the sequence or planned duration of all activities.

§ 3.10.1.2 If any updated Schedule exceeds the time limits set forth in the Contract Documents for completion of the Work, the Contractor shall include with the updated Schedule, a statement of the reasons for the anticipated delay in completion of the Work and the Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Architect to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Architect and documentation of the date such information was requested.

§ 3.10.1.3 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

§ 3.10.1.4 Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining Work in the sequence and time indicated.

§ 3.10.1.5 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal or Guaranteed Maximum Price, as applicable, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept

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responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

§ 3.10.1.6 The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably 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, or fails to provide submittals in accordance with the approved 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 and shall attend progress meetings at the Project Site, in such frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule.

§ 3.10.4 The Contractor shall submit to the Architect with each monthly application for payment a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein.

§ 3.10.5 Correction of Delay.

§ 3.10.5.1 In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, or any Milestone Date unless any such adjustment is submitted by the Contractor as a Claim in compliance with Article 15 or the adjustment is otherwise agreed to in a written confirmation from the Owner and documented by written Change Order.

§ 3.10.5.2 If at any time the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5. The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.5.3 In the event Contractor determines that the Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain and make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, field test records (including environmental inspection and test records), inspection certificates or records, manufacturers' certificates. The Documents to be maintained shall be kept in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner or their respective representatives, and

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delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 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 how the Contractor proposes to conform to the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 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. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Construction Documents and the Contract Documents remain the Contractor's responsibility.

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified 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.

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§ 3.12.10.1 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 an appropriately licensed design professional, 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 Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawings are prepared and, if required by the Architect or applicable law, by a licensed engineer The Owner and the Architect shall be entitled to rely upon the adequacy, completeness and accuracy of the services, certifications, and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10.1, the Architect will review and 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. A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this paragraph, Contractor shall require that the licensed design professional carry commercial general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

§ 3.13.2 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 material and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§ 3.13.3 Without prior approval of the Owner, the Contractor shall not permit any workers to use any of Owner's existing facilities at or adjacent to the Project site, including, without limitation, lavatories, toilets, entrance and parking areas other than those designated by the Owner. The Contractor shall comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and District's Buildings.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly, provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Contract Documents. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or 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

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excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall, on a daily basis, keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. 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. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning and replace any damaged or broken glass.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor. Such reimbursement amounts may be deducted from Contractor's Final Payment Application.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Architect and their designated representatives, with access to the Work in preparation and progress wherever located. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work. Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on an inspection of the Work.

§ 3.17 Royalties, Patents and Copyrights

THE CONTRACTOR SHALL PAY ALL ROYALTIES AND LICENSE FEES. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES DEFEND AGAINST ANY AND ALL SUITS, CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS ALLEGED TO HAVE RESULTED FROM CONTRACTOR'S INFRINGEMENT, AND SHALL INDEMNIFY AND HOLD THE OWNER THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM LOSS ON ACCOUNT THEREOF, INCLUDING ATTORNEY'S FEES (AS PERMITTED BY STATUTE), BUT SHALL NOT BE RESPONSIBLE FOR 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 PROVIDED BY THE OWNER OR PREPARED BY THE ARCHITECT. HOWEVER, IF AN INFRINGEMENT OF A COPYRIGHT OR PATENT ATTRIBUTABLE TO THE OWNER OR ARCHITECT, IS DISCOVERED BY, OR MADE KNOWN TO, THE CONTRACTOR, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOSS UNLESS THE INFORMATION IS PROMPTLY FURNISHED TO THE OWNER AND THE ARCHITECT.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND (EXCEPT AS LIMITED BELOW) AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES (HEREINAFTER IN THIS SECTION 3.18 "OWNER"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), ARISING OUT OF OR

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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), INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, 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 THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. 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.

§ 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 INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

§ 3.18.3 THE DUTY TO DEFEND SET OUT ABOVE SHALL NOT APPLY IN THE EVENT THAT THE CLAIM IS BASED, IN WHOLE OR IN PART, ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE OWNER. NOTWITHSTANDING THE FOREGOING, THE CONTRACTOR AGREES TO REIMBURSE THE OWNER'S REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE CONTRACTOR'S LIABILITY.

§ 3.18.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, 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 THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1.

§ 3.18.5 The indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner under said statutes are secondary to that of the Contractor.

§ 3.18.6 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum

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extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

§ 3.18.7 Contractor shall promptly advise the Owner, in writing, of any claim or demand against the Owner or Contractor, known to the Contractor related to or arising out of Contractor's activities under this Contract.

§ 3.18.8 The provisions in this Section 3.18 in its entirety shall survive the completion, termination or expiration of this contract and are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

§ 3.19 Representations And Warranties

§ 3.19.1 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

- **.1** that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- **.2** that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- **.3** that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;
- **.4** that the execution of the Contract and its performance thereof is within its duly authorized powers; and
- **.5** that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 Business Standards

§ 3.20.1 Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, Subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and contracts.

§ 3.21 Antitrust Violation

To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 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,

§ 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 of the Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, or as they may be amended in the future.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with

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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, and delivered on time. In addition, the Architect or its structural consultant will (1) provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable; and (2) provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third-party laboratory or testing services to assist the Architect and Owner.

§ 4.2.3 On the basis of the site observations, the Architect will keep the Owner informed about the progress and quality of the Work. The Architect shall promptly report to the Owner and Contractor orally regarding: (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. An oral notification of defects and deficiencies observed in the Work shall be followed by a notice in writing to the Owner and Contractor specifying the defect(s), non-conforming Work, deviations from the Contract Documents and corrective actions taken or recommended. The Architect shall not have control over or responsibility for the Contractor's construction means, methods, techniques, sequences, procedures, or safety programs and will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents, nor shall the Architect 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**.** This does not, however, relieve Architect of Architect's responsibilities under this Agreement. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed by the Contractor at no additional cost to Owner. In addition, the Contractor shall reimburse the Owner for compensation paid to the Architect (whether performed by the Architect or its Consultants) or the Owner's Consultants, for additional site visits made necessary by the fault, neglect, the request of the Contractor or made necessary by the Contractor's construction defect or nonconforming Work. Any amount subject to reimbursement under this Section may be required by Owner to be deducted from the next Payment Application submitted by the Contractor and any subsequent Payment Application until paid, and if any amount remains unpaid, the balance shall be paid by the Contractor as a condition to Final Payment.

§ 4.2.4 Communications

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 relating to the Contract and the Project. However, the Owner reserves the right to communicate directly with the Contractor and Subcontractors. Communication by and with the Architect's consultants shall be through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, in accordance with the Contract Documents, 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 or the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work may be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall prevent action to require conformance, if at any subsequent time the Work or any portion thereof is found not to conform to the requirements of the Contract Documents. Architect and/or Contractor shall promptly notify, the other party orally and in writing, and Owner of any perceived fault or defect in the design or nonconformance of the Work with the Construction Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the

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other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no duty to notify Owner of discoveries made or actions taken by Architect.

§ 4.2.7 The Architect will review and approve, 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 as to cause no delay in the Work or in the activities of the Owner, Contractor or Separate Contractors, and allow 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 of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If any submittal does not comply with the requirements of the Contract Documents, the Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.

§ 4.2.8 The Architect will prepare, and make written recommendations to Owner regarding all Change Orders (including changes in the Work to be paid from contingency funds) and Construction Change Directives, for the Owner's approval and execution in accordance with the Contract Documents. The Architect's recommendation shall be accompanied by all supporting documentation necessary for the Owner to make an informed decision, including but not limited to an itemized turn-key proposal from the Contractor which includes quantities and unit costs of labor and materials extended and totaled and, if permitted, overhead and profit proposed. Prior to submission of such documentation to the Owner, the Architect shall review such proposals for reasonableness of pricing and compliance with Section 7.1.4 regarding markup. The Architect may order minor changes in the Work not involving an adjustment in Contract Sum or Guaranteed Maximum Price, or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. The Architect is specifically **not** authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner's prior written consent.

§ 4.2.9 The Architect and the Owner's representative will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. Upon completion of such inspection and agreement by Owner and Architect as to Substantial Completion, the Architect may 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 for approval by the Owner.

§ 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 Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. 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.

§ 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 and not expressly overruled in writing by the Owner.

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§ 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 at no additional expense to the Owner.

§ 4.2.15 The Architect may appoint an employee or other person to assist the Architect during the construction. These representatives will be instructed to assist the Contractor in interpreting the Contract Documents; however, such assistance shall not relieve the Contractor from any responsibility as set forth by the Contract Documents. The fact that the Architect's Representative may have allowed Work not in accordance with the Contract Documents shall not prevent the Architect from insisting that the faulty Work be corrected to conform to the Contract Documents and the Contractor shall correct same.

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. 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 the 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. 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, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, in writing, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect shall notify the Contractor in writing, whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. When the parties agree on a proposed substitute Subcontractor reasonably capable of performing the Work, the 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 Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected without providing reasonable written notice to the Owner and Architect. If neither the Owner nor Architect submits a reasonable objection to such proposed substitution within ten (10) days following their receipt of written notice the Contractor may proceed with the substitution. If either Owner or Architect submit an objection, the Subcontractor shall proceed in accordance with Section 5.2.3 above.

§ 5.2.5 Each Contractor or subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in Contract Sum shall be allowed for failure to so inspect or investigate.

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§ 5.3 Subcontractual Relations

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

§ 5.3.2 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.3 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

§ 5.4 Contingent Assignment of Subcontracts

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

- **.1** assignment is effective only after termination of the Contract by the Owner or abandonment of the Project by the Contractor and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing;
- **.2** assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond relating to the Contract; and
- **.3** The Subcontractor provides bonds as required by law of prime contractors and by Owner.

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

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may, in the Owner's sole discretion, be equitably adjusted for increases in cost resulting from the suspension. Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. Owner shall only be responsible for compensating subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

§ 5.5 Notice Of Subcontractor Default

Contractor shall promptly notify Owner and Architect of any material defaults by any Subcontractor or Sub-subcontractor. 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 Subcontractor, Sub-subcontractor or other materialman or worker employed by Contractor the right to obtain a

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personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or 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 term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract.

§ 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 any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement by the Owner and Contractor. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 [Paragraph Deleted.]

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for site access, staging, 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 notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work 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.

§ 6.2.3 All costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate, or failure to follow the Construction Documents or Contract Documents, will be borne by the Contractor. The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor, the Architect or any Consultant because of the Contractor's delays, improperly timed activities or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor.

§ 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 Owner will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may 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

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limitations stated in this Article 7 and elsewhere in the Contract Documents. Changes may be funded out of a contingency fund, if any, or other allowance established herein, or may require a change in the Contract Sum. The authority to approve a change to the Work, the Contract Sum, approve payment from a Contingency or Allowance, or a change in the Project Time, rests solely with the Owner. A Change Order funded from the Contingency or other Allowance shall be referred to herein for clarity as a "Contingency Authorization Order".

§ 7.1.2 A Contingency Authorization Order or Change Order shall be based upon agreement among the Owner, Contractor, and Architect executed prior to commencement of any Work covered by the Order. A Construction Change Directive (whether funded from contingency, if any, or by an increase in the Contract Sum) requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor prior to the commencement of the Work. An order for a minor change in the Work may be issued by the Architect alone, except as otherwise provided herein.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 Change Order Mark-Up. On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead, profit permitted to be charged to the Owner shall be based on the following schedule:

.1 for work performed by the Contractor's own forces, Contractor's mark-up for overhead and profit shall not exceed 10% of the cost of the change in the Work (0% for change orders to be paid out of any contingency allowance).

.2 for the Contractor, for supervision of work performed by the Contractor's Subcontractors, the total Contractor mark-up for overhead and profit shall not exceed 4% of the amount due to the Subcontractors (0% for change orders to be paid out of any contingency allowance).

.3 for each Subcontractor or Sub-subcontractor involved, in Work performed by that Subcontractor's or Sub-subcontractor's own forces, the total mark-up for overhead and profit ten percent (10%) of the cost of the change in the Work.

.4 In no event shall total mark-up for overhead, profit or fee in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the work, exceed 14% of the total cost of the change in the Work. The Contractor will not be allowed an overhead, profit, or fee mark-up when changes in the Work are funded by Contingency or other Allowances 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.

Methods used to determine adjustments to the Contract Sum or Guaranteed Maximum Price may include those listed in Section 7.3.3.

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

§ 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 (the Guaranteed Maximum Price, as applicable) 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 (the Guaranteed Maximum Price, as applicable) and Contract Time being adjusted as provided in Section 7.3.3.

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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 (or the Guaranteed Maximum Price, as applicable), 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;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon(additional mark-ups for overhead and profit will not be allowed);

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, subject to the limitations of subparagraph 7.1.4; or

.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum (or the Guaranteed Maximum Price, as applicable), the Architect shall determine the adjustment on the basis of the amount by which the Contractor's direct costs have actually been increased over the direct cost of performing the Work without the Change in the Work. Direct costs shall be limited to the following:

.1 Actual documented costs of labor, including applicable payroll taxes and other employee costs approved by the Owner prior to the approval of the Change Order or Contingency Authorization Order (a labor burden factor will not be accepted as documentation);

.2 Actual documented costs of materials, supplies, and equipment, including cost of transportation, whether such materials, supplies, and equipment are incorporated or consumed;

.3 Actual documented rental costs of machinery and equipment, if rented from unaffiliated third-parties, exclusive of hand tools;

.4 Actual documented costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the change, if any; and

.5 Actual documented costs of supervision and field office personnel directly attributable to the change and only if the adjustment causes an extension of the Contract Time.

The Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting of the items listed above, together with appropriate supporting documentation.

§ 7.3.5 If the Work is performed without an agreement as to the final price, the Contractor shall, at a minimum, retain and provide to the Owner, the following documentation to adequately document its actual costs of performing the scope of work set out in a Construction Change Directive. Adequate Documentation shall include at a minimum, but not limited to, payroll records for employees of Contractor providing the Work included in the Change Directive, as well as written documentation of time spent **solely** on the scope of the Change Directive Work, prepared concurrent with the performance of the Work, including (for example) sign-in and sign-out sheets or time cards, executed by the employee(s) documenting attendance and receipts for all materials delivered to the Project site for incorporation in the Work of the Change Directive and paid for by the Contractor. If any of the Work of the Change Directive is performed by subcontractors, the Contractor shall provide a copy of the subcontract, an itemized invoice or payment application which includes, in either case, a detailed itemization of costs showing quantities and unit costs of labor and materials extended and totaled and, if permitted, overhead and profit (in accordance with Section 7.1.4) labor and materials provided by the subcontractor, with receipted invoices for all materials incorporated in the Work and evidence of payment by the subcontractor attached. If the Contractor disagrees with the adjustment in the Contract Time, the Contract Sum (or the Guaranteed Maximum Price, as applicable), allowed in any Change Directive, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 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 (by executing and returning the Change Directive) 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, not later than ten (10) calendar days following the Contractor's receipt of the Construction Change Directive. A copy of a notice of disagreement shall also be provided to the Owner concurrent with the notice to the Architect. A Notice of Disagreement must contain the number of the Change Directive, the date the Change Directive was issued and the words **"Notice of Disagreement With Change Directive"** in the Subject line. It is imperative that Owner receive timely specific notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly.

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost plus the permitted overhead and profit as set forth in Section 7.1.4. When both additions and credits covering related Work or substitutions are involved in a change, both changes shall be shown on the same Change Order and the permitted allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change. Returned materials shall be credited at actual cost and no penalty or restocking fee shall be permitted to be charged to the Owner.

§ 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 require as a condition precedent to certification of payment for Work completed under the Construction Change Directive that the Contractor provide the documentation required by Section 7.3.4, and based on such documentation, shall make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect is specifically authorized by this Section 7.3.9 to require submission of such documentation and any other documentation required to evaluate the requested payment, and shall withhold payment certification until such documentation is received and an interim determination is made in accordance with this Section. 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 reflecting the Agreement of the Owner and Contractor. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

With prior written notice to the Owner's representative, the Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 Commencement. The date of commencement of the Work shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement (or Guaranteed Maximum Price Amendment, as applicable) has been signed by the Contractor and the Owner, and the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

§ 8.1.3 Substantial and Final Completion

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

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§ 8.1.3.2 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) days after the date of Substantial Completion.

§ 8.1.4 Day. 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 stipulates 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor. 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.

§ 8.2.4 Liquidated Damages

§ 8.2.4.1 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set out in the AIA Document A101 (2017) or the AIA Document A133 (2019) into which these General Conditions are incorporated and executed concurrently with these General Conditions, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.4.2 In the event Substantial Completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor all liquidated damages, if any, due Owner in accordance with the Contract Documents.

§ 8.2.4.3 In addition to Liquidated Damages, if any, the Contractor shall reimburse the Owner for any Supplemental or Additional Services of the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor or caused by Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.2.4.4 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 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 war, civil commotion, pandemic, epidemic, federal, state or local declared disaster or public emergency, act of God, governmental restrictions, regulations, orders, or interference, fire or other unavoidable casualty, material changes ordered in the Work; adverse weather conditions documented in accordance with Section 15.1.6 by delay authorized in writing by the Owner prior to the happening of the delay event; or (5) by other causes that the Contractor asserts, and the Architect and Owner determine, justify delay, then the Contract Time may be extended for such reasonable time as the Architect and Owner may determine based upon documentation by the Contractor.

§ 8.3.1.1 The adjustment of the Contract Time for delay, disruption, and interference described in this Section 8.3.1 is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time and Contractor's timely delivery of the notice and claim as set out in this Section 8.3.1. An adjustment to the Contract Time shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Section 8.3.1, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for Owner-caused delays.

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§ 8.3.1.2 Notice and Claim for Extension. In the event of a delay in the commencement or progress of the Work as a result of any of the circumstances in this Section 8.3.1, the Contractor may receive an extension of time for completion of the Work equal to the delay, if the Contractor delivers a written notice and claim to the Owner and Architect delivered in any manner provided in Section 1.6.1 of this Agreement. The Notice shall identify and provide a reasonably detailed description of the circumstances causing the delay, disruption, or interference to the Contractor's performance or progress of the Work on or before the due date of Contractor's Application for Payment covering the period in which the delay began. Claims for an extension of time shall be stated in whole or half calendar days, as applicable. The actual date on which the delay(s) began and/or the date the delay ended, if applicable, must be stated in the Claim Notices as applicable.

§ 8.3.2 In the case of claims for extension of time because of unusually inclement weather, such extension of time may be granted only if the Contractor files a claim in accordance with the requirements set out in Section 15.1.6.

§ 8.3.3 Contractor shall not be entitled to an adjustment in the Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

§ 8.3.4 Any adjustment of the Contract Time authorized under Section 8.3 shall be conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time and Contractor's submission of a timely and properly documented Notice and Claim for additional time in accordance with Section 8.3.

§ 8.3.5 Adjustments to the Contract Time addressed in this Section 8.3 shall apply only to requests for extensions of time based upon delay, disruption, or interference to the Contractor's performance or progress of the Work and shall have no applicability to requests for adjustment of the Contract Time due to other changes in circumstance, including but not limited to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services or materials required, beyond those specified by the Contract Documents. Claims for an adjustment of the Contract Time resulting from these kinds of changes shall be authorized only pursuant to a written order or directive from Owner authorizing Contractor to proceed with a change in the Work in accordance with the Contract Documents.

§ 8.4 No Damages or Other Compensation for Delay or Acceleration

This Agreement does not permit recovery by the Contractor of damages or additional compensation for delay, acceleration, disruption, or interference to the Contractor's performance or progress of the Work Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time including but not limited to delay, disruption, or interference caused by the Owner the Architect, of an employee of either, or of a Separate Contractor, any of the circumstances set out in Section 8.3.1 or acceleration of the Work required by the Owner in accordance with the terms of this Agreement. Contractor's sole remedy for delay disruption, or interference in its performance or progress of the Work or any required acceleration of the Work shall be the grant of an extension of time for completion equal to a delay or such reasonable time as the Owner and Architect may determine in their sole discretion.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement or the Guaranteed Maximum Price Amendment in the case of a Construction Manager at Risk Contract and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract. The Contract Sum shall not be increased because the Contractor experiences an unexpected or unforeseeable increase in the price of labor or materials required to complete the Project.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices may be equitably adjusted by written agreement between the Owner and Contractor, executed prior to an order being placed based on the unit prices.

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§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, as applicable, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment or, in the case of a Guaranteed Maximum Price, concurrent with the Guaranteed Maximum Price Proposal, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702-1992 and G703-1992, Application and Certificate for Payment and Continuation Sheet.

§ 9.3 Applications for Payment

§ 9.3.1 In accordance with the requirements of Section 5.1 of the Agreement, 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. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage withheld. The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document G702-1992, Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703-1992, Continuation Sheet.

§ 9.3.1.1 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 has not been invoiced by a Subcontractor or supplier, unless such Work was self-performed; in such case, only portions of Work actually performed shall be included on the Contractor's request for payment.

§ 9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 9.3.1.4 The Owner shall withhold retainage as provided in the Agreement, except that Owner shall not pay amounts for which the Architect refuses to certify payment, or the Owner refuses to pay, as provided herein. The retainage shall be paid to the Contractor with the Final Payment, subject to the requirements of the Contract Documents.

§ 9.3.2 Unless otherwise provided in a separate written agreement executed between the Owner and Contractor prior to delivery, payments shall not be made on account of materials and equipment delivered and stored at the site or off-site for subsequent incorporation in the Work. The Owner may, in Owner's sole discretion, require Contractor's compliance with such reasonable procedures and requirements as it may establish, as a condition precedent to the grant of Owner's consent and agreement to payment, including but not limited to the following:

- **.1** provision of any additional insurance required to protect the materials and equipment while stored;
- **.2** payment of the costs to store the materials and equipment and any additional transportation costs for multiple deliveries;
- **.3** provision of written consent of Contractor's surety to such storage;
- **.4** submission of an affidavit identifying materials and equipment stored off-site for later incorporation into the Work, and acknowledging responsibility for such materials and equipment;
- **.5** provision of documentation that the facility where the materials and/or equipment will be stored is an adequately insured commercial warehouse, where the materials and equipment stored will be sheltered from the weather and outside elements and are stored in accordance with the manufacturer's instructions, including proper temperature and humidity controls and that the materials and equipment have been physically separated and marked for the Project;

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.6. its agreement to bear the cost of Owner and/or Architect's visits to the off-site storage facility to confirm compliance with these requirements and review the stored contents, and Contractor shall agree to allow such costs to be offset from Progress Payments;

.7 agreement that payment of any costs related to compliance with the procedures and requirements for storage of materials and equipment on or off-site, shall not be subject to charges for overhead or profit;

.8 submission of bills of sale or other documentation acceptable to the Owner, showing proof of delivery and establishing the Owner's title to the materials or equipment and/or otherwise protecting the Owner's interest, including naming the Owner as additional insured on the required insurance policy (naming the specific materials or equipment stored and their location) and providing proof of delivery for those materials and equipment;

.9 agreeing that, in the event of termination of the Contract or default by the Contractor, the material and equipment stored on or off-site shall be immediately turned over to the Owner by delivery to the location designated by the Owner and that the operator of the storage facility is aware of this agreement and willing to honor it; and

.10 agreeing that all such stored materials and equipment, to the extent they include mechanical components, will be maintained by the Contractor kept in good working condition and ready for immediate installation, to the same extent they would have been, had they been delivered "just in time" for installation, that Contractor will be solely responsible for assuring any manufacturer's warranty will commence on date of completion of installation and/or start-up of the material or equipment and for repairs required prior to installation to assure performance in accordance with the Contract Documents.

§ 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY A SUPPLIER, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS PREVIOUSLY MADE BY THE OWNER TO CONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.**

§ 9.3.4 In each Application for Payment, Contractor shall certify that: the information contained in the Application presented is true, correct, accurate and complete; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for, and, unless an agreement described in Paragraph 9.3.2 has been signed, incorporated into the Work; that the subcontractors whose work is identified in the Applications for Payment have been paid, or Contractor has been invoiced for same and intends to pay such subcontractors; there are no known mechanics' or materialmens' liens outstanding at the date of the Application, that 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 that except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, carefully evaluate and review the Application for Payment and, when appropriate, return the Application for Payment to the Contractor as provided in Section 9.4.2. If the Application for Payment is complete, then the Architect shall sign and, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner in writing, of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner in writing, of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. Architect's written reasons for withholding certification shall be construed as the notice required by Texas Government Code Section 2251.042 *et seq.*

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§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, that the Architect has observed the progress of the Work and determined that, in the Architect's professional opinion based on the Architect's evaluation of the Work and the data in the Application for Payment, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect in writing to the Owner. 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 suppliers and other data unless requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

§ 9.5 Decisions to Withhold Certification

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

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or suppliers 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, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- **.7** repeated failure to carry out the Work in accordance with the Contract Documents;
- **.8** delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
- **.9** failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract Time;
- **.10** evidence of financial inability to perform the Contract fully;
- **.11** failure to submit record documents required by the Contract; or
- **.12** failure of the Contractor to perform any other obligations of the Contract.

§ 9.5.2 If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1.

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§ 9.5.4 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 supplier 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 Contractor shall reflect such payment on its next Application for Payment. Notwithstanding any provision contained within this Article, if the Contractor has not achieved Substantial Completion by the required date, subject to extensions of time allowed under the Contract Documents, then Architect may withhold any further Certificate for Payment to the extent necessary to preserve sufficient funds to complete construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1, or this Section 9.5.4.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment of disputed amounts in the manner and within the time provided in the Contract Documents, and in accordance with the Texas Government Code section 2251.042 *et. seq*., Owner shall within twenty-one (21) days notify the Architect and Contractor if Owner disputes the Architect's Certificate for Payment, listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

§ 9.6.2 In compliance with Texas Government Code Section 2251.022, the Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

§ 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 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 and suppliers 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 or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to 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 The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253. Notwithstanding the foregoing, payments received by the Contractor from the Owner for Work properly performed by Subcontractors, or materials properly provided by suppliers, shall be held in trust by the Contractor for the benefit of those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

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§ 9.7 Failure of Payment

§ 9.7.1 Pursuant to Texas Government Code Section 2251.051,if the Owner does not pay the Contractor any payment certified by the Architect, which is undisputed, due and owing after the date the payment is due under the Contract Documents, then the Contractor may, upon ten (10) days' written notice to the Owner and Architect, that payment has not been made and the Contractor intends to suspend performance for nonpayment, may stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that: 1) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect to either: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

§ 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 accompanied by the Owner or Owner's representative, at the Owner's option, 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, then the Architect shall so notify the Contractor and Owner in writing, and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.3.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

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§ 9.8.3.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

§ 9.8.4 When the Work or designated portion thereof is Substantially Complete, as defined by the Contract Documents, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion. If Work is to be completed or corrected after the date of Substantial Completion and prior to final payment, Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Architect, or the date of Final Payment. ("Warranty Commencement Date").

§ 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 the Certificate.

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 9.9 Partial Occupancy or Use

§ 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 in writing by the insurer 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 resulting from such occupancy, use or installation, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties on the partially completed portion of the Work, as required by the Contract Documents. 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. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

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

§ 9.9.3 Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work or installation of furnishings and equipment shall not constitute acceptance of Work not complying with the requirements of the Contract Documents, nor shall it constitute evidence of Substantial Completion or Final Completion.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner (at Owner's option) will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Work has been completed in accordance with the Contract Documents and that remainder of the Contract Sum, including all retainage, less any amount withheld pursuant to the Contract 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. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final

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Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) its affidavit that payrolls, bills for materials and equipment, and other liabilities 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, (3) a written statement that the Contractor knows of no 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, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) except for amounts previously withheld by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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 have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability; (7) In addition, the following items must be completed and received by the Owner before Final Payment will be due:

- **.1** Written certifications required by Sections 10.5, 10.6, and 10.7 herein;
- **.2** Final list of subcontractors (AIA Document G705-2001);
- **.3** Contractor's Certification of Project Compliance required by 16 Texas Administrative Code, Section 61.1036, located at: https://tea.texas.gov;
- **.4** Contractor's warranties, organized as required elsewhere in the Contract Documents;
- **.5** Maintenance and Instruction Manuals;
- **.6** Owner's Certificate of Final Completion; 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.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above.

§ 9.10.3 The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. Final Payment shall not constitute a waiver of any Claims by the Owner.

§ 9.10.4
(Paragraphs deleted)
[Paragraph Deleted.]

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously asserted pursuant to Article 15 and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 The Contractor shall not permit any actual or purported lien, charge or claim to attach or attempt to attach to the Work, the site or any amounts due or to become due to the Contractor under the Contract Documents. If any such lien, charge or claim is so asserted, the Contractor shall promptly procure its release and indemnify the Owner against all damage and expense incident thereto. Upon completion of the Work and before any final payment and settlement, the Contractor shall provide evidence satisfactory to the Owner of payment and release of all debts, taxes, liens, charges, obligations and claims for or relating to labor, materials, Subcontractors and Sub-subcontractors; provided, however, that if the Contractor has not paid for any of the aforesaid as a result of a bona fide dispute, and payment of

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such is guaranteed and covered by the payment bond provided by the Contractor, then the Contractor shall not be required to pay such claim as a condition to final payment and settlement, but instead shall be required to provide Owner with written consent to final payment executed by such surety, expressly acknowledging the existence of such unpaid claim, and agreeing that full and final payment to the Contractor shall not impair any of the Owner's rights or the surety's obligations under the bond.

§ 9.11 Audit

Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

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 and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., latest edition, and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 et seq., and all amendments thereto. However, the Contractor's duties herein shall not relieve any Subcontractor or any other person or entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, from the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.1.1 Contractor shall ensure that the Project site is alcohol-free, drug-free, nicotine/ tobacco-free, e-cigarette free, weapon-free, and sexual-harassment free, and shall require strict compliance on the Project Site with the Owner's Board Policies, including but not limited to GKA(Legal) and GKA(Local). Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

10.1.2 Dress Code, Fraternization and Sexual Harassment. Contractor shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Contractor shall prohibit fraternization between all persons working under Contractor or any of its subcontractors, students and Owner's employees while on Owner's property. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 10.1.3 Weapons. Owner has also banned use, possession, or display of any firearm, handgun, location-restricted knife, club, or "prohibited weapon", as defined by the Texas Penal Code and Owner's Board Policy FNCG(Legal), except when the Contractor, its representatives, employees, agents, and subcontractors, or anyone else over which the Contractor has control or authority holds a Texas handgun license, stores the handgun or other firearm in a locked vehicle in the Owners parking lot, garage, or other parking area provided by the Owner AND the firearm is not loaded and not in plain view. A copy of such policy is available through a link on the Owner's website. The Contractor further

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agrees that Contractor's representatives, employees, agents, and subcontractors will abide by these requirements as well as the Federal Gun-Free School Zones Act.

§ 10.1.4 Tobacco and E-Cigarettes. Contractor's employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not use e-cigarettes or tobacco products while on the Project Site.

§ 10.1.5 Small Unmanned Aircraft (Drones). The Contractor shall operate any Small Unmanned Aircraft as required by 14 C.F.R. Part 107. as applicable, and any other applicable federal or state laws and regulations.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall maintain good order among its employees and its Subcontractors, shall confine its employees and Subcontractors to such work areas, roads and gates as directed by the Owner, take reasonable and necessary precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility, and taking reasonable precautions to secure any abusable glue, aerosol paint, or any other chemical substance for inhalation being used on the project site;

.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, a Subcontractor, or a Sub-subcontractor; and

.3 other property at the site or adjacent thereto, such as fences, trees, shrubs, lawns, walks, athletic fields and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. Contractor's obligations under this Section shall continue to apply during any time period when all or a portion of the Work is suspended for any reason. Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes possession of and occupies that portion of the Project.

§ 10.2.2 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 implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.2.4 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 [Paragraph Deleted.]

§ 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.

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§ 10.2.8 Injury or Damage to Person or Property

§ 10.2.8.1 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, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding three (3) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

§ 10.2.8.2 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, then the accident shall be reported immediately by any means necessary to give actual notice to the Owner's representative and the Architect.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition. If such notice is provided orally, written confirmation of such notice by Contractor shall be provided not later than one (1) business day following such notification. Owner shall not be responsible for materials or substances brought to the site by the Contractor.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall, as soon as reasonably possible, obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the 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. Contractor may be entitled to an extension of the Contract Time in accordance with Article 8.3.

§ 10.3.3 To the extent permitted by the laws and Constitution of the State of Texas, 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. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

§ 10.3.5 Except to the extent that the cost and expense are due to the Owner's fault or negligence, if Contractor imports hazardous materials onto the Project site, the Contractor shall indemnify and hold harmless the Owner for the cost and

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expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, (2) where the Contractor fails to perform its obligations under Section 10.3.1; and (3) any fines or penalties of government agencies directly resulting from the Contractor's importation of the hazardous materials onto the Project site.

§ 10.3.6 [Paragraph Deleted.]

§ 10.4 Emergencies

§ 10.4 .1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. 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.

§ 10.4.2 The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibility for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.

§ 10.5 Asbestos Or Asbestos-Containing Materials. Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, then Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor. Final Payment shall not be made until this written certification has been received.

§ 10.6 Lead-Free Material In Potable Water System

§ 10.6.1 Prior to payment of retainage and final payment, the Contractor and each subcontractor involved with the potable water system shall furnish a written certification that the potable water system is "lead-free".

§ 10.6.2 The written certification shall further state that should lead be found in the potable water system built under this Project, then Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

§ 10.7 Hazardous Materials Certification

The Contractor shall provide written certification that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance

§ 11.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain in force, insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the table below the Agreement or elsewhere in the Contract Documents. No Work will be commenced, and no equipment or materials may be shipped, until all requirements of Article 11 have been satisfied, satisfactory evidence of insurance has been provided, and all required insurance is in full force and effect. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Texas.

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Workmen's Compensation: (Including Waiver of Subrogation Endorsement)	All liability arising out of Contractor's employment of workers and anyone for whom Contractor shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.
Employer's Liability:	Bodily Injury by Accident - $500,000 Each Accident. Bodily Injury by Disease - $500,000 Each Employee. Bodily Injury by Disease - $500,000 Policy Limit.
Commercial General Liability: (Premises Operations, Independent Contractors, Products/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage)	$1,000,000.00 – combined single limit for bodily injury and property damage $2,000,000.00 - aggregate
Property Damage Independent Contractors Contractual Liability	$1,000,000.00 each occurrence $2,000,000.00 aggregate per project (Same limits as above) (Same limits as above)
Automobile Liability: Bodily Injury/Property Damage	$1,000,000.00 combined single limit $1,000,000.00 each occurrence
Umbrella or Excess Liability	$2,000,000.00 - each occurrence $2,000,000 - aggregate
Owner's Protective Liability Insurance: Contractor must obtain an owner's liability insurance policy, at Contractor's expense, naming the District and its employees.	Bodily Injury - $1,000,000 Each Occurrence Aggregate - $1,000,000.
All Risk Builders Risk against the perils of fire, lightening, windstorm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, vandalism, malicious mischief, and all other perils in the amount one hundred percent (100%) of the value of the improvements including transit and materials stored off site. Additionally, this coverage shall provide protection to the full replacement value for boiler and machinery equipment up to installation, during testing, and until acceptance by Owner.	
Professional Liability for Construction Manager-At-Risk. In addition to the coverage and limits provided above, if these General Conditions are incorporated into the 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*, the Construction Manager shall also provide Professional Liability Insurance covering negligent acts, errors and omissions in the performance of professional services during the pre-construction phase, with policy limits of not less than One Million Dollars ($1,000,000.00) per claim and Two Million Dollars ($2,000,000.00) in the aggregate.	

§ 11.1.2 The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner.

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§ 11.1.3 The General Liability and Automobile policies so issued in the name of Contractor shall also name the Owner as additional insured. The coverage afforded to the additional insured under the policy or policies shall be primary insurance. It is the intent of the parties to this Agreement that the General Liability coverage (and associated Umbrella Coverage) required herein shall be primary to and shall seek no contribution from all insurance available to Owner, with Owner's insurance being excess, secondary and non-contributing. The Commercial General Liability coverage provided by Contractor shall be endorsed to provide such primary and non-contributing liability. If the additional insured has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis.

§ 11.1.4 If the insurance is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner then the Contractor shall bear all reasonable costs properly attributable thereto.

§ 11.1.5 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. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.1.6 Contractor shall have its insurance carrier(s) furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, and a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar day's prior written notice to Owner. Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 11.1.1. If Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance and the provisions of Section 11.1.8 hereof shall apply.

§ 11.1.7 Contractor and its Subcontractors shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of Contractor and its Subcontractors are in force and the necessary certificates and statements pursuant to Section 11.1.6 hereof have been received by Owner and the Architect has issued a written notice to proceed.

§ 11.1.8 As an alternative and at Owner's option and expense, Owner may elect to furnish or to arrange for any part or all of the insurance required by Section 11.1 hereof. If Owner so elects, it shall notify, in writing, Contractor and issue a Change Order therefor, but no adjustment to the scheduled completion date or the Contract Sum shall be allowed.

§ 11.1.9 Workers' Compensation Insurance Coverage.

.1 Definitions:

.1.1 Certificate of coverage ("Certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

.1.2 Duration of the Project. Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code §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 contracts 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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.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.

.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

.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 Owner showing that coverage has been extended.

.5 The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:

.5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.5.2 no later than seven (7) 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.

.6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

.7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

.8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, 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.

.9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:

.9.1 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;

.9.2 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;

.9.3 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;

.9.4 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;

.9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

.9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.

.10 By signing this 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 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 Texas Department of Insurance, Division of Self-Insurance Regulation. Providing false or

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misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

.11 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [28 TAC §110.110(c)(7)]

§ 11.1.10 [Paragraph Deleted.]

§ 11.2 Owner's Insurance [Paragraph Deleted.]

(Paragraphs deleted)

§ 11.3 Waivers of Subrogation

§ 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

(Paragraphs deleted)

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum.

§ 11.4.2 The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee.

§ 11.4.3 The Payment and Performance Bond shall meet requirements of Chapter 2253 of the Texas Governmental Code. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

§ 11.4.4 The Sureties shall promptly file a signed copy of the Contract, Performance Bond, and Payment Bond with the Owner in full compliance with Chapter 2253 of the Texas Governmental Code or, in the case of a Construction Manager, as required by Section 14.3.3 of the AIA Document A133-2019.

§ 11.4.5 All bonds will be reviewed by the Architect for compliance with the Contract Documents prior to execution of the contract. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's representative for review and decision.

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§ 11.4.6 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.

§ 11.4.7 Upon the request in writing 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 permit a copy to be made.

§ 11.4.8 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the Contractor's bonds becomes insufficient, 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) business days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld.

§ 11.4.9 By inclusion of this Section 11.4.9 in the Contract Documents, the surety which issues the bonds is hereby notified that the Owner, the Architect, and their agents and employees do not represent and will not be responsible for the surety's interests during the course of the Work. To protect its interests, the surety shall have the right to attend pay estimate meetings, review Applications for Payment when requested in writing by them, comment upon and make recommendations regarding payments, and inspect the Work in the presence of the Contractor and the Architect. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner, the Architect, their agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Contractor, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.

§11.5 Adjustment and Settlement of Insured Loss [Paragraph Deleted.]

(Paragraphs deleted)

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered prior to inspection, contrary to the Architect's request or to requirements specifically expressed in the Contract Documents or if any known deficiencies exist, it must, if requested by the Architect, be uncovered by the Contractor for the Architect's examination and be replaced at the Contractor's sole expense without change in the Contract Time. If the uncovered work is determined by the Architect upon inspection to be deficient or not in accordance with the Contract Documents, the uncovered Work which is deficient or not in accordance with the Contract Documents shall be corrected and covered at the Contractor's sole expense without change in the Contract Time.

§ 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, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense. If the a request inspection of the Work prior to covering or including a requirement for inspection in the Contract Documents is within the Architect's standard of care and the Architect has failed to timely make such request or include the requirement in the Contract Documents, the Architect shall reimburse the Owner for the actual costs of uncovering and recovering such Work and additional costs of correction, if any, caused by covering the Work prior to inspection.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before 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 and will be subject to offset by the Owner at Final Payment.

§ 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 Work or designated portion thereof or after the date for commencement of warranties established

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under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Owner shall give such notice of the condition to the Contractor with reasonable promptness after discovery of the condition. The Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition in its non-conforming state. 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 based on a breach of the warranty contained in this Section 12.2.2.1 providing for correction of Work during the one-year period. If the Contractor fails to correct nonconforming Work within a reasonable time during the period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

§ 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 of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is 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. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fails to conform with the requirements of this Agreement that appear during the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work or by the negligent act of the Contractor or its employees, agents or subcontractors. The cost to Contractor of performing any of its obligations under this Section 12.2.6 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2.7 shall not apply to corrective Work attributable solely to the acts or omissions of any separate Contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.8 If, however, Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made by written agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost to the Owner of the correction.

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§ 12.2.9 Contractor's express warranties set out in this Article 12 shall be in addition to, and not in lieu of, any other warranties or remedies Owner may have under the Contract Documents, at law, or in equity for defective Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the laws of the State of Texas without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

§ 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. Neither party to the Contract shall assign the Contract in whole or in part 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.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity 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 the assignment.

§ 13.2.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability, or effect of the remainder of the Contact Documents.

§ 13.3 Rights and Remedies

§ 13.3.1 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.

§ 13.3.2 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 thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. The Contractor shall give timely notice to the persons or entities selected by the Owner of the need for such services. 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. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 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 13.4.1, 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 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

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§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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 but not limited to those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 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.

§ 13.4.5 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.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth (46th) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

§ 13.6 Equal Opportunity In Employment

§ 13.6.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

§ 13.6.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law.

§ 13.7 Contractors Records

§ 13.7.1 Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office or the principal offices of the Contractor, at the sole option of the Owner.

§ 13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

§ 13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.7.1.

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§ 13.7.5 Contractor shall keep all Construction Documents related to the Project, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

§ 13.7.6 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 No Third-Party Beneficiaries

There are no third-party beneficiaries to this agreement.

§ 13.9 Proprietary Interests And Confidential Information

§ 13.9.1 Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

§ 13.9.2 Neither Architect nor Contractor shall disclose any confidential information of Owner which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to: pending real estate purchases, exchange, lease, or value; information related to litigation; detailed layouts of the Owner's Facilities; the location and deployment of security devices; security access codes; student likenesses; student record information; employee information; or any other information deemed confidential by law.

§ 13.9.3 The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Section 552.001, *et seq*., and the Texas Open Meetings Act, Texas Government Code, Section 551.001, *et seq*.

§ 13.10 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 If the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, 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 reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- **.3** Because the Owner has not made payment of undisputed sums due on an approved Certificate for Payment within the time stated in the Contract Documents; or
- **.4** [Subsection Deleted.]

§ 14.1.2 If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment in an amount which would have been recoverable had the termination been for the Owner's convenience.

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§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work 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 ten (10) additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- **.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- **.4** fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents;
- **.5** fails to furnish the Owner, upon written request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- **.6** engages in or permits serious or repeated worker misconduct in violation of Article 3.3;
- **.7** engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- **.8** otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, subject to any prior rights of the surety, 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' 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.

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the Contract Documents.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Any further payment shall be limited to amounts actually earned to the date of termination.

§ 14.2.4 If the costs of finishing the Work, including compensation for the Architects' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, exceed the unpaid balance of the Contract Sum or Guaranteed Maximum Price (if the Project is a Construction Manager at Risk project), then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such

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request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

§ 14.2.6 As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a Contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time may be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. No adjustment shall be made to the extent

- **.1** that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Trustees has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

§ 14.4.2 Upon receipt of 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 Owner shall pay the Contractor for Work properly executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

§ 14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in this Section 14.4.3.

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, payment of money, a change in the Contract 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims [Paragraph Deleted.]

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§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor, shall be initiated by notice to the Owner and to the Architect, Claims under this Section 15.1.3.1 shall be initiated within 21 calendar days after the occurrence of the event giving rise to such Claim or within 21 calendar days after the claimant first knew or should have known of the condition giving rise to the Claim, whichever is earlier. If the full impact cannot be assessed as of the date of the Notice, then Notice shall be provided and amended by a second notice at the earliest date that is reasonably possible, but in no event later than the date of Contractor's Application for Payment covering the period in which the impact can be assessed and quantified.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required. If Texas Government Code, Chapter 2272 is applicable to the Claim, the Owner shall comply with the requirements set out therein as a condition precedent to any initiation of any litigation.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments for Work performed in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum (or Guaranteed Maximum Price, as applicable), if permitted, and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of the Contractor to proceed in accordance with this Article 15.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum (provided such a claim is specifically permitted by the Contract Documents), notice as provided in Section 15.1.3 shall be given to the Owner and Architect. before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 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.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions occurred at the locality of the Work which were abnormal for the period of time, were in excess of that normally experienced at the job site, could not have been reasonably anticipated, and prevented the execution of Work on scheduled Working Days. The term "Adverse Weather Conditions" as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the Local Climatological Data maintained by NOAA's National Centers for Environmental Information [formerly the National Climatic Data Center (NCDC)] from the station closest to the location of the Work. No day will be counted as a rain-day when substantial Contractor forces are able to perform Work on the Project for more than fifty percent (50%) of the usual workday or when the stage of the Work on the Project is not adversely impacted. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of the Contract Time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, but shall be applied only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. As provided herein, Contractor shall only be entitled an extension of the Contract Time per the terms of the Contract Documents and no damages shall be paid for delays.

(Paragraphs deleted)

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§ 15.1.7 Calculating Claims For Damages

Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

.1 No indirect or consequential damages will be allowed.

.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

.4 No damages will be allowed for home office overhead or other home office changes or any Eichleay formula calculation.

Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, nor will this Section 15.1.7 be deemed to apply to delay damages, which are prohibited entirely.

§ 15.2 Initial Decision

§ 15.2.1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any Claim, after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The Architect will review Claims and within ten (10) days of receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 15.2.3 Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

§ 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 the 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.

§ 15.2.5 [Paragraph Deleted.]

§ 15.2.6 [Paragraph Deleted.]

§ 15.2.6.1 [Paragraph 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 Waiver Of Lien

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

§ 15.3 Mediation

§ 15.3.1 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator qualified as an impartial third party for purposes of Section 154.052 of the Texas Civil Practice & Remedies Code.

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§ 15.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.

§ 15.3.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. 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.

§ 15.3.5 Nothing herein shall preclude the Owner or the Contractor or as applicable, the Construction Manager from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

§ 15.3.6 Any claim not resolved in mediation pursuant to Section 15.3 shall be subject to litigation as the sole method of dispute resolution.

§ 15.3.7 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

§ 15.4 Arbitration. This Section 15.4 and all subparts are intentionally deleted. No dispute arising under the Contract Documents, these General Conditions or the underlying Contract shall be subject under any circumstances to Arbitration as the method of binding dispute resolution and Owner rejects any selection otherwise made by the parties.

§ 15.5 Immunity

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

Executed on this the ____ day of _____, 20__.

MCALLEN INDEPENDENT SCHOOL DISTRICT		_____
OWNER *(Signature)*		**CONSTRUCTION MANAGER** *(Signature)*
Tony Forina, Board President, Board of Trustees, McAllen Independent School District		
(Printed name and title)		*(Printed name and title)*

(Paragraphs deleted)

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PAGE 1

(Name, legal status and address)

McAllen Independent School District, a public school district and political subdivision of the State of Texas
2000 North 23rd Street
McAllen, Texas 78501

...

(Name, legal status and address)

_____, a _____ of the State of _____
[Address]
[Address continued]
Phone: _____
E-mail: _____

THE CONTRACTOR/CONSTRUCTION MANAGER

_____, a _____ of the State of _____
[Address]
[Address continued]
Phone: _____
E-mail: _____

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15 CLAIMS AND DISPUTES

NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson, P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

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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, Project Manual and the Bid or Proposal Documents prepared and submitted by the Owner and the Contractor's Bid or Proposal submitted by the Contractor, to the extent they do not conflict with the terms of this Agreement, and 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, 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 or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

...

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~~ After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written 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, (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 under the Contract intended to facilitate performance of the Architect's duties.

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§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Miscellaneous Other Words

§ 1.1.10.1 Business Day

The term "business day" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner's Superintendent of Schools for inclement weather or other reason. Days on which the Administration Building is normally closed are Thanksgiving Break, Winter Break, Spring Break, and Summer Break, as well as other federal, state or local days specified in the calendar approved by the Owner's Board of Trustees on an annual basis. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or special events.

§ 1.1.10.2 Calendar Day

A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

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§ 1.1.10.3 Holidays
Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

§ 1.1.10.4 Work Day
Work days include all calendar days except Holidays, Saturdays and Sundays.

...

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

...

§ 1.2.4 Precedence Of The Contract Documents
The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

.1 Contract Modifications signed by Contractor and Owner.
.2 Addenda, with those of later date having precedence over those of earlier date.
.3 General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.
.4 Agreement – AIA Document A101-2017 or A133-2019, as modified by the Owner for the Project.
.5 Specifications and Drawings.
.6 Bid/Proposal Documents including the Project Manual, Contractor's Bid or Proposal Documents (to the extent such Bid or Proposal submitted by the Contractor is part of the Contract Documents and is not inconsistent with other portions of the Contract Documents)

§ 1.2.5 Relation Of Specifications And Drawings
Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above-mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.5.1 Drawings and Specifications are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above-mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.5.2 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

§ 1.2.5.3 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall apply.

§ 1.2.5.4 Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

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

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In the interest of ~~brevity~~ 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.

...

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given in person, by mail, by courier, or by electronic transmission if a method for electronic transmission ~~is set forth in the Agreement.~~(e-mail or facsimile) or other commercially reasonable means and will under any of these circumstances, be effective when actually received. Any address for notice may be changed by written notice delivered as provided in this Section 1.6.

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The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data ~~Exhibit,~~ Exhibit or such other form agreed to by the parties, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

~~**Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.**~~[Paragraph Deleted.]

...

§ 2.1.1 The Owner is the ~~person or entity identified as such in the Agreement~~ Board of Trustees of the McAllen Independent School District 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.~~ may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Except as otherwise provided in Section 4.2.1, the Architect does not have ~~such authority.~~ the authority to bind the Owner. The term "Owner" means the Owner or the Owner's authorized representative.

§ 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.~~may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

§ 2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.

...

§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended~~

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~~appropriately.~~Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work.

§ 2.2.2 ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~[Paragraph Deleted.]

§ 2.2.3 ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~[Paragraph Deleted.]

§ 2.2.4 ~~Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~[Paragraph Deleted.]

...

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor ~~to whom the Contractor has no reasonable objection and~~ whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner ~~shall~~ may furnish surveys describing physical characteristics, 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.~~site, but shall have no duty to do so. Notwithstanding the foregoing, if the Owner provides such survey, the Contractor shall remain responsible to independently investigate the physical characteristics, legal limitations, and utility locations for the Project site. In the event that the Contractor damages any utilities during construction, the Contractor shall immediately repair the same at its sole cost and expense.

§ 2.3.5 ~~The Owner shall furnish information~~ 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.~~shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 2.3.6 ~~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.~~The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

§ 2.3.7 Owner's personnel or consultant may, but are not required to be present at the construction site during progress of the Work to assist the Architect in the performance of his duties, and to verify the Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and the equipment used in the performance of the Work for purpose of verification of Contractor's Applications for Payment.

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§ 2.3.8 The Owner (either directly or by contract with the Architect) may 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.

§ 2.3.9 The Owner, (directly or by contract with the Architect), when such services are required, in the professional opinion of the Architect, 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.

§ 2.3.10 The Owner will contract for, independently of the Contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for the acceptance of the Work by the Owner as required by the Texas Government Code, Section 2269.058.

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If the Contractor fails to correct Work that is defective or not in accordance with the requirements of the Contract Documents as required by ~~Section 12.2 or repeatedly~~ Section 12.2, fails to timely carry out Work in accordance with the Contract ~~Documents,~~ Documents or is in default of any of its material obligations hereunder, 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.~~entity.. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

...

~~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 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~**§ 2.5.1** If the Contractor is in default in any of its material obligations hereunder, neglects to timely carry out the Work in accordance with the Contract Documents, or fails to correct nonconforming or defective Work as required by Section 12.2, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or such non-conforming or defective Work with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or such non-conforming or defective Work at the sole cost of the Contractor. The Architect may, pursuant to Section 9.5.1, withhold or nullify the Contractor's Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such default or such non-conforming or defective Work, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure to correct such non-conforming or defective Work. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5.2 Nothing contained in this Section 2.5 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

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§ 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 authorized to do business in the state of Texas and lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this

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Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative, or in the case of a Construction Manager-at-Risk, the Construction Manager-at-Risk, or its authorized representative.

§ 3.1.2 The Contractor shall perform the Work in a good and workmanlike manner and accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Owner's consultants, if applicable, conducted in accordance with the Contract Documents or 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.

...

§ 3.2.1 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. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, or for price escalations in the marketplace. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 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 2.3.4, 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 any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized 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. Contractor shall not perform any Work it knows involves an error, inconsistency, or omission without further instructions to Contractor or revised Construction Documents from the Architect. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the Work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 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 any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. 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 honor its warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner, in writing providing substantiation for its position.

§ 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 submit Claims as provided in Article ~~15.~~ 15; however, nothing in this section shall provide the Contractor with an affirmative claim for damages for delay by Owner or Architect, as such a claim is prohibited under this Contract. 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, subject to Section 15.1.7, as would have been avoided if the Contractor had

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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.

§ 3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor.

§ 3.2.6 The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays or disruptions to the Work. This limitation on damages is further subject to the limitations set forth in Section 15.1.7.

§ 3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall assign a Superintendent who shall make decisions on behalf of the Contractor and its subcontractors. The Superintendent shall be on the Project, in this capacity, at all times while Work on the Project is in progress. 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be 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 propose ~~alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its~~ alternative means, methods, techniques, sequences, or procedures.

...

§ 3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, *et seq.*, and shall require any applicable subcontractor to comply all such procedures. Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

§ 3.3.5 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent Contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the

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Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

§ 3.3.6 The Contractor shall review Subcontractor(s) safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g. a supplier) including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

§ 3.3.7 Contractor acknowledges that the Work may be performed in connection with an educational facility which is currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury.

§ 3.3.8 Representatives of the Owner, Contractor, and Architect shall meet periodically at mutually agreed upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

§ 3.3.9 The Contractor shall pay fees for public or private water, gas, electrical and other utility service at the site until Substantial Completion of the Work. In the event that the Work will be conducted at an Owner site, where utility services are existing on site and reasonably accessible to the Contractor, the Owner may elect, in writing, to provide and pay for utility service for the Project site. Agreement to pay for such utility service shall not absolve the Contractor from using utilities judiciously in connection with its performance of the Work. In all cases, the Contractor shall secure and arrange for all necessary utility connections.

§ 3.3.10 The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient workers and labor, eligible to work in accordance with state and federal law. Contractor shall appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for 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. Before ordering any material or doing any Work, Contractor shall verify all dimensions and check all conditions in order to assure Contractor that they are the same as those in the Drawings, Specifications, and other Construction Documents. Any inconsistency shall be brought to the attention of the Architect. In the event that discrepancies occur between ordered

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material and actual conditions and Architect was not notified beforehand, then costs to correct such discrepancies shall be borne by Contractor. In accordance with Texas Government Code §2269.054, these Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization. In accordance with Texas Government Code §2269.0541, these Contract Documents shall also not prohibit, require, discourage or encourage a person, or discriminate against a person bidding on this contract from entering into or declining to enter into, or adhering to, an agreement with a collective bargaining organization relating to this Project.

~~**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 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.~~

§ 3.4.2 Prevailing Wages

§ 3.4.2.1 The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.2.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications and attached to the AIA Document A101-2017, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction.

§ 3.4.2.3 A Contractor or Subcontractor who violates the provisions of Sections 3.4.2.1 or 3.4.2.2 shall pay to Owner the sum of Sixty Dollars and No/100 ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

~~**§ 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.~~**Substitutions**

§ 3.4.3.1 If the Contract Documents (including the Instructions to Proposers and /or Offerors) specifically permit the submission by Contractor of requests for substitutions, Contractor may, within thirty (30) days after the Contract has been executed, make written request for the substitution of products in place of those specified in the Contract Documents to the Owner and the Architect. Any request for substitution shall be submitted to the Architect in writing, with appropriate shop drawings, product data, and certified test results substantiating the proposed product equivalence as required by this Section 3.4.3.1 and Section 3.4.3.2 and will be rejected if not so submitted.

§ 3.4.3.2 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and any modifications to the construction schedule; and (v) an affidavit stating that (a) the proposed substitution confirms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect; (c) the cost breakdown presented with Contractor's request is complete and includes all related costs, except for the Architect's redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent;(d) that the Contractor will coordinate and supervise the installation of the proposed substitute, making such changes as may be required for the Work to be complete in all respects; and (e) the Contractor will reimburse the Owner and for review or redesign services associated with any re-approval by applicable governmental authorities related to the substitution.

§ 3.4.3.3 By making requests for substitutions pursuant to Section 3.4.3 (and all subsections), the Contractor represents and certifies that: (1) Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to the product specified; (2) Contractor will provide the same warranty for the substitution product that the Contractor would have provided for the product specified; (3) the cost breakdown

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presented with the request is complete and includes all related costs, except for the Architect's redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent; (4) Contractor will coordinate and supervise the installation of the proposed substitute, making such changes as may be required for the Work to be complete in all respects; and (5) will reimburse Owner and Architect for review or redesign services associated with any re-approval by applicable governmental authorities related to the substitution.

§ 3.4.3.4 Owner and the Architect may accept or reject any such request for substitution in their sole discretion, based on cost, time, or other considerations. Requests for substitutions submitted after such thirty (30) day period will not be considered unless a product becomes impossible to obtain due to circumstances beyond the Contractor's control.

§ 3.4.3.5 Regardless of acceptance or rejection of substitution, the Contractor shall be responsible for amounts paid by the Owner to the Architect, to evaluate the Contractor's proposed substitutions and any amounts paid to the Architect to make agreed upon changes in the Specifications and Drawings made necessary by the Owner's acceptance of such substitutions. The Owner shall be entitled to deduct such amounts from the Contract Sum.

§ 3.4.4 Responsibility for Subcontractors

§ 3.4.4.1 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, its subcontractors and vendors shall bear responsibility for compliance with all federal, state and local laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of his own conduct. THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES; NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES; CONTRACTOR'S FORCES NON-COMPLIANCE WITH CRIMINAL LAW; OR CONTRACTOR'S OR CONTRACTOR'S FORCES NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.4.4.2 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Work may be performed in connection with an operational educational facility or the Project site may be adjacent to a public-school campus. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb or disrupt Owner's normal operations or facilities. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working at or near an operational campus and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum.

§ 3.4.5 Criminal History Records Checks

§ 3.4.5.1 For purposes of this Section 3.4.5 (and all subsections), the following definitions shall be applicable:

.1 "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.

.2 "Covered Employees", shall mean, all employees of Contractor, as well as employees of Contractor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

§ 3.4.5.2 Unless otherwise exempt from providing such information by any provision in Texas Education Code, Section 22.08341 (the "Statute"), the Contractor agrees, that prior to commencement of work under this Agreement, using the form promulgated by the Owner or such other form approved by the Owner, Contractor will arrange with the

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Owner to obtain any national criminal history record information ("CHRI") required pursuant to the Statute on all of Contractor's employees, independent contractors, agents, or Subcontractors, Contractor's Subcontractors of every tier ("Subcontractors"), Subcontractors' employees, independent contractors, agents, or sub-subcontractors, if any of these persons is a "Covered Employee" as defined in Section § 3.4.5.1 and shall reimburse the Owner for the costs and expenses associated with obtaining the required CHRI.

§ 3.4.5.3 For purposes of this Section 3.4.5 a person does **not** have the opportunity for direct contact with students if:

.1 the public work does not involve the construction, alteration, or repair of an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code ("Instructional Facility);

.2 for a public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first date the facility will be used for instructional purposes; or

.3 for a public work that involves an existing Instructional Facility:

(a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and

(b) the Contractor adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

§ 3.4.5.4 Any Covered Employee that has during the preceding thirty (30) years, been convicted of one of the following offenses, if at the time of the offense the victim was under eighteen (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 to (a) or (b) under federal law or the laws of another state ("Disqualifying Criminal History Offense") shall be disqualified and prohibited from performing any contract duties or services and neither the Contractor nor its Subcontractor may permit such person to provide services at an instructional facility. If a Covered Employee is determined by the Owner's review of the CHRI to have a Disqualifying Criminal History, Contractor will exclude that person from assignment to the Project. Contractor understands that it will not have access to the results of such criminal history records check, based on statewide regulations beyond the control of the Owner, and agrees to rely solely on the judgment of the Owner as to whether the Covered Employee must be excluded from the Project.

§ 3.4.5.5 Prior to commencement of its work on the Project the Contractor will provide written certification to the Owner that either: (1) Contractor and its Subcontractors of every tier, do not have any Covered Employees, as defined; (2) are otherwise exempt from compliance with the Statute; or (3) has complied with the statutory and contractual requirements stated in Section 3.4.5 of this Agreement (including all subparts), as of that date, and that it:

.1 has requested a Criminal History Records Check through the District on all Covered Employees, if any, of every tier, has provided the required information to the District to do so and reimbursed the District for same;

.2 has obtained written certification from its independent contractors, and Subconsultants (of any tier) that they have provided the required information to the Contractor, necessary to secure the information from the District and reimbursed the Contractor for same; and

.3 have excluded any Covered Employee reported by the District to have a Disqualifying Criminal History from assignment to the Project.

Further, Contractor agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses, during the performance of the Work, Contractor will immediately remove the Covered Employee from District's property or other location where students are regularly present, and notify the District of said removal within three (3) days of doing so. Contractor understands that any failure to comply with the requirements of this section may be grounds for termination of this Agreement, in accordance with Article 14, Termination.

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§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good 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. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in

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accordance with all applicable codes, generally accepted standards of construction practice for construction of projects similar to the Project. All materials shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. 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, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. No acceptance or payment by the Owner shall constitute a waiver of the foregoing and nothing herein shall exclude or limit any warranties implied by law. The warranties provided in this Section 3.5.1 are in addition to, and not in limitation of, any other warranties, remedies and/or guaranties set out in the Contract Documents or under applicable law.

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§ 3.5.3 Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. In such case, each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion (or, for Work to be completed or corrected after the date of Substantial Completion, the Warranty Commencement Date). Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the warranties under granted in the Contract Documents will expire, on each phase or building and will provide a copy of such Schedule to the Owner, as required in Subsection 3.5.6, as a condition precedent to Final Payment.

§ 3.5.4 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or such further reasonable proof as is required by the Architect.

§ 3.5.5 The Contractor agrees to assign to the Owner at the time of Final Completion of the Work any and all manufacturer's warranties relating to equipment, machinery, materials, equipment or components and labor incorporated into the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations. The warranties provided in this Section 3.5 or otherwise provided in the Contract Documents or by law, shall in no way limit or abridge the warranties provided by the suppliers of equipment and systems which are to comprise a portion of the Work. A complete set of all warranties required from contractors, manufacturers, or suppliers as appropriate, on the manufacturer's or supplier's approved forms, executed by Contractor as required, with a Warranty Commencement Date noted as required, and in the form required by Subparagraph 3.5.6 shall be submitted to the Architect for delivery to the Owner, as a condition precedent to Final Payment.

§ 3.5.6 Prior to receipt of Final Payment, Contractor shall: (1) obtain duplicate original warranties, executed by all subcontractors, and the warranties of suppliers and manufacturers, noting the Warranty Commencement Date on the face of each; (2) verify that the documents are in proper form and contain full information; (3) Co-sign warranties when required; (4) bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers; (5) label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the Title of the Project; name, address and telephone number of Contractor; and name of its responsible principal; (6) include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified; (7) include the Schedule of Warranty Commencement Dates required by Subparagraph 3.5.3; (8) separate each warranty with index tab sheets keyed to the Table of Contents listing; and (9) deliver warranties in the form described in this Subparagraph 3.5.6, to the Architect for review same prior to submission to the Owner.

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~~

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~~go into effect.~~not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes. **CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.** **PAGE 22**

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall 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 legally required at the time ~~bids are received or negotiations concluded.~~proposals are received or negotiations concluded. The Owner shall be responsible for payment of TDLR Texas Accessibility submissions and inspection costs.

§ 3.7.2 ~~The~~ In performing its obligations hereunder, the Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the ~~Work.~~Work and upon request by the Owner or Architect shall furnish evidence, satisfactory to the Owner, of such compliance.

§ 3.7.3 If the Contractor performs Work ~~knowing~~ when Contractor knows or reasonably should have known it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, the Contract Documents, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. **THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ITS TRUSTEES, OFFICERS, REPRESENTATIVES, AGENTS AND EMPLOYEES FROM AND AGAINST ALL THIRD-PARTY CLAIMS, FINES, PENALTIES, OR LIABILITIES FROM, ARISING OUT OF, OR BASED UPON CONTRACTOR'S VIOLATION OF ANY LAWS, ORDINANCES, RULES, REGULATIONS, ORDERS OR DECREES.**

~~§ 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 14 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 that an equitable adjustment be made 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, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.~~

§ 3.7.4 Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract Sum, or both. The Contract Time and the Contract Sum contained herein (as proposed by Contractor), or GMP as applicable, shall be deemed to include all costs of and sufficient time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if the Contractor encounters conditions

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at the site that are subsurface or otherwise concealed physical conditions which were not known to the Contractor, and that differ materially from those indicated in the Contract Documents the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed, and in no event later than three (3) days after first observance of the conditions and report its findings to the Owner and Architect.

§ 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. 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. In accordance with the terms of this Agreement, there will be no adjustment to the Contract Sum for delay arising out or related to the circumstances described in this Section 3.7.5.

§ 3.7.6 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 (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" 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 the construction process which require the issuance of a permit shall be at Contractor's sole cost.

§ 3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State 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 Instruments of Service related to Contract Closeout.

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.3 ~~whenever~~ 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.~~within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

§ 3.8.4 When performing Work under Allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work on the basis of the best value for the Owner, as directed by the Architect following Owner's written approval of the cost proposal.

...

§ 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. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall ~~notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day~~

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~~period shall constitute notice of no reasonable objection.~~furnish a list to the Architect a list of all engineers, consultants, job-site superintendents, subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner. The Owner shall have the right, at any time, to require a change in any engineer, consultant, job-site superintendent, subcontractor or supplier if their performance is deemed unsatisfactory in its sole discretion.

§ 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.~~provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

§ 3.9.4 Owner shall be notified as soon as Contractor becomes aware, but in no event fewer than twenty-four (24) hours before the time of that the Superintendent is required to be present at the site, that the Superintendent will not be present at the site for any reason, except illness. If the reason is due to illness, then Owner shall be notified as soon as the Contractor obtains the information, but in no event later than the beginning of the day that the Superintendent will be absent from the site. In such event of such absence, the Contractor will designate a person as acting superintendent and Contractor promptly notify the Owner of the identity and contact information for the designated acting superintendent.

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§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the ~~Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.~~Work, utilizing critical path method scheduling techniques. The Schedule shall not exceed the time limits set forth in the Contract Documents. The Schedule shall thereafter be updated on a monthly basis and submitted with each Application For Payment. The receipt of an updated schedule with each Application For Payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6. The schedule shall not interfere with the operation of Owner's existing facilities and operations without Owner's prior written approval.

§ 3.10.1.1 Each Schedule shall: (1) break the work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect and shall assign each scheduled activity a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project cash flow for the Project; (2) include activates representing manufacturing, fabrication, or ordering lead time for materials, equipment or other items for which the Architect is required to review submittals, shop drawings, product data, or samples; (3) with the exception of the initial schedule, shall indicate the activities, or portions thereof, which have been completed; (4) shall reflect the actual time for completion of such activities, and shall reflect any changes to the sequence or planned duration of all activities.

§ 3.10.1.2 If any updated Schedule exceeds the time limits set forth in the Contract Documents for completion of the Work, the Contractor shall include with the updated Schedule, a statement of the reasons for the anticipated delay in completion of the Work and the Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Architect to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Architect and documentation of the date such information was requested.

§ 3.10.1.3 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

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§ 3.10.1.4 Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining Work in the sequence and time indicated.

§ 3.10.1.5 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal or Guaranteed Maximum Price, as applicable, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

§ 3.10.1.6 The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions.

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§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and ~~Architect.~~Architect and shall attend progress meetings at the Project Site, in such frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule.

§ 3.10.4 The Contractor shall submit to the Architect with each monthly application for payment a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein.

§ 3.10.5 Correction of Delay.

§ 3.10.5.1 In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, or any Milestone Date unless any such adjustment is submitted by the Contractor as a Claim in compliance with Article 15 or the adjustment is otherwise agreed to in a written confirmation from the Owner and documented by written Change Order.

§ 3.10.5.2 If at any time the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5. The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.5.3 In the event Contractor determines that the Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

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The Contractor shall maintain and make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, field test records (including environmental inspection and test records), inspection certificates or records, manufacturers' certificates. The Documents to be maintained shall be kept in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and ~~Owner,~~ Owner or their respective representatives, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how 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.

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§ 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. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Construction Documents and the Contract Documents remain the Contractor's responsibility.

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§ 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the ~~Architect~~ 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.

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§ 3.12.10.1 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 ~~be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall~~ cause such services or certifications to be provided by an appropriately licensed design professional, 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 Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawings are prepared and, if required by the Architect or applicable law, by a licensed engineer The Owner and the Architect shall be entitled to rely upon the ~~adequacy~~ adequacy, completeness and accuracy of the services, certifications, and approvals performed or provided by such design ~~professionals, provided the Owner and Architect have specified to the Contractor the performance and~~

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~~design criteria that such services must satisfy. Pursuant to this Section 3.12.10,~~ professionals. Pursuant to this Section 3.12.10.1, the Architect will review and 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. A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this paragraph, Contractor shall require that the licensed design professional carry commercial general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

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§ 3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

§ 3.13.2 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 material and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§ 3.13.3 Without prior approval of the Owner, the Contractor shall not permit any workers to use any of Owner's existing facilities at or adjacent to the Project site, including, without limitation, lavatories, toilets, entrance and parking areas other than those designated by the Owner. The Contractor shall comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and District's Buildings.

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§ 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.~~ properly, provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Contract Documents. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

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§ 3.15.1 The Contractor ~~shall~~ shall, on a daily basis, keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. 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. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains,

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putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning and replace any damaged or broken glass.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor. Such reimbursement amounts may be deducted from Contractor's Final Payment Application.

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The Contractor shall provide the ~~Owner and Architect~~ Owner, Architect and their designated representatives, with access to the Work in preparation and progress wherever located. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work. Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on an inspection of the Work.

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~~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 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.~~THE CONTRACTOR SHALL PAY ALL ROYALTIES AND LICENSE FEES. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES DEFEND AGAINST ANY AND ALL SUITS, CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS ALLEGED TO HAVE RESULTED FROM CONTRACTOR'S INFRINGEMENT, AND SHALL INDEMNIFY AND HOLD THE OWNER THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM LOSS ON ACCOUNT THEREOF, INCLUDING ATTORNEY'S FEES (AS PERMITTED BY STATUTE), BUT SHALL NOT BE RESPONSIBLE FOR 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 PROVIDED BY THE OWNER OR PREPARED BY THE ARCHITECT. HOWEVER, IF AN INFRINGEMENT OF A COPYRIGHT OR PATENT ATTRIBUTABLE TO THE OWNER OR ARCHITECT, IS DISCOVERED BY, OR MADE KNOWN TO, THE CONTRACTOR, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOSS UNLESS THE INFORMATION IS PROMPTLY FURNISHED TO THE OWNER AND THE ARCHITECT.

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§ 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.~~TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND (EXCEPT AS LIMITED BELOW) AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS,

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AGENTS AND EMPLOYEES (HEREINAFTER IN THIS SECTION 3.18 "OWNER"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), 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), INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, 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 THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. 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.

§ 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.~~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 INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

§ 3.18.3 THE DUTY TO DEFEND SET OUT ABOVE SHALL NOT APPLY IN THE EVENT THAT THE CLAIM IS BASED, IN WHOLE OR IN PART, ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE OWNER. NOTWITHSTANDING THE FOREGOING, THE CONTRACTOR AGREES TO REIMBURSE THE OWNER'S REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE CONTRACTOR'S LIABILITY.

§ 3.18.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, 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 THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1.

§ 3.18.5 The indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and

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rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner under said statutes are secondary to that of the Contractor.

§ 3.18.6 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

§ 3.18.7 Contractor shall promptly advise the Owner, in writing, of any claim or demand against the Owner or Contractor, known to the Contractor related to or arising out of Contractor's activities under this Contract.

§ 3.18.8 The provisions in this Section 3.18 in its entirety shall survive the completion, termination or expiration of this contract and are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

§ 3.19 Representations And Warranties

§ 3.19.1 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

.2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 Business Standards

§ 3.20.1 Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, Subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and contracts.

§ 3.21 Antitrust Violation

To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

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§ 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.~~

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§ 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.~~ of the Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract ~~Documents.~~Documents, or as they may be amended in the future.

§ 4.2.2 The Architect 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. 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.~~Documents, and delivered on time. In addition, the Architect or its structural consultant will (1) provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable; and (2) provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third-party laboratory or testing services to assist the Architect and Owner.

§ 4.2.3 On the basis of the site ~~**visits,**~~ observations, the Architect will keep the Owner ~~**reasonably**~~ informed about the progress and quality of the ~~**portion of the Work completed, and**~~ Work. The Architect shall promptly report to the Owner and Contractor orally regarding: (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. An oral notification of defects and deficiencies observed in the Work shall be followed by a notice in writing to the Owner and Contractor specifying the defect(s), non-conforming Work, deviations from the Contract Documents and corrective actions taken or recommended. The Architect shall not have control over or responsibility for the Contractor's construction means, methods, techniques, sequences, procedures, or safety programs and 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**~~ Documents, nor shall the Architect 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.**~~of the Work. This does not, however, relieve Architect of Architect's responsibilities under this Agreement. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed by the Contractor at no additional cost to Owner. In addition, the Contractor shall reimburse the Owner for compensation paid to the Architect (whether performed by the Architect or its Consultants) or the Owner's Consultants, for additional site visits made necessary by the fault, neglect, the request of the Contractor or made necessary by the Contractor's construction defect or nonconforming Work. Any amount subject to reimbursement under this Section may be required by Owner to be deducted from the next Payment Application submitted by the Contractor and any subsequent Payment Application until paid, and if any amount remains unpaid, the balance shall be paid by the Contractor as a condition to Final Payment.

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~~The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications~~ 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 relating to the Contract and the Project. However, the Owner reserves the right to communicate directly with the Contractor and Subcontractors. Communication by and with the Architect's consultants shall be through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. ~~The Contract Documents may specify other communication protocols.~~

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

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§ 4.2.6 The Architect or the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work may be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall prevent action to require conformance, if at any subsequent time the Work or any portion thereof is found not to conform to the requirements of the Contract Documents. Architect and/or Contractor shall promptly notify, the other party orally and in writing, and Owner of any perceived fault or defect in the design or nonconformance of the Work with the Construction Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no duty to notify Owner of discoveries made or actions taken by Architect.

§ 4.2.7 The Architect will review and approve, 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~~ as to cause no delay in the Work or in the activities of the Owner, Contractor or Separate Contractors, and allow 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 of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If any submittal does not comply with the requirements of the Contract Documents, the Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.

§ 4.2.8 The Architect will ~~prepare Change Orders and Construction Change Directives, and~~ prepare, and make written recommendations to Owner regarding all Change Orders (including changes in the Work to be paid from contingency funds) and Construction Change Directives, for the Owner's approval and execution in accordance with the Contract Documents. The Architect's recommendation shall be accompanied by all supporting documentation necessary for the Owner to make an informed decision, including but not limited to an itemized turn-key proposal from the Contractor which includes quantities and unit costs of labor and materials extended and totaled and, if permitted, overhead and profit proposed. Prior to submission of such documentation to the Owner, the Architect shall review such proposals for reasonableness of pricing and compliance with Section 7.1.4 regarding markup. The Architect may order minor changes in the Work not involving an adjustment in Contract Sum or Guaranteed Maximum Price, or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. The Architect is specifically **not** authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner's prior written consent.

§ 4.2.9 The Architect and the Owner's representative will conduct inspections to determine the date or dates of Substantial Completion and the date of final ~~completion;~~ completion. Upon completion of such inspection and agreement by Owner and Architect as to Substantial Completion, the Architect may 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.~~Section 9.10 for approval by the Owner.

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§ 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.~~ Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. 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 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract ~~Documents.~~Documents and not expressly overruled in writing by the Owner.

§ 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.~~information at no additional expense to the Owner.

§ 4.2.15 The Architect may appoint an employee or other person to assist the Architect during the construction. These representatives will be instructed to assist the Contractor in interpreting the Contract Documents; however, such assistance shall not relieve the Contractor from any responsibility as set forth by the Contract Documents. The fact that the Architect's Representative may have allowed Work not in accordance with the Contract Documents shall not prevent the Architect from insisting that the faulty Work be corrected to conform to the Contract Documents and the Contractor shall correct same.

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§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and ~~Architect~~ Architect, in writing, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect ~~may~~ shall notify the Contractor in writing, whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.

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§ 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~~ When the parties agree on a proposed substitute Subcontractor 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.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected ~~if the Owner or Architect makes reasonable objection to such substitution.~~without providing reasonable written notice to the Owner and Architect. If neither the Owner nor Architect submits a reasonable objection to such proposed substitution within ten (10) days following their receipt of written notice the Contractor may proceed with the substitution. If either Owner or Architect submit an objection, the Subcontractor shall proceed in accordance with Section 5.2.3 above.

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§ 5.2.5 Each Contractor or subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in Contract Sum shall be allowed for failure to so inspect or investigate.

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~~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 that the Contractor, by these Contract 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** 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 that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, included as provided below. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in an amount commensurate with the Work to be performed by the Subcontractor.

§ 5.3.2 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.3 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

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

.1 assignment is effective only after termination of the Contract by the Owner ~~for cause pursuant to Section 14.2~~ or abandonment of the Project by the Contractor and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and ~~Contractor; and~~Contractor in writing;

.2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond relating to the ~~Contract.~~Contract; and

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.3 The Subcontractor provides bonds as required by law of prime contractors and by Owner.

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§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation ~~shall~~ may, in the Owner's sole discretion, be equitably adjusted for increases in cost resulting from the suspension. Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable.

§ 5.4.3 Upon 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.~~Owner shall only be responsible for compensating subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

§ 5.5 Notice Of Subcontractor Default

Contractor shall promptly notify Owner and Architect of any material defaults by any Subcontractor or Sub-subcontractor. 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 Subcontractor, Sub-subcontractor or other materialman or worker employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor.

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§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this ~~Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.~~Contract.

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§ 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 any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual ~~agreement.~~ agreement by the Owner and Contractor. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 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 or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.~~[Paragraph Deleted.]

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§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for site access, staging, 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 notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the

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Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work 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. ~~The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.~~

§ 6.2.3 All costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate, or failure to follow the Construction Documents or Contract Documents, will be borne by the Contractor. The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate ~~Contractor~~ Contractor, the Architect or any Consultant 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.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate ~~Contractor as provided in Section 10.2.5.~~Contractor.

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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~~ Owner will allocate the cost among those responsible.

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§ 7.1.1 Changes in the Work may 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. Changes may be funded out of a contingency fund, if any, or other allowance established herein, or may require a change in the Contract Sum. The authority to approve a change to the Work, the Contract Sum, approve payment from a Contingency or Allowance, or a change in the Project Time, rests solely with the Owner. A Change Order funded from the Contingency or other Allowance shall be referred to herein for clarity as a "Contingency Authorization Order".

§ 7.1.2 A Contingency Authorization Order or Change Order shall be based upon agreement among the Owner, Contractor, and ~~Architect. A Construction Change Directive~~ Architect executed prior to commencement of any Work covered by the Order. A Construction Change Directive (whether funded from contingency, if any, or by an increase in the Contract Sum) requires agreement by the Owner and Architect and may or may not be agreed to by ~~the Contractor.~~ the Contractor prior to the commencement of the Work. An order for a minor change in the Work may be issued by the Architect ~~alone.~~alone, except as otherwise provided herein.

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§ 7.1.4 Change Order Mark-Up. On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead, profit permitted to be charged to the Owner shall be based on the following schedule:

.1 for work performed by the Contractor's own forces, Contractor's mark-up for overhead and profit shall not exceed 10% of the cost of the change in the Work (0% for change orders to be paid out of any contingency allowance).

.2 for the Contractor, for supervision of work performed by the Contractor's Subcontractors, the total Contractor mark-up for overhead and profit shall not exceed 4% of the amount due to the Subcontractors (0% for change orders to be paid out of any contingency allowance).

.3 for each Subcontractor or Sub-subcontractor involved, in Work performed by that Subcontractor's or Sub-subcontractor's own forces, the total mark-up for overhead and profit ten percent (10%) of the cost of the change in the Work.

.4 In no event shall total mark-up for overhead, profit or fee in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the work, exceed 14% of the total cost of the change in the Work. The Contractor will not be allowed an overhead, profit, or fee mark-up when changes in the Work are funded by Contingency or other Allowances provided for in the Contract Documents.

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Methods used to determine adjustments to the Contract Sum or Guaranteed Maximum Price may include those listed in Section 7.3.3.

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

§ 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 (the Guaranteed Maximum Price, as applicable) 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.~~(the Guaranteed Maximum Price, as applicable) and Contract Time being adjusted as provided in Section 7.3.3.

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§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract ~~Sum,~~ Sum (or the Guaranteed Maximum Price, as applicable), the adjustment shall be based on one of the following methods:

...

.2 Unit prices stated in the Contract Documents or subsequently agreed ~~upon;~~upon(additional mark-ups for overhead and profit will not be allowed);

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage ~~fee;~~ fee, subject to the limitations of subparagraph 7.1.4; or

...

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract ~~Sum,~~ Sum (or the Guaranteed Maximum Price, as applicable), the Architect shall determine 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. 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 7.3.4~~ of the amount by which the Contractor's direct costs have actually been increased over the direct cost of performing the Work without the Change in the Work. Direct costs shall be limited to the following:

.1 ~~Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance,~~ Actual documented costs of labor, including applicable payroll taxes and other employee costs approved by ~~the Architect;~~the Owner prior to the approval of the Change Order or Contingency Authorization Order (a labor burden factor will not be accepted as documentation);

.2 ~~Costs~~ Actual documented costs of materials, supplies, and equipment, including cost of transportation, whether such materials, supplies, and equipment are incorporated or consumed;

.3 ~~Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;~~Actual documented rental costs of machinery and equipment, if rented from unaffiliated third-parties, exclusive of hand tools;

.4 ~~Costs~~ Actual documented costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the ~~change;~~ change, if any; and

.5 ~~Costs~~ Actual documented costs of supervision and field office personnel directly attributable to ~~the change.~~the change and only if the adjustment causes an extension of the Contract Time.

The Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting of the items listed above, together with appropriate supporting documentation.

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§ 7.3.5 If the Work is performed without an agreement as to the final price, the Contractor shall, at a minimum, retain and provide to the Owner, the following documentation to adequately document its actual costs of performing the scope of work set out in a Construction Change Directive. Adequate Documentation shall include at a minimum, but not limited to, payroll records for employees of Contractor providing the Work included in the Change Directive, as well as written documentation of time spent **solely** on the scope of the Change Directive Work, prepared concurrent with the performance of the Work, including (for example) sign-in and sign-out sheets or time cards, executed by the employee(s) documenting attendance and receipts for all materials delivered to the Project site for incorporation in the Work of the Change Directive and paid for by the Contractor. If any of the Work of the Change Directive is performed by subcontractors, the Contractor shall provide a copy of the subcontract, an itemized invoice or payment application which includes, in either case, a detailed itemization of costs showing quantities and unit costs of labor and materials extended and totaled and, if permitted, overhead and profit (in accordance with Section 7.1.4) labor and materials provided by the subcontractor, with receipted invoices for all materials incorporated in the Work and evidence of payment by the subcontractor attached. If the Contractor disagrees with the adjustment in the Contract Time, the Contract Sum (or the Guaranteed Maximum Price, as applicable), allowed in any Change Directive, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 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 (by executing and returning the Change Directive) 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.~~Time, not later than ten (10) calendar days following the Contractor's receipt of the Construction Change Directive. A copy of a notice of disagreement shall also be provided to the Owner concurrent with the notice to the Architect. A Notice of Disagreement must contain the number of the Change Directive, the date the Change Directive was issued and the words **"Notice of Disagreement With Change Directive"** in the Subject line. It is imperative that Owner receive timely specific notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly.

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

§ 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.~~ plus the permitted overhead and profit as set forth in Section 7.1.4. When both additions and credits covering related Work or substitutions are involved in a change, both changes shall be shown on the same Change Order and the permitted allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change. Returned materials shall be credited at actual cost and no penalty or restocking fee shall be permitted to be charged to the Owner.

§ 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 require as a condition precedent to certification of payment for Work completed under the Construction Change Directive that the Contractor provide the documentation required by Section 7.3.4, and based on such documentation, shall make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect is specifically authorized by this Section 7.3.9 to require submission of such documentation and any other documentation required to evaluate the requested payment, and shall withhold payment certification until such documentation is received and an interim determination is made in accordance with this Section. 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.~~ Order reflecting the Agreement of the Owner and Contractor. Change Orders may be issued for all or any part of a Construction Change Directive.

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~~The~~ With prior written notice to the Owner's representative, the Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

...

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

§ 8.1.2 Commencement. The date of commencement of the Work ~~is the date established in the Agreement.~~shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement (or Guaranteed Maximum Price Amendment, as applicable) has been signed by the Contractor and the Owner, and the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

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

§ 8.1.3.2 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) days after the date of Substantial Completion.

§ 8.1.4 Day. The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.
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§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor ~~confirms~~ stipulates 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, commence the Work prior to the effective date of insurance required to be furnished by the ~~Contractor and Owner.~~Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

...

§ 8.2.4 Liquidated Damages
§ 8.2.4.1 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set out in the AIA Document A101 (2017) or the AIA Document A133 (2019) into which these General Conditions are incorporated and executed concurrently with these General Conditions, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.4.2 In the event Substantial Completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor all liquidated damages, if any, due Owner in accordance with the Contract Documents.

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§ 8.2.4.3 In addition to Liquidated Damages, if any, the Contractor shall reimburse the Owner for any Supplemental or Additional Services of the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor or caused by Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.2.4.4 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by ~~(1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties,~~ war, civil commotion, pandemic, epidemic, federal, state or local declared disaster or public emergency, act of God, governmental restrictions, regulations, orders, or interference, fire or other unavoidable casualty, material changes ordered in the Work; adverse weather conditions documented in accordance with Section ~~15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution;~~ 15.1.6 by delay authorized in writing by the Owner prior to the happening of the delay event; or (5) by other causes that the Contractor asserts, and the Architect ~~determines,~~ and Owner determine, justify delay, then the Contract Time ~~shall~~ may be extended for such reasonable time as the Architect ~~may determine.~~and Owner may determine based upon documentation by the Contractor.

§ 8.3.1.1 The adjustment of the Contract Time for delay, disruption, and interference described in this Section 8.3.1 is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time and Contractor's timely delivery of the notice and claim as set out in this Section 8.3.1. An adjustment to the Contract Time shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Section 8.3.1, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for Owner-caused delays.

§ 8.3.1.2 Notice and Claim for Extension. In the event of a delay in the commencement or progress of the Work as a result of any of the circumstances in this Section 8.3.1, the Contractor may receive an extension of time for completion of the Work equal to the delay, if the Contractor delivers a written notice and claim to the Owner and Architect delivered in any manner provided in Section 1.6.1 of this Agreement. The Notice shall identify and provide a reasonably detailed description of the circumstances causing the delay, disruption, or interference to the Contractor's performance or progress of the Work on or before the due date of Contractor's Application for Payment covering the period in which the delay began. Claims for an extension of time shall be stated in whole or half calendar days, as applicable. The actual date on which the delay(s) began and/or the date the delay ended, if applicable, must be stated in the Claim Notices as applicable.

§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Article 15.~~In the case of claims for extension of time because of unusually inclement weather, such extension of time may be granted only if the Contractor files a claim in accordance with the requirements set out in Section 15.1.6.

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~Contractor shall not be entitled to an adjustment in the Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

§ 8.3.4 Any adjustment of the Contract Time authorized under Section 8.3 shall be conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time and Contractor's submission of a timely and properly documented Notice and Claim for additional time in accordance with Section 8.3.

§ 8.3.5 Adjustments to the Contract Time addressed in this Section 8.3 shall apply only to requests for extensions of time based upon delay, disruption, or interference to the Contractor's performance or progress of the Work and shall have no applicability to requests for adjustment of the Contract Time due to other changes in circumstance, including but not limited to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services or materials required, beyond those specified by the Contract Documents. Claims for an adjustment of the Contract Time resulting from these kinds of changes shall be authorized only pursuant to a

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written order or directive from Owner authorizing Contractor to proceed with a change in the Work in accordance with the Contract Documents.

§ 8.4 No Damages or Other Compensation for Delay or Acceleration

This Agreement does not permit recovery by the Contractor of damages or additional compensation for delay, acceleration, disruption, or interference to the Contractor's performance or progress of the Work Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time including but not limited to delay, disruption, or interference caused by the Owner the Architect, of an employee of either, or of a Separate Contractor, any of the circumstances set out in Section 8.3.1 or acceleration of the Work required by the Owner in accordance with the terms of this Agreement. Contractor's sole remedy for delay disruption, or interference in its performance or progress of the Work or any required acceleration of the Work shall be the grant of an extension of time for completion equal to a delay or such reasonable time as the Owner and Architect may determine in their sole discretion.

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§ 9.1.1 The Contract Sum is stated in the Agreement or the Guaranteed Maximum Price Amendment in the case of a Construction Manager at Risk Contract and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract. The Contract Sum shall not be increased because the Contractor experiences an unexpected or unforeseeable increase in the price of labor or materials required to complete the Project.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices ~~shall be equitably adjusted.~~may be equitably adjusted by written agreement between the Owner and Contractor, executed prior to an order being placed based on the unit prices.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, as applicable, the Contractor shall submit a schedule of values to the Architect before the first Application for ~~Payment,~~ Payment or, in the case of a Guaranteed Maximum Price, concurrent with the Guaranteed Maximum Price Proposal, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702-1992 and G703-1992, Application and Certificate for Payment and Continuation Sheet.

...

§ 9.3.1 ~~At least ten days before the date established for each progress payment,~~ In accordance with the requirements of Section 5.1 of the Agreement, 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. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage ~~if provided for in the Contract Documents.~~withheld. The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document G702-1992, Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703-1992, Continuation Sheet.

§ 9.3.1.1 ~~As provided in Section 7.3.9, such~~ 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.

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§ 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 supplier, unless such Work has been performed by others whom the Contractor intends to pay.~~has not been invoiced by a Subcontractor or supplier, unless such Work was self-performed; in such case, only portions of Work actually performed shall be included on the Contractor's request for payment.

§ 9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 9.3.1.4 The Owner shall withhold retainage as provided in the Agreement, except that Owner shall not pay amounts for which the Architect refuses to certify payment, or the Owner refuses to pay, as provided herein. The retainage shall be paid to the Contractor with the Final Payment, subject to the requirements of the Contract Documents.

§ 9.3.2 Unless otherwise provided in ~~the Contract Documents, payments shall~~ a separate written agreement executed between the Owner and Contractor prior to delivery, payments shall not be made on account of materials and equipment delivered and ~~suitably~~ stored at the site or off-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. 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.~~The Owner may, in Owner's sole discretion, require Contractor's compliance with such reasonable procedures and requirements as it may establish, as a condition precedent to the grant of Owner's consent and agreement to payment, including but not limited to the following:

.1 provision of any additional insurance required to protect the materials and equipment while stored;

.2 payment of the costs to store the materials and equipment and any additional transportation costs for multiple deliveries;

.3 provision of written consent of Contractor's surety to such storage;

.4 submission of an affidavit identifying materials and equipment stored off-site for later incorporation into the Work, and acknowledging responsibility for such materials and equipment;

.5 provision of documentation that the facility where the materials and/or equipment will be stored is an adequately insured commercial warehouse, where the materials and equipment stored will be sheltered from the weather and outside elements and are stored in accordance with the manufacturer's instructions, including proper temperature and humidity controls and that the materials and equipment have been physically separated and marked for the Project;

.6. its agreement to bear the cost of Owner and/or Architect's visits to the off-site storage facility to confirm compliance with these requirements and review the stored contents, and Contractor shall agree to allow such costs to be offset from Progress Payments;

.7 agreement that payment of any costs related to compliance with the procedures and requirements for storage of materials and equipment on or off-site, shall not be subject to charges for overhead or profit;

.8 submission of bills of sale or other documentation acceptable to the Owner, showing proof of delivery and establishing the Owner's title to the materials or equipment and/or otherwise protecting the Owner's interest, including naming the Owner as additional insured on the required insurance policy (naming the specific materials or equipment stored and their location) and providing proof of delivery for those materials and equipment;

.9 agreeing that, in the event of termination of the Contract or default by the Contractor, the material and equipment stored on or off-site shall be immediately turned over to the Owner by delivery to the location designated by the Owner and that the operator of the storage facility is aware of this agreement and willing to honor it; and

.10 agreeing that all such stored materials and equipment, to the extent they include mechanical components, will be maintained by the Contractor kept in good working condition and ready for immediate installation, to the same extent they would have been, had they been delivered "just in time" for installation, that Contractor will be solely responsible for assuring any manufacturer's warranty will commence on date of completion of installation and/or start-up of the material or equipment and

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for repairs required prior to installation to assure performance in accordance with the Contract Documents.

§ 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY A SUPPLIER, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS PREVIOUSLY MADE BY THE OWNER TO CONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.**

§ 9.3.4 In each Application for Payment, Contractor shall certify that: the information contained in the Application presented is true, correct, accurate and complete; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for, and, unless an agreement described in Paragraph 9.3.2 has been signed, incorporated into the Work; that the subcontractors whose work is identified in the Applications for Payment have been paid, or Contractor has been invoiced for same and intends to pay such subcontractors; there are no known mechanics' or materialmens' liens outstanding at the date of the Application, that 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 that except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

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§ 9.4.1 The Architect will, ~~within seven days after receipt of the Contractor's Application for Payment,~~ carefully evaluate and review the Application for Payment and, when appropriate, return the Application for Payment to the Contractor as provided in Section 9.4.2. If the Application for Payment is complete, then the Architect shall sign and, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner in writing, of the Architect's reasons for withholding certification in part as provided in ~~Section 9.5.1;~~ Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner in writing, of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. Architect's written reasons for withholding certification shall be construed as the notice required by Texas Government Code Section 2251.042 *et seq.*

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, that the Architect has observed the progress of the Work and determined that, in the Architect's professional opinion based on the Architect's evaluation of the Work and the data in the Application for Payment, ~~that, to the best of the Architect's knowledge, information, and belief,~~ the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the ~~Architect.~~ Architect in writing to the Owner. 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 suppliers and other data unless requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

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§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

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.6 reasonable evidence that the Work will not be completed within the Contract Time, and 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.~~ the Contract Documents;

.8 delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;

.9 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract Time;

.10 evidence of financial inability to perform the Contract fully;

.11 failure to submit record documents required by the Contract; or

.12 failure of the Contractor to perform any other obligations of the Contract.

§ 9.5.2 ~~When either party disputes the Architect's~~ If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, ~~that party~~ the Contractor may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1.

§ 9.5.4 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 supplier 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 Contractor shall reflect such payment on its next Application for Payment. Notwithstanding any provision contained within this Article, if the Contractor has not achieved Substantial Completion by the required date, subject to extensions of time allowed under the Contract Documents, then Architect may withhold any further Certificate for Payment to the extent necessary to preserve sufficient funds to complete construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1, or this Section 9.5.4.

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§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment of disputed amounts in the manner and within the time provided in the Contract Documents, and ~~shall so notify the Architect.~~ in accordance with the Texas Government Code section 2251.042 *et. seq*., Owner shall within twenty-one (21) days notify the Architect and Contractor if Owner disputes the Architect's Certificate for Payment, listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

§ 9.6.2 ~~The Contractor shall pay each Subcontractor, no later than seven days after~~ In compliance with Texas Government Code Section 2251.022, the Contractor shall, within ten (10) days following 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.~~ pay all bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

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§ 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 or provided by suppliers shall be held by the Contractor for~~ The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253. Notwithstanding the foregoing, payments received by the Contractor from the Owner for Work properly performed by Subcontractors, or materials properly provided by suppliers, shall be held in trust by the Contractor for the benefit of those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the ~~Contractor 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, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~Contractor.

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~~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 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, then the Contractor may, upon seven additional days' 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 shutdown, delay and start-up, plus interest as provided for in the Contract Documents.~~**§ 9.7.1** Pursuant to Texas Government Code Section 2251.051,if the Owner does not pay the Contractor any payment certified by the Architect, which is undisputed, due and owing after the date the payment is due under the Contract Documents, then the Contractor may, upon ten (10) days' written notice to the Owner and Architect, that payment has not been made and the Contractor intends to suspend performance for nonpayment, may stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that: 1) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect to either: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended ~~use.~~use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in

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nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

...

§ 9.8.3 Upon receipt of the Contractor's list, the Architect accompanied by the Owner or Owner's representative, at the Owner's option, 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, then the Architect shall so notify the Contractor and Owner in writing, and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.3.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

§ 9.8.3.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

§ 9.8.4 When the Work or designated portion thereof is ~~substantially complete,~~ Substantially Complete, as defined by the Contract Documents, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion ~~thereof~~ thereof, unless otherwise provided in the Certificate of Substantial Completion. If Work is to be completed or corrected after the date of Substantial Completion and prior to final payment, Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Architect, or the date of Final Payment. ("Warranty Commencement Date").

§ 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 the Certificate. ~~Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

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§ 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 in writing by the insurer 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 resulting from such occupancy, use or installation, 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~~

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~~Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2.~~ on the partially completed portion of the Work, as required by the Contract Documents. 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. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

...

§ 9.9.3 Unless ~~otherwise agreed upon,~~ expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work or installation of furnishings and equipment shall not constitute acceptance of Work not complying with the requirements of the Contract ~~Documents.~~Documents, nor shall it constitute evidence of Substantial Completion or Final Completion.

...

§ 9.10.1 ~~Upon receipt of the Contractor's 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. When the Architect finds the Work acceptable under the Contract Documents and the Contract~~ When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner (at Owner's option) will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been 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~~ certifying to the Owner that the Work has been completed in accordance with the Contract Documents and that ~~the entire balance found to be due the Contractor~~ remainder of the Contract Sum, including all retainage, less any amount withheld pursuant to the Contract 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. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) ~~an~~ its affidavit that payrolls, bills for materials and equipment, and other ~~indebtedness~~ liabilities 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, (3) a written statement that the Contractor knows of no 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, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) ~~if required~~ except for amounts previously withheld by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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 have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to ~~indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.~~discharge any such lien or indemnify the Owner from liability; (7) In addition, the following items must be completed and received by the Owner before Final Payment will be due:

.1 Written certifications required by Sections 10.5, 10.6, and 10.7 herein;

.2 Final list of subcontractors (AIA Document G705-2001);

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.3 Contractor's Certification of Project Compliance required by 16 Texas Administrative Code, Section 61.1036, located at: https://tea.texas.gov;

.4 Contractor's warranties, organized as required elsewhere in the Contract Documents;

.5 Maintenance and Instruction Manuals;

.6 Owner's Certificate of Final Completion; 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.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above.

§ 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, corrected, 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 the 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~~ The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. Final Payment shall not constitute a waiver of ~~Claims.~~any Claims by the Owner.

§ 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 audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~[Paragraph Deleted.]

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously ~~made in writing~~ asserted pursuant to Article 15 and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 The Contractor shall not permit any actual or purported lien, charge or claim to attach or attempt to attach to the Work, the site or any amounts due or to become due to the Contractor under the Contract Documents. If any such lien, charge or claim is so asserted, the Contractor shall promptly procure its release and indemnify the Owner against all damage and expense incident thereto. Upon completion of the Work and before any final payment and settlement, the Contractor shall provide evidence satisfactory to the Owner of payment and release of all debts, taxes, liens, charges, obligations and claims for or relating to labor, materials, Subcontractors and Sub-subcontractors; provided, however, that if the Contractor has not paid for any of the aforesaid as a result of a bona fide dispute, and payment of such is guaranteed and covered by the payment bond provided by the Contractor, then the Contractor shall not be required to pay such claim as a condition to final payment and settlement, but instead shall be required to provide Owner with written consent to final payment executed by such surety, expressly acknowledging the existence of such unpaid claim, and agreeing that full and final payment to the Contractor shall not impair any of the Owner's rights or the surety's obligations under the bond.

§ 9.11 Audit

Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times,

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Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.
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The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the ~~Contract.~~Contract and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., latest edition, and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 et seq., and all amendments thereto. However, the Contractor's duties herein shall not relieve any Subcontractor or any other person or entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, from the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.1.1 Contractor shall ensure that the Project site is alcohol-free, drug-free, nicotine/ tobacco-free, e-cigarette free, weapon-free, and sexual-harassment free, and shall require strict compliance on the Project Site with the Owner's Board Policies, including but not limited to GKA(Legal) and GKA(Local). Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

10.1.2 Dress Code, Fraternization and Sexual Harassment. Contractor shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Contractor shall prohibit fraternization between all persons working under Contractor or any of its subcontractors, students and Owner's employees while on Owner's property. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 10.1.3 Weapons. Owner has also banned use, possession, or display of any firearm, handgun, location-restricted knife, club, or "prohibited weapon", as defined by the Texas Penal Code and Owner's Board Policy FNCG(Legal), except when the Contractor, its representatives, employees, agents, and subcontractors, or anyone else over which the Contractor has control or authority holds a Texas handgun license, stores the handgun or other firearm in a locked vehicle in the Owners parking lot, garage, or other parking area provided by the Owner AND the firearm is not loaded and not in plain view. A copy of such policy is available through a link on the Owner's website. The Contractor further agrees that Contractor's representatives, employees, agents, and subcontractors will abide by these requirements as well as the Federal Gun-Free School Zones Act.

§ 10.1.4 Tobacco and E-Cigarettes. Contractor's employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not use e-cigarettes or tobacco products while on the Project Site.

§ 10.1.5 Small Unmanned Aircraft (Drones). The Contractor shall operate any Small Unmanned Aircraft as required by 14 C.F.R. Part 107. as applicable, and any other applicable federal or state laws and regulations.
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§ 10.2.1 The Contractor shall maintain good order among its employees and its Subcontractors, shall confine its employees and Subcontractors to such work areas, roads and gates as directed by the Owner, take reasonable and necessary precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees ~~on the Work~~ on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected ~~thereby;~~thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility, and taking reasonable precautions to secure any abusable glue, aerosol paint, or any other chemical substance for inhalation being used on the project site;

...

.3 other property at the site or adjacent thereto, such as fences, trees, shrubs, lawns, walks, athletic fields and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. Contractor's obligations under this Section shall continue to apply during any time period when all or a portion of the Work is suspended for any reason. Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes possession of and occupies that portion of the Project.

...

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.2.4 When use or storage of ~~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.~~personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 ~~The Contractor shall promptly remedy damage and loss (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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is 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.~~[Paragraph Deleted.]

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~~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, notice of the 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.~~**§ 10.2.8.1** 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, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding three (3) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

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§ 10.2.8.2 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, then the accident shall be reported immediately by any means necessary to give actual notice to the Owner's representative and the Architect.

...

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition. If such notice is provided orally, written confirmation of such notice by Contractor shall be provided not later than one (1) business day following such notification. Owner shall not be responsible for materials or substances brought to the site by the Contractor.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner ~~shall~~ shall, as soon as reasonably possible, obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the 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 by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.~~Contractor may be entitled to an extension of the Contract Time in accordance with Article 8.3.

§ 10.3.3 To the ~~fullest extent permitted by law,~~ extent permitted by the laws and Constitution of the State of Texas, 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. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous 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 hazardous 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.~~

§ 10.3.5 ~~The Contractor shall reimburse~~ Except to the extent that the cost and expense are due to the Owner's fault or negligence, if Contractor imports hazardous materials onto the Project site, the Contractor shall indemnify and hold harmless the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances 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~~

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~~negligence.~~Section 10.3.1; and (3) any fines or penalties of government agencies directly resulting from the Contractor's importation of the hazardous materials onto the Project site.

§ 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 reimburse the Contractor for all cost and expense thereby incurred.~~[Paragraph Deleted.]

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~~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.~~**§ 10.4 .1** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. 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.

§ 10.4.2 The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibility for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.

§ 10.5 Asbestos Or Asbestos-Containing Materials. Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, then Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor. Final Payment shall not be made until this written certification has been received.

§ 10.6 Lead-Free Material In Potable Water System

§ 10.6.1 Prior to payment of retainage and final payment, the Contractor and each subcontractor involved with the potable water system shall furnish a written certification that the potable water system is "lead-free".

§ 10.6.2 The written certification shall further state that should lead be found in the potable water system built under this Project, then Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

§ 10.7 Hazardous Materials Certification

The Contractor shall provide written certification that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

...

§ 11.1 Contractor's Insurance ~~and Bonds~~

§ 11.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain in force, insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the table below the Agreement or elsewhere in the Contract Documents. No Work will be commenced, and no equipment or materials may be shipped, until all requirements of Article 11 have been satisfied, satisfactory evidence of insurance has been provided, and all required insurance is in full force and effect. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the ~~jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as~~

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~~additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.~~State of Texas.

Workmen's Compensation: (Including Waiver of Subrogation Endorsement)	All liability arising out of Contractor's employment of workers and anyone for whom Contractor shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.
Employer's Liability:	Bodily Injury by Accident - $500,000 ~~Each Accident.~~ Bodily Injury by Disease - $500,000 Each Employee. Bodily Injury by Disease - $500,000 Policy Limit.
Commercial General Liability: (Premises Operations, Independent Contractors, Products/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage)	$1,000,000.00 – combined single limit for bodily injury and property damage $2,000,000.00 - aggregate
Property Damage Independent Contractors Contractual Liability	$1,000,000.00 each occurrence $2,000,000.00 aggregate per project (Same limits as above) (Same limits as above)
Automobile Liability: Bodily Injury/Property Damage	$1,000,000.00 combined single limit $1,000,000.00 each occurrence
Umbrella or Excess Liability	$2,000,000.00 - each occurrence $2,000,000 - aggregate
Owner's Protective Liability Insurance: Contractor must obtain an owner's liability insurance policy, at Contractor's expense, naming the District and its employees.	Bodily Injury - $1,000,000 Each Occurrence Aggregate - $1,000,000.
All Risk Builders Risk against the perils of fire, lightening, windstorm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, vandalism, malicious mischief, and all other perils in the amount one hundred percent (100%) of the value of the improvements including transit and materials stored off site. Additionally, this coverage shall provide protection to the full replacement value for boiler and machinery equipment up to installation, during testing, and until acceptance by Owner.	
Professional Liability for Construction Manager-At-Risk. In addition to the coverage and limits provided above, if these General Conditions are incorporated into the 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*, the Construction Manager shall also provide Professional Liability Insurance covering negligent acts, errors and omissions in the performance of professional services during the pre-construction phase, with policy limits of not less than One Million Dollars ($1,000,000.00) per claim and Two Million Dollars ($2,000,000.00) in the aggregate.	

§ 11.1.2 The ~~Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is~~

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~~located.~~required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner.

§ 11.1.3 ~~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.~~The General Liability and Automobile policies so issued in the name of Contractor shall also name the Owner as additional insured. The coverage afforded to the additional insured under the policy or policies shall be primary insurance. It is the intent of the parties to this Agreement that the General Liability coverage (and associated Umbrella Coverage) required herein shall be primary to and shall seek no contribution from all insurance available to Owner, with Owner's insurance being excess, secondary and non-contributing. The Commercial General Liability coverage provided by Contractor shall be endorsed to provide such primary and non-contributing liability. If the additional insured has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis.

§ 11.1.4 ~~Notice of Cancellation or Expiration of Contractor's Required Insurance.~~ ~~Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~
If the insurance is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner then the Contractor shall bear all reasonable costs properly attributable thereto.
§ 11.1.5 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. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.1.6 Contractor shall have its insurance carrier(s) furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, and a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar day's prior written notice to Owner. Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 11.1.1. If Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance and the provisions of Section 11.1.8 hereof shall apply.

§ 11.1.7 Contractor and its Subcontractors shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of Contractor and its Subcontractors are in force and the necessary certificates and statements pursuant to Section 11.1.6 hereof have been received by Owner and the Architect has issued a written notice to proceed.

§ 11.1.8 As an alternative and at Owner's option and expense, Owner may elect to furnish or to arrange for any part or all of the insurance required by Section 11.1 hereof. If Owner so elects, it shall notify, in writing, Contractor and issue a Change Order therefor, but no adjustment to the scheduled completion date or the Contract Sum shall be allowed.

§ 11.1.9 Workers' Compensation Insurance Coverage.

.1 Definitions:

.1.1 Certificate of coverage ("Certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

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.1.2 **Duration of the Project.** Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

.1.3 **Persons providing services on the Project ("subcontractor" in Texas Labor Code §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 contracts directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

.2 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.

.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

.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 Owner showing that coverage has been extended.

.5 The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:

.5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.5.2 no later than seven (7) 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.

.6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

.7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

.8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, 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.

.9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:

.9.1 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;

.9.2 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;

.9.3 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;

.9.4 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;

.9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

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.9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.

.10 By signing this 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 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 Texas Department of Insurance, 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 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [28 TAC §110.110(c)(7)]

§ 11.1.10 [Paragraph Deleted.]

§ 11.2 Owner's Insurance [Paragraph Deleted.]

~~**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~

~~**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~

~~**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~

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~~**§ 11.3.2** 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~~

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~~Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

~~**§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**~~

~~The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum.

§ 11.4.2 The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee.

§ 11.4.3 The Payment and Performance Bond shall meet requirements of Chapter 2253 of the Texas Governmental Code. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

§ 11.4.4 The Sureties shall promptly file a signed copy of the Contract, Performance Bond, and Payment Bond with the Owner in full compliance with Chapter 2253 of the Texas Governmental Code or, in the case of a Construction Manager, as required by Section 14.3.3 of the AIA Document A133-2019.

§ 11.4.5 All bonds will be reviewed by the Architect for compliance with the Contract Documents prior to execution of the contract. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's representative for review and decision.

§ 11.4.6 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.

§ 11.4.7 Upon the request in writing 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 permit a copy to be made.

§ 11.4.8 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the Contractor's bonds becomes insufficient, 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) business days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld.

§ 11.4.9 By inclusion of this Section 11.4.9 in the Contract Documents, the surety which issues the bonds is hereby notified that the Owner, the Architect, and their agents and employees do not represent and will not be responsible for the surety's interests during the course of the Work. To protect its interests, the surety shall have the right to attend pay

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estimate meetings, review Applications for Payment when requested in writing by them, comment upon and make recommendations regarding payments, and inspect the Work in the presence of the Contractor and the Architect. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner, the Architect, their agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Contractor, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.

§11.5 Adjustment and Settlement of Insured Loss [Paragraph Deleted.]

~~**§ 11.5.1** A loss insured under the property insurance required by the Agreement 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 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~

~~**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~

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§ 12.1.1 If a portion of the Work is covered prior to inspection, contrary to the Architect's request or to requirements specifically expressed in the Contract ~~Documents,~~ Documents or if any known deficiencies exist, it must, if requested ~~in writing~~ by the Architect, be uncovered by the Contractor for the Architect's examination and be replaced at the Contractor's sole expense without change in the Contract Time. If the uncovered work is determined by the Architect upon inspection to be deficient or not in accordance with the Contract Documents, the uncovered Work which is deficient or not in accordance with the Contract Documents shall be corrected and covered at the Contractor's sole expense without change in the Contract Time.

§ 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, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense. If the a request inspection of the Work prior to covering or including a requirement for inspection in the Contract Documents is within the Architect's standard of care and the Architect has failed to timely make such request or include the requirement in the Contract Documents, the Architect shall reimburse the Owner for the actual costs of uncovering and recovering such Work and additional costs of correction, if any, caused by covering the Work prior to inspection.

...

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before 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.~~expense and will be subject to offset by the Owner at Final Payment.

...

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§ 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, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Owner shall give such notice of the condition to the Contractor with reasonable promptness after discovery of the condition. The Contractor shall correct it promptly after receipt of 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.~~ condition in its non-conforming state. 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.~~ based on a breach of the warranty contained in this Section 12.2.2.1 providing for correction of Work during the one-year period. If the Contractor fails to correct nonconforming Work within a reasonable time during ~~that~~ the period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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§ 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 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

...

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fails to conform with the requirements of this Agreement that appear during the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work or by the negligent act of the Contractor or its employees, agents or subcontractors. The cost to Contractor of performing any of its obligations under this Section 12.2.6 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2.7 shall not apply to corrective Work attributable solely to the acts or omissions of any separate Contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.8 If, however, Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made by written agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost to the Owner of the correction.

§ 12.2.9 Contractor's express warranties set out in this Article 12 shall be in addition to, and not in lieu of, any other warranties or remedies Owner may have under the Contract Documents, at law, or in equity for defective Work.

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The Contract shall be governed by the ~~law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~laws of the State of Texas without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

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...

§ 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~~ Neither party to the Contract shall assign the Contract ~~as a whole~~ in whole or in part 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.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity 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 the assignment.

§ 13.2.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability, or effect of the remainder of the Contact Documents.

...

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public ~~authorities. 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.~~ authorities having jurisdiction. The Contractor shall give timely notice to the persons or entities selected by the Owner of the need for such services. 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. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 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 13.4.1, 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 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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 but not limited to those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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~~Payments~~ Undisputed payments due and unpaid under the Contract Documents shall bear interest ~~from the date payment is due at the rate the parties 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.~~ in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth (46th) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

§ 13.6 Equal Opportunity In Employment

§ 13.6.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, disability, sex, national origin, or any class otherwise protected by

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District policy or law. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

§ 13.6.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law.

§ 13.7 Contractors Records

§ 13.7.1 Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office or the principal offices of the Contractor, at the sole option of the Owner.

§ 13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

§ 13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.7.1.

§ 13.7.5 Contractor shall keep all Construction Documents related to the Project, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

§ 13.7.6 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 No Third-Party Beneficiaries

There are no third-party beneficiaries to this agreement.

§ 13.9 Proprietary Interests And Confidential Information

§ 13.9.1 Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

§ 13.9.2 Neither Architect nor Contractor shall disclose any confidential information of Owner which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to: pending real estate purchases, exchange, lease, or value; information related to litigation; detailed layouts of the Owner's Facilities; the location and deployment of security devices; security access codes; student likenesses; student record information; employee information; or any other information deemed confidential by law.

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§ 13.9.3 The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Section 552.001, *et seq*., and the Texas Open Meetings Act, Texas Government Code, Section 551.001, *et seq*.

§ 13.10 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

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§ 14.1.1 ~~The Contractor may terminate the Contract if~~ If the Work is stopped for a period of ~~30~~ thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of ~~the Work, for any of the following reasons:~~the Work under direct or indirect contract with the Contractor for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

...

.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~~ of undisputed sums due on an approved Certificate for Payment within the time stated in the Contract Documents; or

.4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~[Subsection Deleted.]

§ 14.1.2 ~~The Contractor may terminate the Contract if,~~ If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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.~~less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment ~~for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~ in an amount which would have been recoverable had the termination been for the Owner's convenience.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work 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~~ ten (10) additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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.2 fails to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

...

.4 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents;

.5 fails to furnish the Owner, upon written request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;

.6 engages in or permits serious or repeated worker misconduct in violation of Article 3.3;

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.7 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or

.8 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ subject to any prior rights of the surety, 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' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

.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.~~

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the Contract Documents.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Any further payment shall be limited to amounts actually earned to the date of termination.

§ 14.2.4 If the ~~unpaid balance of the Contract Sum exceeds~~ costs of finishing the Work, including compensation for the ~~Architect's~~ Architects' 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~~ exceed the unpaid balance of the Contract Sum or Guaranteed Maximum Price (if the Project is a Construction Manager at Risk project), then the Contractor and/or its Surety 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, and this~~ Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

§ 14.2.6 As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a Contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

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§ 14.3.2 The Contract Sum and Contract Time ~~shall~~ may be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. ~~Adjustment of the Contract Sum shall include profit.~~ No adjustment shall be made to the extent

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Trustees has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly ~~executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

§ 14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in this Section 14.4.3.

...

§ 15.1.2 Time Limits on Claims

~~**The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the 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 15.1.2.**~~[Paragraph Deleted.]

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§ 15.1.3.1 Claims by ~~either~~ the ~~Owner or~~ Contractor, ~~where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2,~~ shall be initiated by 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~~ Owner and to the Architect, Claims under this Section 15.1.3.1 shall be initiated within 21 calendar days after the occurrence of the event giving rise to such Claim or within 21 calendar days after the claimant first ~~recognizes~~ knew or should have known of the condition giving rise to the Claim, whichever ~~is later.~~is earlier. If the full impact cannot be assessed as of the date of the Notice, then Notice shall be provided and amended by a second notice at the earliest date that is reasonably possible, but in no event later than the date of Contractor's Application for Payment covering the period in which the impact can be assessed and quantified.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required. If Texas Government Code, Chapter 2272 is applicable to the Claim, the Owner shall comply with the requirements set out therein as a condition precedent to any initiation of any litigation.

...

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments for Work performed in accordance with the Contract Documents.

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§ 15.1.4.2 The Contract Sum (or Guaranteed Maximum Price, as applicable), if permitted, and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of ~~either party~~ the Contractor to proceed in accordance with this Article 15.~~The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.~~

...

If the Contractor wishes to make a Claim for an increase in the Contract ~~Sum,~~ Sum (provided such a claim is specifically permitted by the Contract Documents), notice as provided in Section 15.1.3 shall be given to the Owner and Architect. before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

...

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions occurred at the locality of the Work which were abnormal for the period of time, were in excess of that normally experienced at the job site, could not have been reasonably anticipated, ~~and had an adverse effect on the scheduled construction.~~and prevented the execution of Work on scheduled Working Days. The term "Adverse Weather Conditions" as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the Local Climatological Data maintained by NOAA's National Centers for Environmental Information [formerly the National Climatic Data Center (NCDC)] from the station closest to the location of the Work. No day will be counted as a rain-day when substantial Contractor forces are able to perform Work on the Project for more than fifty percent (50%) of the usual workday or when the stage of the Work on the Project is not adversely impacted. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of the Contract Time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, but shall be applied only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. As provided herein, Contractor shall only be entitled an extension of the Contract Time per the terms of the Contract Documents and no damages shall be paid for delays.

~~**§ 15.1.7 Waiver of Claims for Consequential Damages**~~

~~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~~

~~**.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.~~

~~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 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

§ 15.1.7 Calculating Claims For Damages

Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

.1 No indirect or consequential damages will be allowed.

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.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

.4 No damages will be allowed for home office overhead or other home office changes or any Eichleay formula calculation.

Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, nor will this Section 15.1.7 be deemed to apply to delay damages, which are prohibited entirely.

§ 15.2.1 ~~Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, 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~~ Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any ~~Claim. If an initial decision has not been rendered within 30 days~~ Claim, after the Claim has been referred to the ~~Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a 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.~~Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The ~~Initial Decision Maker~~ Architect will review Claims and within ten (10) days of ~~the~~ receipt of ~~a~~ the 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, (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.~~Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 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.~~Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

§ 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 the 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 binding dispute resolution.~~[Paragraph Deleted.]

§ 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.~~[Paragraph Deleted.]

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§ 15.2.6.1 ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~[Paragraph Deleted.]

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§ 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.~~**Waiver Of Lien**

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

...

§ 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 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator qualified as an impartial third party for purposes of Section 154.052 of the Texas Civil Practice & Remedies Code.

§ 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. 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.~~Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.

§ 15.3.3 ~~Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

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§ 15.3.5 Nothing herein shall preclude the Owner or the Contractor or as applicable, the Construction Manager from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

§ 15.3.6 Any claim not resolved in mediation pursuant to Section 15.3 shall be subject to litigation as the sole method of dispute resolution.

§ 15.3.7 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

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.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

§ 15.4 Arbitration. This Section 15.4 and all subparts are intentionally deleted. No dispute arising under the Contract Documents, these General Conditions or the underlying Contract shall be subject under any circumstances to Arbitration as the method of binding dispute resolution and Owner rejects any selection otherwise made by the parties.

§ 15.5 Immunity

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

Executed on this the ____ day of _____, 20__.

MCALLEN INDEPENDENT SCHOOL DISTRICT		_____
OWNER *(Signature)*		**CONSTRUCTION MANAGER** *(Signature)*
Tony Forina, Board President, Board of Trustees, McAllen Independent School District		
(Printed name and title)		*(Printed name and title)*

~~**§ 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. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. 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** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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~~

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~~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 those of the Owner and Contractor under this Agreement.~~

DRAFT

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BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Discussion and Possible Action on the McAllen Independent School District January Budget Amendment 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:

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	Capital Projects Fund
Audited Fund Balance	$ 149,933,573	$ 14,770,086
Revenues	233,784,223	13,500,000
Expenditures	290,299,754	28,240,231
Preliminary Ending Fund Balance	$ 93,418,042	$ 29,855

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Discussion and Possible Action on the McAllen Independent School District January Budget Amendment for Fiscal Year Beginning July 1, 2022 and Ending June 30, 2023.

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the McAllen Independent School District January Budget Amendment for the General Fund and Capital Projects Fund for Fiscal Year Beginning July 1, 2022 and Ending June 30, 2023.

SUBMITTED BY: _____ **SUPERVISOR:** _____

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 January 31, 2023
Review of Budget Amendments and Proposed Amendments

GENERAL FUND

	A	B	C	D	E
			Budget Amendments Under Consideration		
Description	Original Budget	Revised Budget 12/31/2022	Revisions	Transfers	Revised Budget 01/31/2023
Audited Fund Balance	**149,933,573**	**149,933,573**			**149,933,573**
Revenues:					
Local:					
Property Taxes	84,847,227	84,847,227			84,847,227
Interest Income	449,000	468,111			468,111
Other Local Income	2,558,363	2,601,293	186,324		2,787,617
State:	122,747,887	122,772,887	(1,954,622)		120,818,265
Federal:	24,168,809	24,798,911			24,798,911
Other Sources:	0	63,232	860		64,092
Total Revenues	**234,771,286**	**235,551,661**	**(1,767,438)**	**0**	**233,784,223**
Expenditures:					
11 Instruction	111,529,775	116,413,489	1,692,352	116,201	118,222,042
12 Inst. Res. & Media Services	3,439,107	3,513,162		8,060	3,521,222
13 Curriculum Dev. & Inst. Staff Dev.	4,485,953	4,699,877	9,696	2,182	4,711,755
21 Inst. Leadership	3,232,831	3,511,356	6,000	(17,176)	3,500,180
23 School Leadership	13,078,246	13,483,896		10,666	13,494,562
31 Guid., Counseling & Eval. Ser.	9,892,119	10,099,373		(60,267)	10,039,106
32 Social Work Services	1,938,730	2,052,209			2,052,209
33 Health Services	3,011,681	3,117,827		5,112	3,122,939
34 Student (Pupil) Trans.	4,394,173	5,151,532	500,000		5,651,532
35 Food Services	19,375,000	21,355,623	985,000	8,050	22,348,673
36 Curricular/Extracurricular Act.	11,106,630	12,227,950	140,701	(568,703)	11,799,948
41 General Administration	7,751,869	8,584,173		30,274	8,614,447
51 Plant Maint. & Operations	26,638,858	22,741,970	860	(22,269)	22,720,561
52 Security and Monitoring Serv.	4,787,045	7,767,459		(75,450)	7,692,009
53 Data Processing Services	4,866,183	6,170,596		70,923	6,241,519
61 Community Services	110,373	149,073		(700)	148,373
71 Debt Service	6,265,094	5,008,074		(239,055)	4,769,019
81 Fac. Acquisition & Const.	21,022,428	27,411,587		713,860	28,125,447
95 Pmt. to Juv. Justice Alt. Ed. Prg.	40,000	40,000			40,000
99 Other Intergovernmental Charges	965,919	965,919		18,292	984,211
Other Uses	12,500,000	12,500,000			12,500,000
Total Expenditures	**270,432,014**	**286,965,145**	**3,334,609**	**0**	**290,299,754**
Preliminary Ending Fund Balance	**114,272,845**	**98,520,089**	**(5,102,047)**	**0**	**93,418,042**

GENERAL FUND
Revisions

REVENUES:

Local				
Other Local Income	- Increase to Local Revenues for Fund 199 General Fund		$ 186,324	
				186,324
State				
	- Summary of Finance Adjustment to 3rd Six Weeks for Fund 155 College, Career and Military Readiness		$ (85,250)	
	- Summary of Finance Adjustment to 3rd Six Weeks for Fund 156 Early Education Allotment		1,232	
	- Summary of Finance Adjustment to 3rd Six Weeks for Fund 157 Dyslexia		119,812	
	- Summary of Finance Adjustment to 3rd Six Weeks for Fund 158 School Safety Allotment		(6,897)	
	- Summary of Finance Adjustment to 3rd Six Weeks for Fund 162 Career Technical Education		286,701	
	- Summary of Finance Adjustment to 3rd Six Weeks for Fund 163 Gifted and Talented		(15,304)	
	- Summary of Finance Adjustment to 3rd Six Weeks for Fund 164 Bilingual		68,762	
	- Summary of Finance Adjustment to 3rd Six Weeks for Fund 173 Special Education		1,508,590	
	- Summary of Finance Adjustment to 3rd Six Weeks for Fund 193 State Compensatory		(556,110)	
	- Summary of Finance Adjustment to 3rd Six Weeks for Fund 199 General Fund		(3,276,158)	
				(1,954,622)
Other Sources				
	- Transfer to Fund 199 General Fund from Fund 713 Safe and Secure for Exterior Signs for Sanchez Elementary		$ 860	
				860
		Grand Total		$ (1,767,438)

EXPENDITURES:

Function 11	- Increase for Substitutes for Fund 162 Career Technical Education		$ 115,000	
	- Increase for Learning Resources and Headphones for Fund 164 Bilingual		68,762	
	- Increase for Professional and Paraprofessional Salaries for Fund 173 Special Education		1,508,590	
				1,692,352
Function 13	- Increase for Employee Travel for Fund 162 Career Technical Education		$ 25,000	
	- Decrease to Employee Travel for Fund 163 Gifted and Talented		(15,304)	
				9,696
Function 21	- Increase for Employee Travel for Fund 162 Career Technical Education		$ 6,000	
				6,000
Function 34	- Transfer from Assigned Fund Balance for Fund 199 General Fund - Transportation Buses		$ 500,000	
				500,000
Function 35	- Transfer from Fund Balance for Fund 101 Food Service - Increase in Food Cost and New Menu Launch		$ 985,000	
				985,000
Function 36	- Increase for Student and Employee Travel for Fund 162 Career Technical Education		$ 140,701	
				140,701
Function 51	- Increase to Miscellaneous Contracted Services for Exterior Sign for Sanchez Elementary		$ 860	
				860
		Grand Total		$ 3,334,609

McAllen Independent School District
Summary Report as of January 31, 2023
Review of Budget Amendments and Proposed Amendments

CAPITAL PROJECTS

	A	B	C	D	E
			Budget Amendments Under Consideration		
Description	Original Budget	Revised Budget 12/31/2022	Revisions	Transfers	Revised Budget 01/31/2023
Audited Fund Balance	**14,770,086**	**14,770,086**			**14,770,086**
Revenues:					
Local					
Other Local Income	1,000,000	1,000,000			1,000,000
Other Sources	12,500,000	12,500,000			12,500,000
Total Revenues	**13,500,000**	**13,500,000**	**0**	**0**	**13,500,000**
Expenditures:					
51 Plant Maint. & Operations	356,000	500,425		31,578	532,003
52 Security and Monitoring Serv.		202,200			202,200
81 Fac. Acquisition & Const.	22,280,181	27,459,539	78,067	(31,578)	27,506,028
Total Expenditures	**22,636,181**	**28,162,164**	**78,067**	**0**	**28,240,231**
Preliminary Ending Fund Balance	**5,633,905**	**107,922**	**(78,067)**	**0**	**29,855**

CAPITAL PROJECTS FUND
Revisions

REVENUES:

None for January 2023

		Grand Total	$ -

EXPENDITURES:

Function 81	- Carry Forward Purchase Order from 2021-2022 for Fund 619 MISD MTN 2020 - Pressbox	$ 78,067		
			78,067	
		Grand Total		$ 78,067

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 13, 2023

SUBJECT: Discussion and Possible Action to Approve Board of Education Meeting Minutes

REFERENCE: N/A

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The minutes for each meeting of the Board of Education are traditionally brought to the Board for approval. After approval, the minutes become the Official Record of Board Action.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
The Administration asks that the Board of Education consider approval of the attached minutes.

LEGAL REVIEW: None

BUDGETARY CONSIDERATIONS: None

RECOMMENDED BOARD ACTION:
That the Board approve the minutes of the following meeting(s):

Regular Board Meeting	January 23, 2023	5:00 P.M.
Board Workshop	February 6, 2023	4:30 P.M.
Special Board Meeting	February 6, 2023	5:30 P.M.

SUBMITTED BY: Natalia Goza

SUPERVISOR: Tony Forina (Feb 8, 2023 14:11 CST)

For further information contact:
Name: Natalia Goza
Office: 956-618-6094
eMail: natalie.goza@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools Feb 8, 2023