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, April 24, 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. Discussion and Possible Action on Transfer Agreement No. 2023-198 McAllen Independent School District Police Canine — 8
   Item Submitted: Jose Silva, McAllen Independent School District Chief of Police

   Presenter: Dr. J. A. Gonzalez, Superintendent
6. **DONATION(S)**

   A) Recognition of Albert Rego, Sony Rego and Fred Harms for the Donation to the Career Technical Education Culinary Arts Program — 13
   Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

   Presenter: Dr. J. A. Gonzalez, Superintendent
7. **PROCLAMATION(S)**

   A) Discussion and Possible Action to Adopt the Proclamation Regarding Celebrate Diversity Month — 14
   Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

   Presenter: Dr. J. A. Gonzalez, Superintendent

B) Discussion and Possible Action to Adopt the Proclamation Regarding Mental Health Awareness Month 16
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

C) Discussion and Possible Action to Adopt the Proclamation Regarding Better Hearing and Speech Month 18
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

D) Discussion and Possible Action to Adopt the Proclamation Regarding Administrative Professionals Day 20
Item Submitted: Todd Miller, Assistant Superintendent for Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

E) Discussion and Possible Action to Adopt the Proclamation Regarding School Lunch Hero Day 22
Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

F) Discussion and Possible Action to Adopt the Proclamation Regarding School Nurses Day 24
Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

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) and Retirees for School Year 2022-2023

C) Discussion of Superintendent's Recommendation Concerning the Renewal of 2022-2023 Employee Contracts of Teachers and Other Professional Personnel for the 2023-2024 School Year - Policy DC (LEGAL)

D) Discussion of Human Resources Director Recommendation for Year 2023-2024

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 and Possible Action of Human Resources Recommendation(s) for School Year 2022-2023 26
Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

B) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2022-2023 — 28
Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

C) Discussion and Possible Action of Superintendent's Recommendation Concerning the Renewal of 2022-2023 Employee Contracts of Teachers and Other Professional Personnel for the 2023-2024 School Year - Policy DC (LEGAL) — 29
Item Submitted: Todd Miller, Assistant Superintendent for Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

D) Discussion and Possible Action of Human Resources Director Recommendation for Year 2023-2024 — 30
Item Submitted: Todd Miller, Assistant Superintendent for Human Resources

Presenter: Dr. J. A. Gonzalez, Superintendent

E) Discussion Regarding School Safety and Security

F) Pending and/or Potential Litigation

G) Possible Real Estate Acquisition

11. **SUPERINTENDENT'S REPORT(S)** - Rowe-botics Day

Presenter: Dr. J. A. Gonzalez, Superintendent

12. **RECOGNITION(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 Bilingual/English as a Second Language/Foreign Languages Department — 31
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

2. Report Regarding Facilities, Maintenance and Operations Projects — 48
Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

3. Report Regarding Intention to Apply for Grants through the United States Department of Justice and the Substance Abuse and Mental Health Services Administration 63
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

4. Report Regarding Intention to Apply for United States Department of Justice, Fiscal Year 2023 Body-Worn Camera Policy and Implementation Program to Support Law Enforcement Agencies Grant 66
Item Submitted: Adel Felix, Assistant Superintendent for Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

5. Report Regarding Intention to Apply for the Department of Education and Office of Elementary and Secondary Education Fiscal Year 2023 Well-Rounded Education Programs: Innovative Approaches to Literacy Program Grant 70
Item Submitted: Adel Felix, Assistant Superintendent for Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

6. Report Regarding Taxes Collected for March 2023 74
Item Submitted: Adel Felix, Assistant Superintendent for Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

7. Report Regarding the Monthly Financial and Quarterly Investment Report for March 2023 76
Item Submitted: Adel Felix, Assistant Superintendent for Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

14. **CONSENT AGENDA ITEMS**

A) Possible Action on Request for Proposal No. 2021-1005 Professional Development, Site Licenses, Supplemental Materials, and Other Related Products and Services (Round 23) 137
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

B) Possible Action on Request for Proposal No. 2022-1038 Special Education Equipment, Supplies, Services, and Related Products (Round 11) 139
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

C) Possible Action on Training Agreement No. 2024-005 Supported Transition and Road to Independence: Development and Employment for Students ("STRIDES") Training and Educational Services with South Texas College 141

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

Presenter: Dr. J. A. Gonzalez, Superintendent

D) Possible Action on Request for Proposal No. 2023-1029 District-Wide Vending Machine Services 148
Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

E) Possible Action on Request for Proposal No. 2021-1020 Food, Restaurants, Catering, Fundraising, Field Trips, and Rentals (Round 24) 221
Item Submitted: Adel Felix, Assistant Superintendent for Business Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

F) Possible Action on Request for Proposal No. 2022-1031 Athletic Equipment, Supplies, Reconditioning Services, and Related Products (Round 9) 223
Item Submitted: Brian McClenny, Director of Athletic Department

Presenter: Dr. J. A. Gonzalez, Superintendent

G) Possible Action on Request for Proposal No. 2022-1025 Fine Arts Equipment, Supplies, Related Products, and Services (Round 11) 225
Item Submitted: Debra Loya, Director of Fine Arts Department

Presenter: Dr. J. A. Gonzalez, Superintendent

15. **INSTRUCTIONAL SERVICES, INSTRUCTIONAL LEADERSHIP, HUMAN RESOURCES, DISTRICT OPERATIONS, BUSINESS OPERATIONS, SUPERINTENDENTS, 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 Statement of Acceptance No. 2023-196 Alonzo De Leon Middle School International Baccalaureate Program 227
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

2. Discussion and Possible Action of the Resolution to Oppose School Vouchers 234
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

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

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

1. Discussion and Possible Action on Competitive Sealed Proposal No. 2023-1040 James Nikki Rowe High School Natatorium Improvements 237
Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

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

E) **Superintendent Item(s)**

1. Discussion and Possible Action of Travel for Superintendent 386

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

1. Annual Announcement of Continuing Education of Board Members 388
2. Discussion and Possible Action of Travel for Board of Trustees 389
3. Discussion and Possible Action of Board of Education Meeting Minutes 390
   a) Board Workshop April 3, 2023
   b) Special Board Meeting April 3, 2023
   c) Regular Board Meeting April 10, 2023
   d) School Safety and Security Committee Meeting April 18, 2023

16. **SCHEDULE OF FUTURE MEETINGS**

A) Regular Board Meeting - May 8, 2023 - 5:00 P.M. Dr. Ricardo Chapa Board Room/Administration Building

B) Special Board Meeting - May 15, 2023 - 5:30 P.M. Auditorium/McAllen High School

C) Special Board Meeting - May 17, 2023 - 5:30 - Dr. Ricardo Chapa Board Room/Administration Building

D) Regular Board Meeting - May 22, 2023 - 5:00 P.M. Dr. Ricardo Chapa Board Room/Administration Building

E) Special Board Meeting - May 25, 2023 - 5:30 P.M. Auditorium/James "Nikki" Rowe High School

F) Board Workshop- May 26, 2023 - 5:30 P.M. Dr. Ricardo Chapa Board Room/Administration Building

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

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

19. **ADJOURNMENT**

If, during the course of the meeting, discussion of any item on the agenda should be held in a closed meeting, the Board will conduct a closed meeting in accordance with the Texas Open Meetings Act, Government Code, Chapter 551, Subchapters D and E. Before any closed meeting is convened, the presiding officer will publicly identify the section or sections of the Act authorizing the closed meeting. All final votes, actions, or decisions will be taken in open meeting.

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

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

The notice for this meeting was posted in compliance with the Texas Open Meeting Act on April 21 , 2023 at 3:00 P.M.
Natalia Goza
on behalf of the Board of Trustees

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Discussion and Possible Action on Transfer Agreement No. 2023-198 McAllen Independent School District Police Department Canine

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Police canine Thor, is ten (10) years old and has been on duty as a K9 officer for McAllen Independent School District for over six (6) years. He is not medically fit for duty.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District has determined that the canine is surplus to the needs of the District due to age and medical condition and is suitable and eligible for transfer ownership. Canine will be transfered to Corporal Ricardo Bernal, current officer assigned to canine. Transferee will humanly care for the police canine, including, but not limited to, providing food, shelter, and appropriate medial care.

LEGAL REVIEW:

The Transfer Agreement has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

None. McAllen Independent School District will transfer ownership and possession of canine without charge to Transferee.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Transfer Agreement No. 2023-198 McAllen Independent School District Police Department canine.

SUBMITTED BY: Jose Silva (Apr 19, 2023 16:25 CDT)

SUPERVISOR:

For further information contact:
Name: Jose Silva
Office: 956-928-8990
email: jose.silva@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

MCALLEN ISD POLICE CANINE TRANSFER AGREEMENT

This Agreement is entered into on the 24th day of April, 2023, by and between McAllen Independent School District ("**MISD** or **"the District**") and Corporal Ricardo Bernal ("**Transferee**"), to transfer ownership of Police Canine ("canine") from MISD to Transferee.

RECITALS

Whereas. A Police Canine named Thor, a male Malinois Belgian, was born on February 24, 2013 and has served the MISD since November 8, 2016.

Whereas. The Superintendent of MISD has determined that the Police Canine is surplus to the needs of the District due to its age and is suitable and eligible for transfer of ownership.

Whereas. Due to the training and nature of the Police Canine, it must be transferred to a suitable transferee.

Whereas. Transferee is capable of humanely caring for the Police Canine as a handler for MISD and wishes to assume ownership and take possession of the Police Canine.

Whereas. MISD wishes to transfer ownership and possession of the canine without charge to Transferee.

PURPOSE OF AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and the mutual terms, promises and undertakings set forth herein, the signatories to this Agreement voluntarily agrees as follows:

MISD agrees to:

- Transfer ownership of the Police Canine.

Transferee agrees to:

- Accept and take the Police Canine from MISD's possession.

A. Terms and Conditions of acceptance of Police Canine

1. Transferee will take possession of the Police Canine on a date and time to be scheduled with the Transferor's Superintendent of Schools or designee.

2. Transferee shall comply with all state and local laws applicable to keeping domestic animals.

3. Transferee shall humanely care for the Police Canine, including, but not limited to, providing food, shelter, and regular and appropriate medical care.

4. Transferee shall immediately notify MISD if Transferee is no longer able to humanely care for the Police Canine.

5. Possession of the Police Canine shall revert to MISD upon notice that Transferee is no longer able to humanely care for the Police Canine or upon a finding by the District that Transferee is no longer able to humanely care for the Police Canine.

B. Indemnity

TO THE FULLEST EXTENT PERMITTED BY LAW, TRANSFEREE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE MCALLEN INDEPENDENT SCHOOL DISTRICT ("DISTRICT" OR "TRANSFEROR"), ITS AGENTS, TRUSTEES AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM ANY CLAIM OR ACTION BASED ON OR ARISING OUT OF INJURIES, INCLUDING DEATH, TO PERSONS OR DAMAGES TO OR DESTRUCTION OF PROPERTY, SUSTAINED OR ALLEGED TO HAVE BEEN SUSTAINED IN CONNECTION WITH OR TO HAVE ARISEN OUT OF OR INCIDENTAL TO THE, USE, TRANSFER AND OWNERSHIP OF THE POLICE CANINE BY TRANSFEREE, AND, REGARDLESS OF WHETHER SUCH CLAIMS OR ACTIONS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED NEGLIGENCE OF THE DISTRICT, DISTRICT'S REPRESENTATIVES, OR THE TRUSTEES, EMPLOYEES, AGENTS, INVITEES OR LICENSEES THEREOF. TRANSFEREE FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS DISTRICT AND ITS REPRESENTATIVES, AND TRUSTEES, EMPLOYEES, AGENTS, INVITEES AND LICENSEES THEREOF IN RESPECT OF ANY SUCH MATTERS AND AGREES TO DEFEND ANY CLAIM OR SUIT OR ACTION BROUGHT AGAINST THE DISTRICT, THE DISTRICT'S REPRESENTATIVES, TRUSTEES, EMPLOYEES, AGENTS, INVITEES, AND LICENSEES THEREOF.

C. Disclaimer of Warranty "As Is, Where Is"

THE POLICE CANINE BE CONVEYED TO TRANSFEREE IN AN "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS. ALL WARRANTIES ARE EXPRESSLY DISCLAIMED.

Transferee represents and agrees that MISD 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 value, nature, quality or condition of the Police Canine, (B) the suitability of the Police Canine for any and all activities and uses

which Transferee may conduct thereon, (C) the compliance with ordinances or regulations of any applicable governmental authority or body, (D) the merchantability, marketability, profitability or fitness for a particular purpose of the Police Canine, or (E) any other matter with respect to the Police Canine, and specifically, that Transferor has not made, does not make and specifically disclaims any representations regarding the safety, nature, or viability of the Police Canine for any and all purposes.

Transferee further represents and agrees that, having been given the opportunity to inspect the Police Canine, Transferee is relying solely on its own investigation of the Police Canine and not on any information provided by MISD. Transferee further acknowledges and agrees that any information provided or to be provided with respect to the Police Canine was obtained from a variety of sources and that Transferor has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. will not be liable or bound in any manner by any verbal or written statements, representations or information pertaining to the Police Canine, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. Transferee further represents and agrees that to the maximum extent permitted by law, the Transfer of the Police Canine as provided for herein is made on an "as is" condition and basis with all faults.

Waiver of Consumer Rights. TRANSFEREE 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, TRANSFEREE VOLUNTARILY CONSENTS TO THIS WAIVER.

D. Miscellaneous Provisions

1. *Entire Agreement.* This Agreement, together with its exhibits, constitutes the entire agreement of the parties concerning the Transfer of the Police Canine by Transferor to Transferee. There are no oral representations, warranties, agreements, or promises pertaining to the Transfer of the Police Canine by Transferor to Transferee not incorporated in writing in this Agreement.

2. *Amendment.* This Agreement may be amended only by an instrument in writing signed by the parties.

3. *Prohibition of Assignment.* Transferee may not assign this Agreement or any of Transferee's rights under it without Transferor's prior written consent, and any attempted assignment is void. This Agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

4. *Survival.* The obligations of this Agreement that cannot be performed before termination of this Agreement will survive termination of this Agreement, and the legal doctrine of merger will not apply to these matters.

5. *Choice of Law; Venue; Alternative Dispute Resolution.* This Agreement will be construed

under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue for any action arising under this agreement shall be Hidalgo County, Texas.

6. *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.

7. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this Agreement.

8. *Severability.* The provisions of this Agreement are severable. If a court of competent jurisdiction finds that any provision of this Agreement is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

9. *Ambiguities Not to Be Construed against Party Who Drafted Agreement.* 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 Agreement.

10. *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.

TRANSFEROR:
MCALLEN INDEPENDENT SCHOOL DISTRICT

Approved as to form:
Walsh Gallegos Treviño Kyle & Robinson P.C.
by: Kacey Villafuerte
Kacey Villafuerte

By: _____

Printed name and title: Tony Forina Board of Trustees, President

Date: _____

TRANSFEREE:

By: _____

Printed name and title: Corporal Ricardo Bernal

Date: _____

BOARD RECOGNITION FORM
McALLEN INDEPENDENT SCHOOL DISTRICT

Meeting Date (Recommended): April 24, 2023

Title of Recognition: Recognition of Albert Rego, Sony Rego, and Fred Harms for the Donation to the Career Technical Education Culinary Arts Program

Person(s) Being Recognized (include names & description i.e student at X High School):
Albert Rego, Sony Rego and Fred Harms

Reason for Recognition:
We would like to recognize and thank Albert, and Sony Rego, and Fred Harms with the Santa Fe Steakhouse Foundation for their $20,000.00 donation to our McAllen ISD Culinary Arts Program on March 1, 2023, during our Culinary Arts Teaching Facility Grand Opening. These funds will help with the renovation of our future C.A.F.E. where STRIDES and CTE students will work collaboratively to prepare and serve meals to our district and community.

Please note any items that will be presented:

Photographer Requested: Yes

AV needs:

Name of Presenter: Diana Pena
Phone: 956-632-5181
eMail: diana.pena@mcallenisd.net

Approved for Recognition: _____
Superintendent Apr 18, 2023

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

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

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Discussion and Possible Action to Adopt the Proclamation Regarding Celebrate Diversity Month

REFERENCE: Goal 1: Student Achievement/Student Focus

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
McAllen ISD acknowledges the importance to incorporate a culture of responsive inclusion of diversity. Therefore, the month of May has been designated One World One District Celebrating Diversity Month.

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 Celebrate Diversity Month.

SUBMITTED BY: Norma Cabrera (Apr 18, 2023 13:16 CDT)

SUPERVISOR: Rosalba De Hoyos

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

Approved for presentation to the Board of Education:

Superintendent of Schools Apr 18, 2023

Proclamation

State of Texas
County of Hidalgo
McAllen Independent School District

Whereas, McAllen ISD embraces diversity all year round. We are one world, one district, celebrating diversity.

Whereas, During the month of May, McAllen ISD celebrates people of all races, ethnicities, religions, gender, economic status, physical and mental circumstances.

Whereas, McAllen ISD is an organization where employees utilize their unique experiences, and backgrounds to embrace a culture of inclusion.

Now Therefore, I, Conrado Alvarado, Member, Board of Trustees of the McAllen Independent School District, do hereby proclaim that the month of May 2023 be observed as:

"Celebrate Diversity Month"

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 24th day of April 2023.

_____
Conrado Alvarado, 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: April 24, 2023

SUBJECT: Discussion and Possible Action to Adopt the Proclamation Regarding Mental Health Awareness Month

REFERENCE: Goal 1: Student Achievement/Student Focus

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
McAllen ISD has designated May as Mental Health Awareness Month. We aim to increase access to mental health services for students, families and staff. By increasing and strengthening ties to community resources, and coordinating mental health services for our families, we are invested in creating a mentally healthy environment for: children to learn, parents to get assistance, and staff to educate. Through partnerships, McAllen Independent School District has created a foundation for continued community support to meet a growing mental health need, and through and we will continue to address the needs to ensure we are doing our best to provide a quality service to our community.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
Upon approval McAllen Independent School District will observe May 2023 as Mental Health Awareness Month.

LEGAL REVIEW: None required

BUDGETARY CONSIDERATIONS: None required

RECOMMENDED BOARD ACTION:
That the Board of Trustees adopt the Proclamation Regarding Mental Health Awareness Month.

SUBMITTED BY: Adrian Garza (Fam Treat) **SUPERVISOR:** Rosalba De Hoyos

For further information contact:
Name: Adrian Garza
Office: Family Treatment Program (956) 926-4813
eMail: adrian.garza@mcallenisd.net

Approved for presentation to the Board of Education:



Superintendent of Schools Apr 18, 2023

Proclamation

State of Texas
County of Hidalgo
McAllen Independent School District



Whereas, every citizen in the community can make a difference in helping end the silence and stigma that has surrounded mental illness and discouraged people from getting help; and

Whereas, through public education and civic activities McAllen ISD remains engaged in the promise to address the challenges people with mental illness face by increasing access to mental health services; and

Whereas, Mental Health Awareness Month is an opportunity to increase public understanding of the importance of mental health;

NowTherefore, I, Debbie Crane Aliseda, Vice-President, Board of Trustees of the McAllen Independent School District, do hereby proclaim that the month of May 2023 be observed as

"Mental Health Awareness Month"

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 24th day of April, 2023.

_____
Debbie Crane Aliseda, Vice-President, Board of Trustees
McAllen Independent School District

Attest:

_____
Marco Suarez, Secretary, Board of Trustees
McAllen Independent School District

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Discussion and Possible Action to Adopt the Proclamation Regarding Better Hearing and Speech Month

REFERENCE: Goal 1: Student Achievement/Student Focus

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
To proclaim May as Better Hearing and Speech month. To recognize the efforts of all speech-language pathologists and assistants throughout our district who work to help these individuals with communication disorders to lead independent, productive and fulfilling lives.

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 Better Hearing and Speech Month.

SUBMITTED BY: Maribelle Elizondo (Apr 18, 2023 16:15 CDT)

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Maribelle Elizondo
Office: (956) 632-3285
eMail: maribelle.elizondo@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools Apr 18, 2023

Proclamation

State of Texas
County of Hidalgo
McAllen Independent School District



Whereas, residents of McAllen Texas who have overcome their communication disabilities through the services of dedicated audiologists and speech- language pathologists should be recognized; and

Whereas, today we recognize and value the efforts of all audiologists and speech-language pathologists throughout our nation who work to help these individuals with communication disorders to lead independent, productive and fulfilling lives; and

Whereas, May is observed and celebrated as Better Hearing and Speech Month by audiologists and speech-language pathologists;

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

"Better Hearing and Speech Month"

I urge all citizens to recognize the achievements of audiologists and speech- language pathologists in improving the quality of life for people with communication disorders.

INWITNESSWHEREOF, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 24th day of April, 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: April 24, 2023

SUBJECT: Discussion and Possible Action to Adopt the Proclamation Regarding Administrative Professionals Day

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
Administrative Professionals Day is celebrated on Wednesday, April 26, 2023, and is observed annually in workplaces around the world to recognize the many important contributions of administrative professional staff.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

LEGAL REVIEW: Not applicable

BUDGETARY CONSIDERATIONS: Not applicable

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the Proclamation for Administrative Professionals Day.

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

Apr 19, 2023

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

Approved for presentation to the Board of Education:

J. Hinojosa

20_____

Superintendent of Schools Apr 19, 2023

Proclamation

State of Texas
County of Hidalgo
McAllen Independent School District

WHEREAS, Administrative Professionals provide quality services and perform indispensable roles in the education of McAllen Independent School District students; and

WHEREAS, Administrative Professionals are vital contributors in today's team-oriented work environment and are key front-line public relations ambassadors for our district, and

WHEREAS, McAllen Independent School District supports the invaluable role Administrative Professionals play throughout the district in providing quality services that enable students to learn in a positive, safe, and supportive environment; and McAllen ISD acknowledges Administrative Professionals as equal and essential partners in the education process.

NOW, THEREFORE, I, Conrado Alvarado, Member, Board of Trustees of the McAllen Independent School District, do hereby proclaim the 26th of April 2023 as

"Administrative Professional's Day"

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on the 24th day of April 2023.

_____
Conrado Alvarado, 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: April 24, 2023

SUBJECT: Discussion and Possible Action to Adopt the Proclamation Regarding School Lunch Hero Day

REFERENCE: Goal 1: Student Achievement/Student Focus; Strategy 4: Rigorous/World Class Standards Customized for Every Learner

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

"School Lunch Hero" Day is celebrated annually across the country to recognize school nutrition professionals and the difference they make every day in schools. School nutrition professionals are true heroes by supporting students well being. Cafeteria workers, managers, supervisors, and specialists are essential in ensuring breakfast, lunch, and suppers are provided daily to students in multiple settings. They consistently provide exceptional customer service to students by being their first good morning smile with a warm meal and their last friendly goodbye at the end of the day with the supper program

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Administration is recommending that we proclaim May 5th as "Lunch Hero" Day to recognize the team leads for elementary, middle schools, and high school campuses who provide training, technical assistance, and peer-to-peer support to their fellow cafeteria managers.

LEGAL REVIEW:

None

BUDGETARY CONSIDERATIONS:

None

RECOMMENDED BOARD ACTION:

Administration is recommending that the Board of Trustees approve the Proclamation Regarding "School Lunch Hero" Day.

SUBMITTED BY: Alexandra Molina (Apr 13, 2023 14:34 PDT)

SUPERVISOR: Alejandra Gonzalez (Apr 14, 2023 08:56 CDT)

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

Approved for presentation to the Board of Education:

22

Superintendent of Schools

MCALLEN ISD

Proclamation

State of Texas
County of Hidalgo
McAllen Independent School District

Whereas, McAllen ISD provides an average of 41,500 daily delicious, nutritious, and safe meals at school to McAllen ISD students daily;

Whereas, over 250 dedicated child nutrition professionals provide campus and administrative support to ensure adherence to strict nutrition standards, navigating student food allergies, and offering breakfast, lunch, and supper meals daily with a smile;

Whereas, district data reflects historically 80% of students in attendance consume nutritious delicious breakfast and lunch through multiple distribution methods; and 10% consumption of supper at school sites and community sites afterschool;

Now Therefore, I, Sam Saldivar Jr., Member, Board of Trustees of the McAllen Independent School District, do hereby proclaim the day of May 5th, 2023, as

"School Lunch Hero Day"

I call upon all residents to join the dedicated individuals in appropriate activities that support the health and well-being of our children and to become aware of their own nutrition habits, in hope of achieving a more healthful citizenry for today and the future.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 24th day of April 2023.

_____
Sam Saldivar Jr., Member, Board Trustee
McAllen Independent School District

Attest:

_____
Marco Suarez, Secretary, Board of Trustees
McAllen Independent School District

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Discussion and Possible Action to Adopt the Proclamation Regarding School Nurses Day

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Since 1972, National School Nurse Day was established to recognize school nurse and foster a better understanding of the role of school nurses in the educational setting. Students across the country are able to fully access their education because of the interventions and actions performed by school nurses every day.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Administration is recommending that we proclaim May 10, 2023 as "School Nurses" Day to recognize school nurses.

LEGAL REVIEW:

Not applicable

BUDGETARY CONSIDERATIONS:

Not applicable

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the Proclamation Regarding School Nurses Day

SUBMITTED BY: _____ **SUPERVISOR:** _____

For further information contact:
Name: Elizabeth Gutierrez BSN, RN
Office: (956) 632-3275
email: Elizabeth.Gutierrez@mcallenisd.net

Approved for presentation to the Board of Education:

_____
Superintendent of Schools

McALLEN ISD

Proclamation



State of Texas
County of Hidalgo
McAllen Independent School District

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

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

Whereas, school nurses are professional nurses that advance the well-being, academic success, and life-long achievements of all students by serving on the frontlines and providing a critical safety net for our nation's most fragile children, and

Now Therefore, I, Daniel D. Vela, Member, Board of Trustees of the McAllen Independent School District do hereby proclaim the day of May 10, 2023, to be observed as

"School Nurses Day"

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 24th day of April, 2023.

_____
Daniel D. Vela, 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: April 24, 2023

SUBJECT: Discussion and Possible Action on Human Resources Recommendation(s) for School Year 2023-2024

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 2023-2024.

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

Apr 18, 2023

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 Apr 18, 2023

Human Resources Recommendation(s) for School Year 2023-2024

Final Audit Report 2023-04-18

Created:	2023-04-17
By:	Erika Melgoza (erika.melgoza@mcallenisd.net)
Status:	Signed
Transaction ID:	CBJCHBCAABAAhSNPOlGr-cuQJMwldeBXevKGqohbffMx

"Human Resources Recommendation(s) for School Year 2023-2024" History

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Discussion of Human Resources Employee Resignation(s) and Retirees 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
Apr 19, 2023

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 Apr 19, 2023

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Approval of Superintendent's Recommendation Concerning the Renewal of 2022-2023 Employee Contracts of Teachers and Other Professional Personnel for the 2023-2024 School Year - Policy DC (LEGAL)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

As specified in Policy DC (LEGAL), a district shall employ each classroom teacher, principal, librarian, nurse, or school counselor under a probationary contract, a continuing contract, or a term contract. A district is not required to employ a person other than these listed employees under a probationary, continuing, or term contract. Education Code 21.002

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

These recommendations are made based on job performance, program needs, and funding. Additional days are not reflected.

LEGAL REVIEW: Not applicable.

BUDGETARY CONSIDERATIONS: Budgeted

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the Superintendent's recommendation concerning the renewal of 2022-2023 Employee Contracts of Teachers and Other Professional Personnel for the 2023-2024 School Year.

SUBMITTED BY: Apr 17, 2023

SUPERVISOR: Apr 19, 2023

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

Approved for presentation to the Board of Education:

Superintendent of Schools Apr 19, 2023

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Discussion and Possible Action of Human Resources Director Recommendation for Year 2023-2024

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

This Human Resources Director position has been vacant since the reassignment of John Cavazos (HR Director) to Director of Student Support Services on March 22, 2023. The vacant position was posted on March 22, 2023 and closed on April 12, 2023.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Thirty-four applicants (10 internal & 24 external) applied and interviews were held on April 20, 2023. The interview committee made their recommendation to the Superintendent. The individual's name will be presented under separate cover.

LEGAL REVIEW: Not applicable

BUDGETARY CONSIDERATIONS:

The Human Resources Director position is a budgeted position.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the Superintendent's recommendation for the Director for Human Resources.

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

Apr 20, 2023

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

Approved for presentation to the Board of Education:

J. Hinojosa

Superintendent of Schools Apr 20, 2023

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Report Regarding Bilingual/English as a Second Language/Foreign Languages Department

REFERENCE: Goal 1: Student Achievement/Student Focus

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The McAllen ISD Bilingual/ESL/FL Department supports emergent bilingual students academically, linguistically, and affectively in order for them to be successful in their education and to meet federal regulations and state policy. We strive to empower McAllen ISD teachers, administrators, and families of emergent bilingual students to ensure students successfully participate in the different education programs offered in our district.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS: N/A

LEGAL REVIEW: None required

BUDGETARY CONSIDERATIONS: None required

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

SUBMITTED BY: Rocio Nava

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Rocio Nava
Office: (956) 618-7338
eMail: rocio.nava@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools Apr 18, 2023

Bilingual/ESL/Foreign Languages Department 2022-2023

Rocío Nava, Department Director

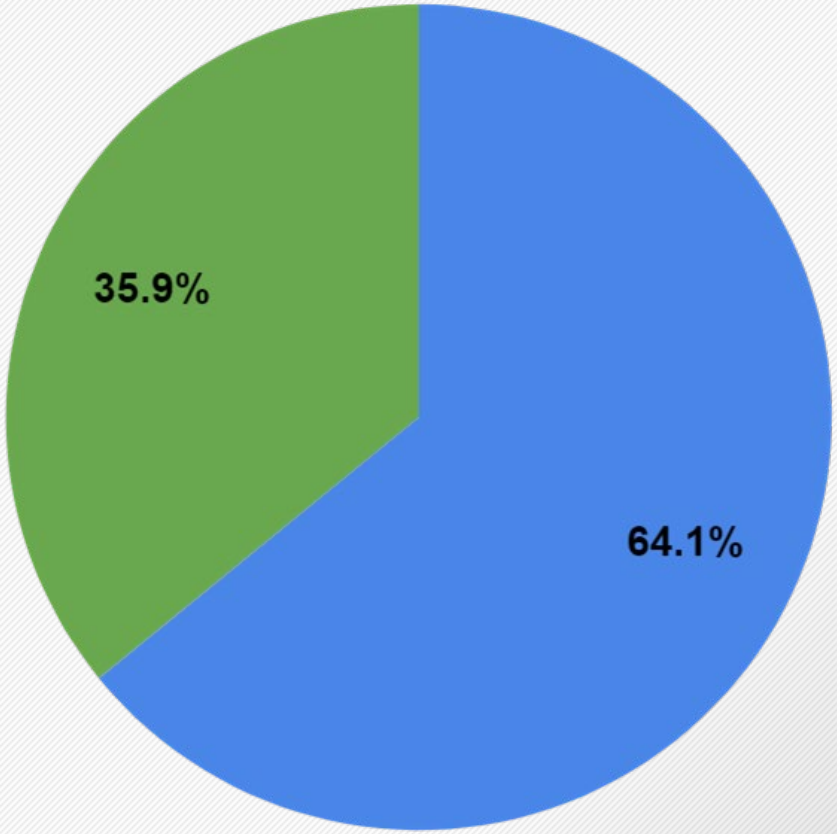
MISSION STATEMENT

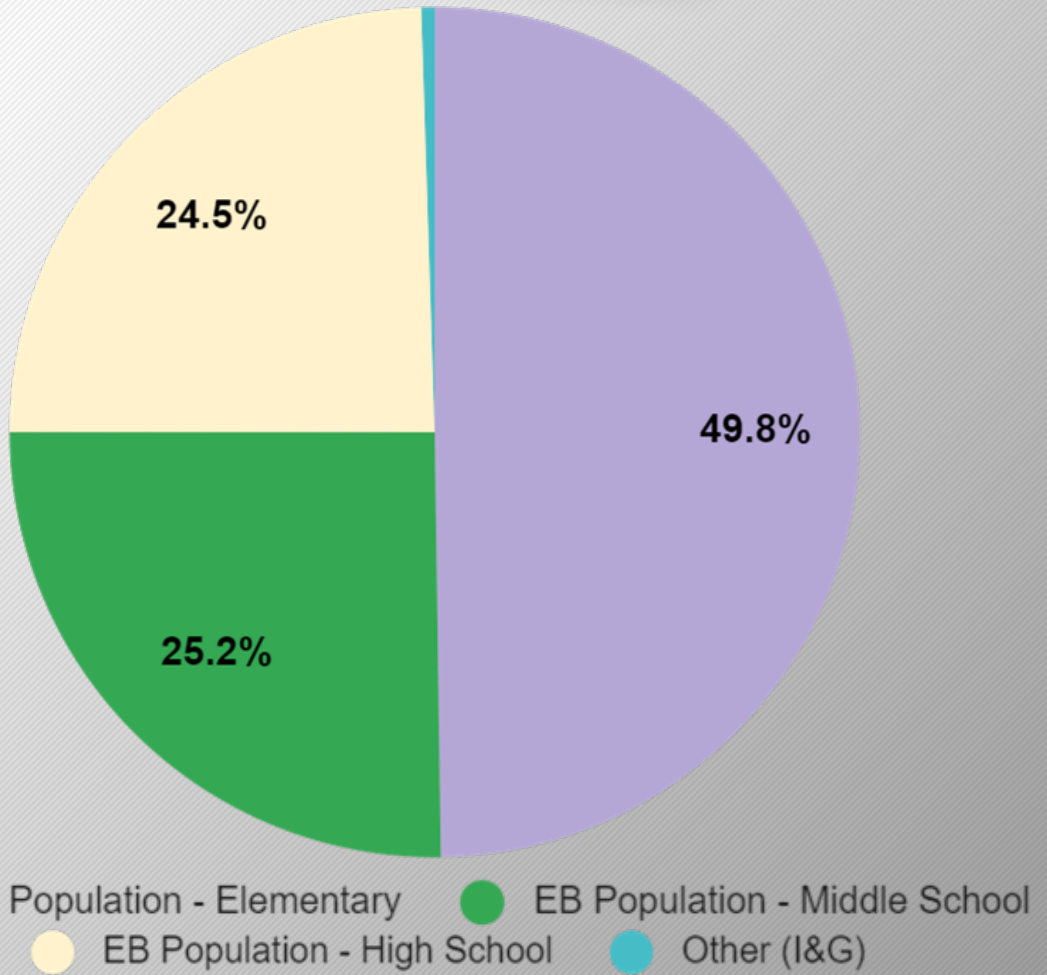
The McAllen ISD Bilingual and English as a Second Language (ESL) Department supports the district's mission and strategic plan in assuring **all emergent bilingual students** receive an **equitable educational opportunity** that addresses their **affective, linguistic, and cognitive needs** according to federal regulations and state policy.

McAllen ISD **ensures** emergent bilingual students participate in academically challenging programs that **respect** and **build upon** the unique cultural and linguistic attributes they **bring** to the learning community.

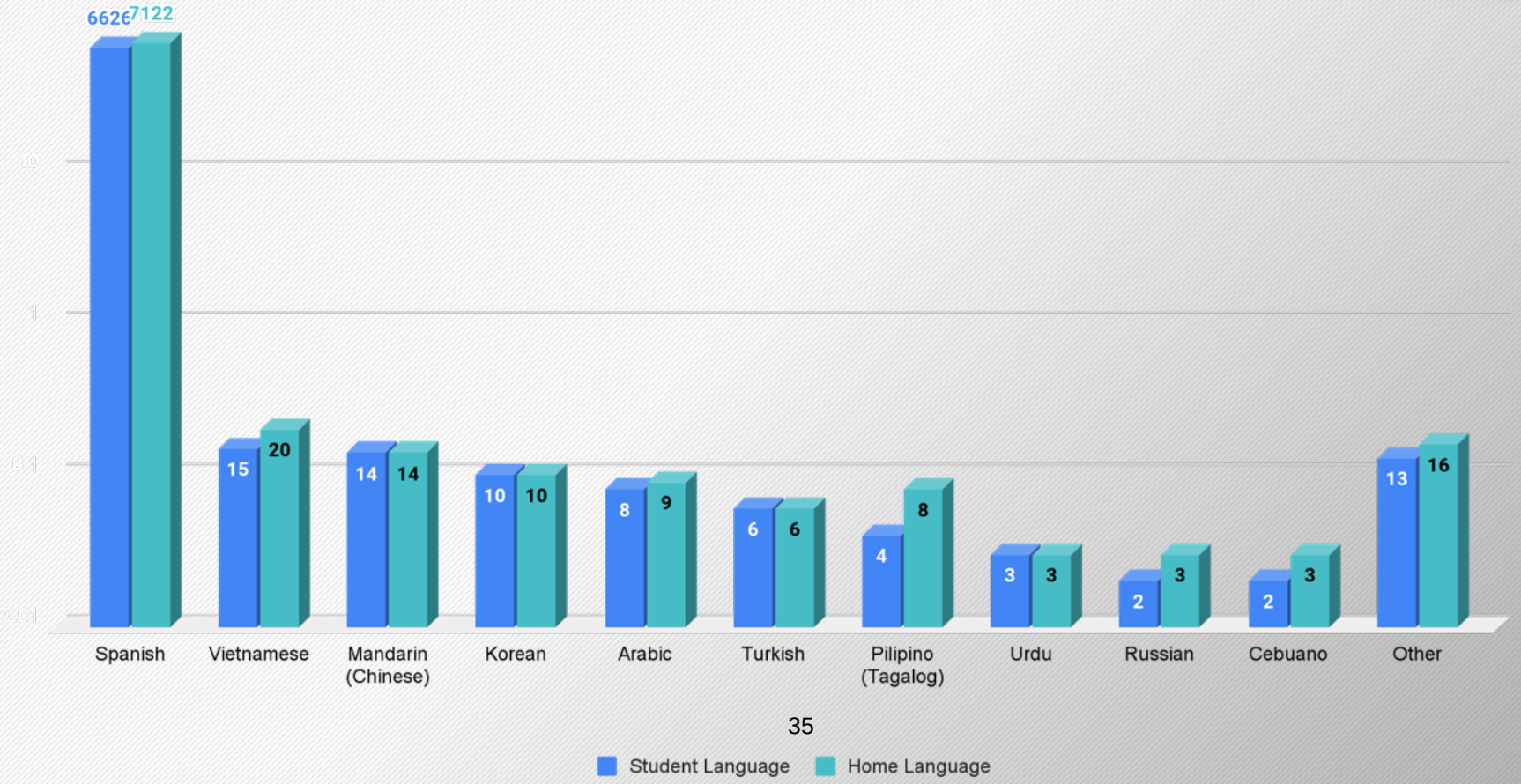


EMERGENT BILINGUAL (EB) STUDENTS IN McALLEN ISD

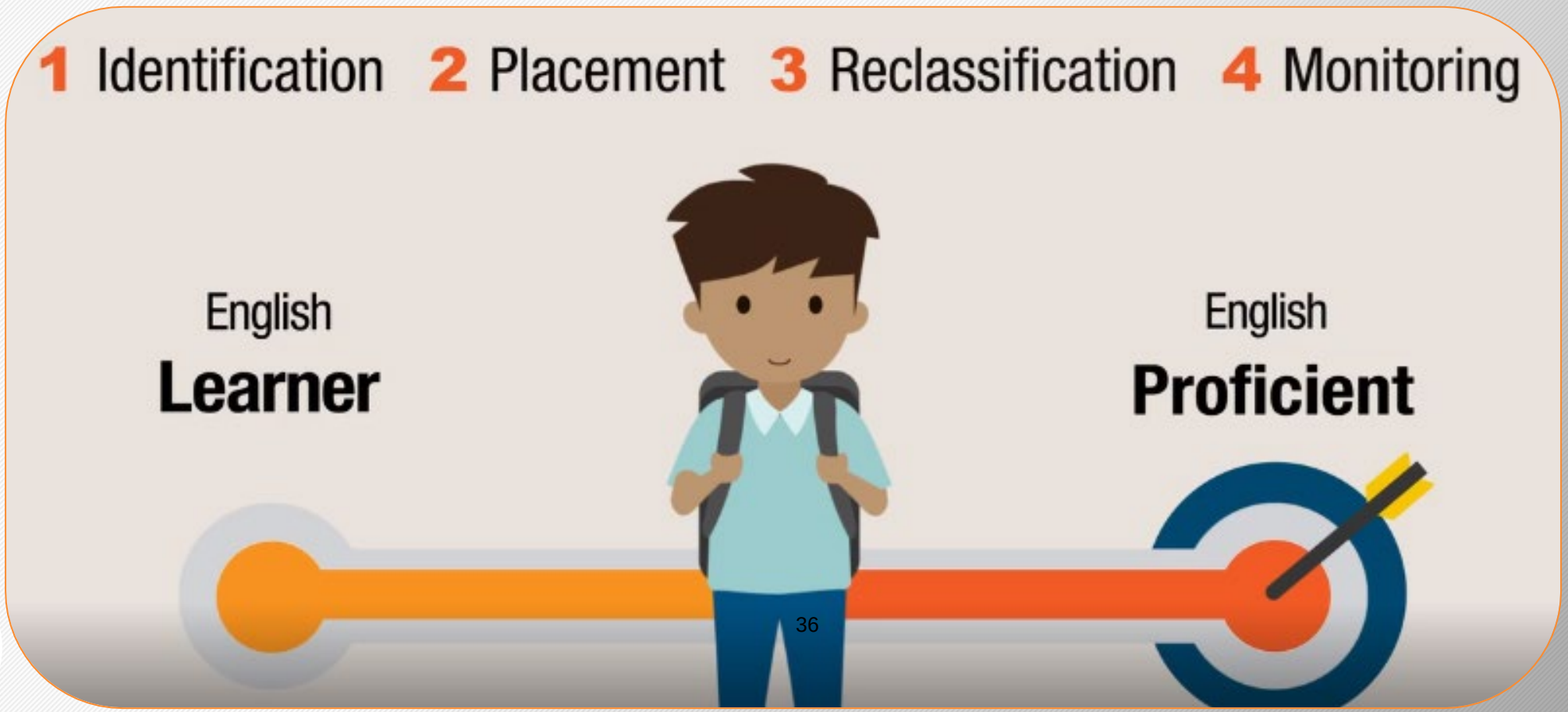




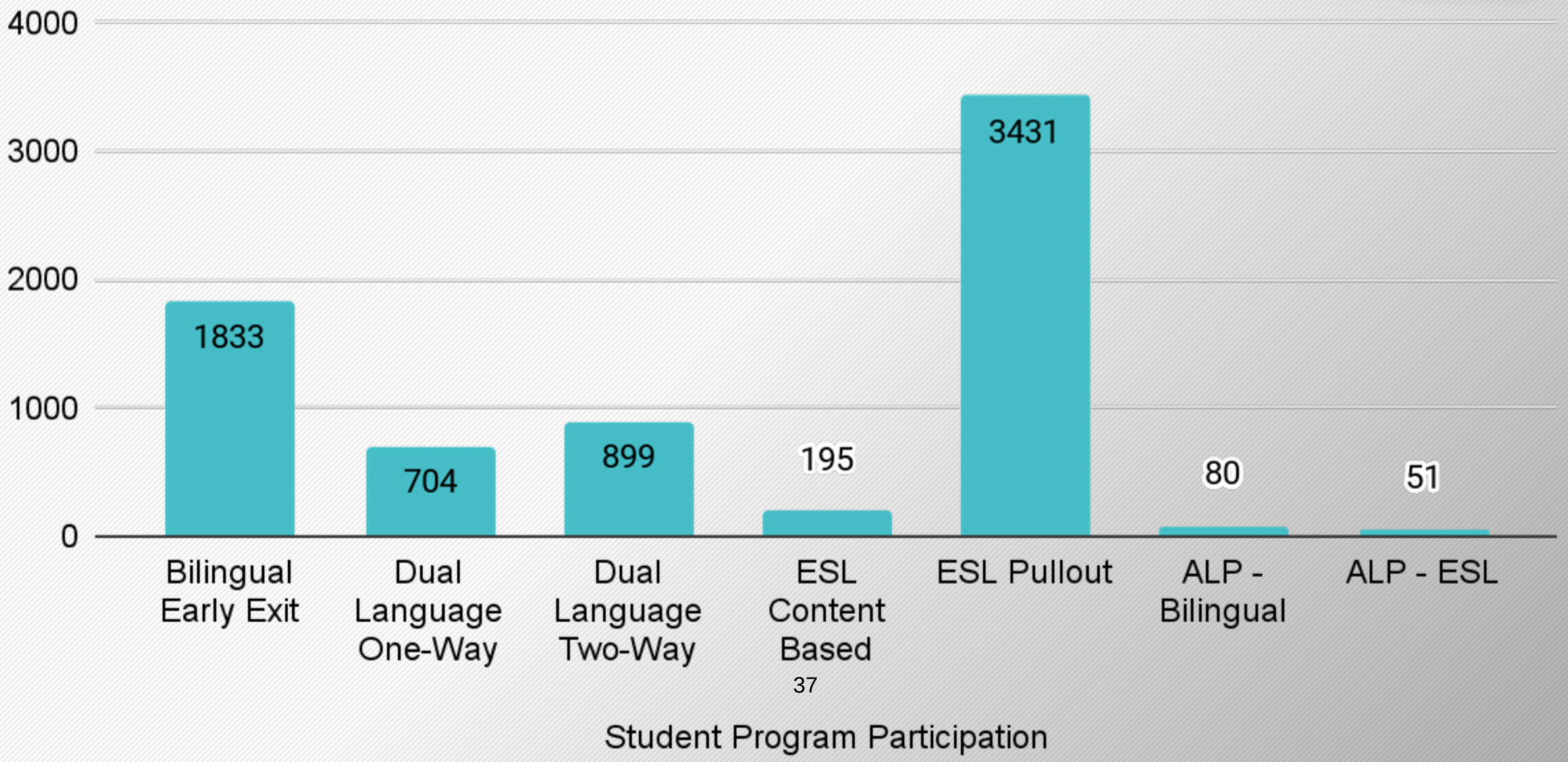
McALLEN ISD EB POPULATION BY HOME AND STUDENT LANGUAGE



THE PROCESS TO SERVE AN EB STUDENT



EB PROGRAMS AT McALLEN ISD



EB PROGRAMS AT McALLEN ISD

Dual Language (1-way and/or 2-way)

- Fields ES
- Gonzalez ES
- Jackson ES
- McAuliffe ES
- Milam ES
- Perez ES
- Sanchez ES
- Fossum MS
- AECHS

Bilingual Early Exit

- Alvarez ES
- Castañeda ES
- Escandón ES
- Garza ES
- Gonzalez ES
- Hendricks ES
- Houston ES
- Jackson ES
- McAuliffe ES
- Milam ES
- Rayburn ES
- Roosevelt ES
- Sanchez ES
- Seguin ES
- Thigpen-Zavala ES
- Wilson ES

ESL Content Based

- Elementary Campuses (as needed)

ESL Pullout

- Secondary Campuses

FOREIGN LANGUAGE COURSES IN McALLEN ISD

Middle School

- Fossum MS - Dual Language (Spanish)
- De Leon MS - IB Language Acquisition (Spanish)

High School

- Rowe HS
  - Spanish
  - French
- Memorial HS
  - Spanish
  - French
  - ASL
- McHI
  - Spanish
  - French
  - ASL
- AECHS
  - Spanish
- LAMAR
  - Spanish



DEPARTMENT SUPPORTS

STUDENTS

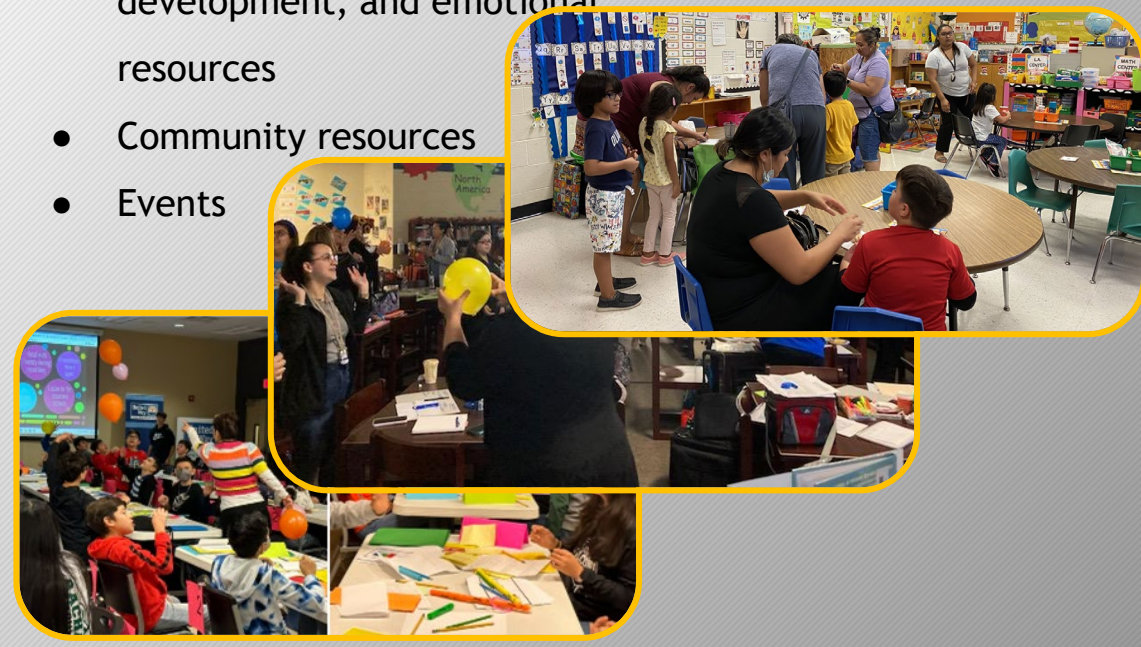
- Instructional resources
- Instructional software
- Technology
- Language development camps
- Summer program
- Enrichment camps

STAFF

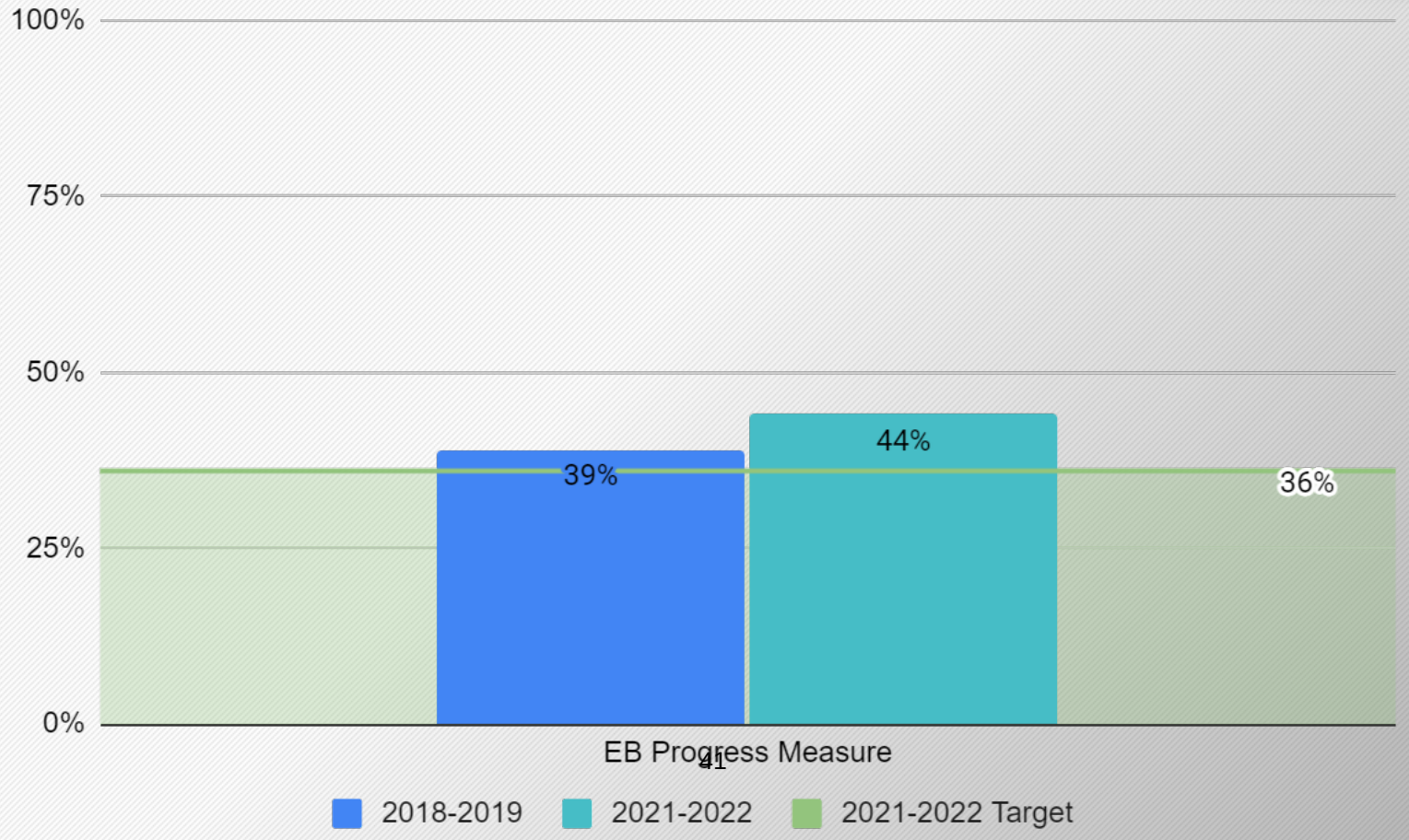
- On-site support/coaching
- Professional learning
- Instructional resources
- Instructional planning
- Curriculum writing
- Instructional technology
- Software
- Stipends

FAMILIES

- Academic, language development, and emotional resources
- Community resources
- Events

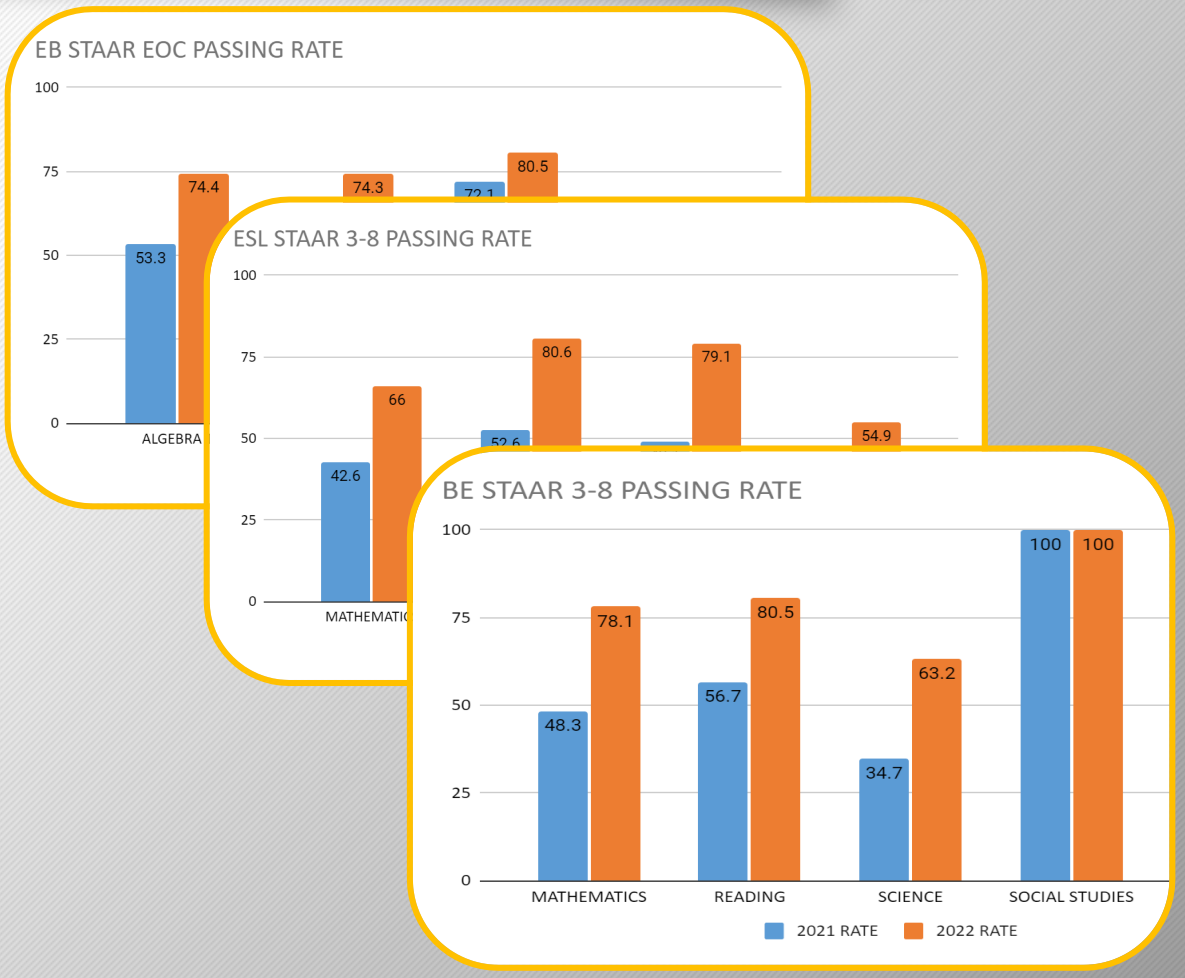


TELPAS


100%
75%
50%
25%
0%
39%
44%
36%
EB Progress Measure
2018-2019
2021-2022
2021-2022 Target

RESULTS DRIVEN ACCOUNTABILITY (RDA)

- 12 indicators
  - Academic Achievement (9 indicators)
  - Post-Secondary Readiness (2 indicators)
  - Disproportionate Analisis (1 indicator)



2022-2023 CELEBRATIONS

TABE - BILINGUAL T.O.Y.



DUAL LANGUAGE RICE TAPIA CAMP



NATIONAL HISPANIC HERITAGE MONTH



Proclamation Regarding National Hispanic Heritage Month

2022-2023 CELEBRATIONS

SUMMER PROGRAMS



DUAL LANGUAGE - 5th GRADE HS LOTE CREDIT



NABE - 1st PLACE IN ELEMENTARY BILINGUAL ESSAY CONTEST



2022-2023 CELEBRATIONS

RGV TABE - ESSAY & CARD CONTEST WINNERS





SPANISH SPELLING BEE

DISTRICT CHAMPIONS and REGION 1ST PLACE WINNERS

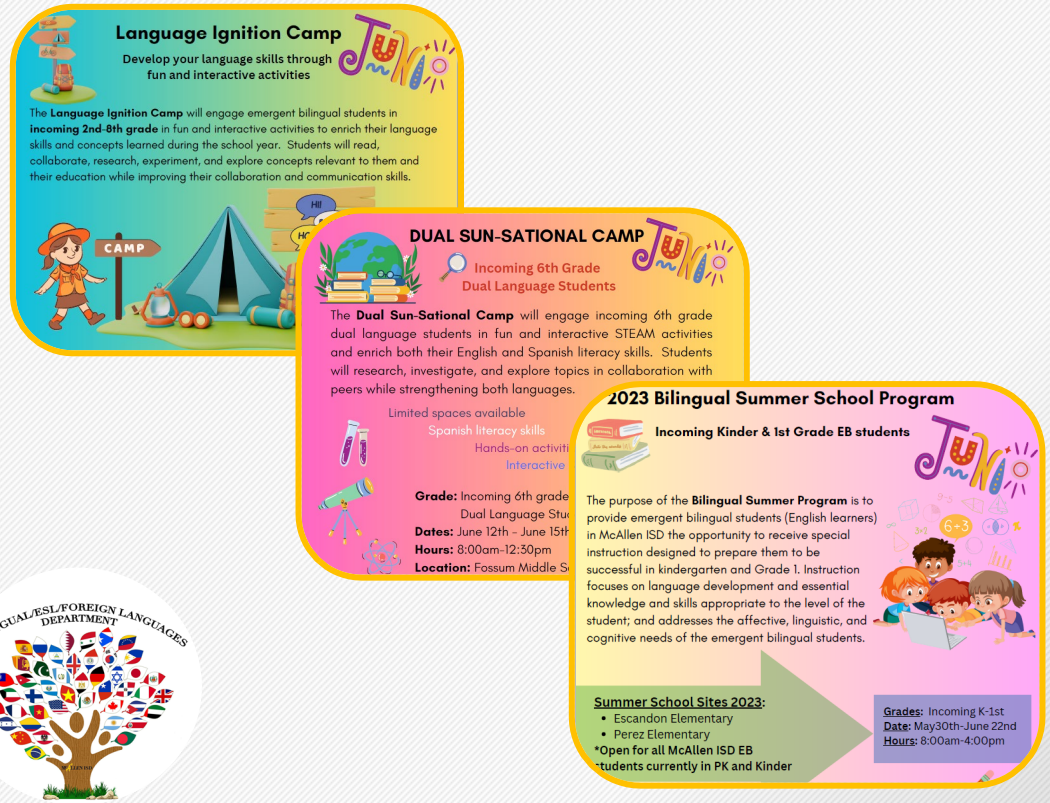






2022-2023 UPCOMING EVENTS

BILINGUAL SUMMER PROGRAMS



FAMILY, PARENT & COMMUNITY ENGAGEMENT



THANK YOU

Rocío Nava, Director

Bilingual/ESL/FL Department

(956) 618-7338

Follow us on

Twitter @bil_misd

Facebook @McAllenISDBilingual

Instagram @misdbilingual

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Report Regarding Facilities, Maintenance, & Operations Monthly Projects

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Facilities, Maintenance, & Operations Department provides the Board of Trustees a monthly report on District projects.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The attached report provides the current projects.

LEGAL REVIEW:

None

BUDGETARY CONSIDERATIONS:

None

RECOMMENDED BOARD ACTION:

The item is for informational purposes only.

SUBMITTED BY: 

SUPERVISOR: Alejandra Gonzalez (Apr 14, 2023 08:56 CDT)

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

Report Regarding

Facilities Maintenance & Operations Projects



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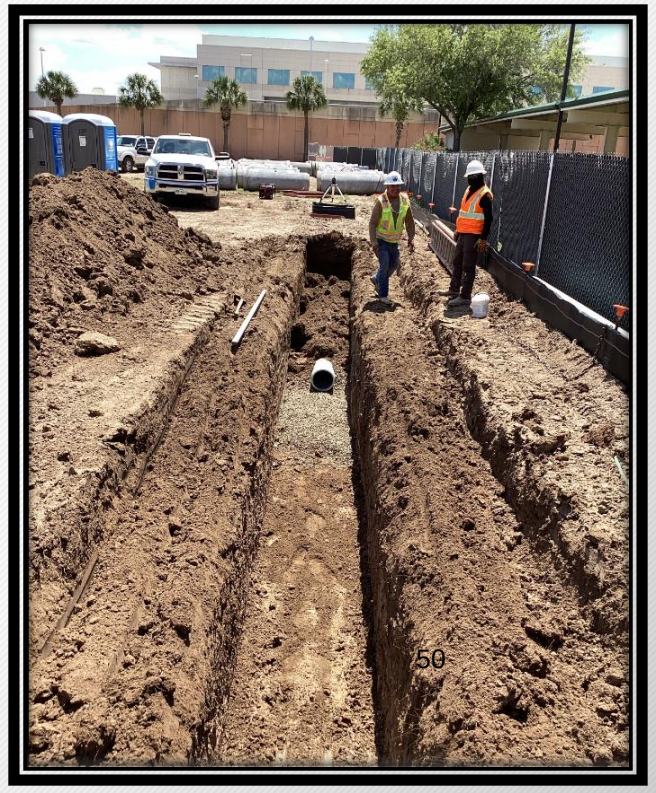
April 24, 2023

Ongoing Projects: High Schools

UTRGV- McAllen ISD Collegiate Academy

Estimated Substantial Completion Date
July 2024







Ongoing Projects: High Schools

HVAC Upgrades

- Lamar Academy
- Rowe HS

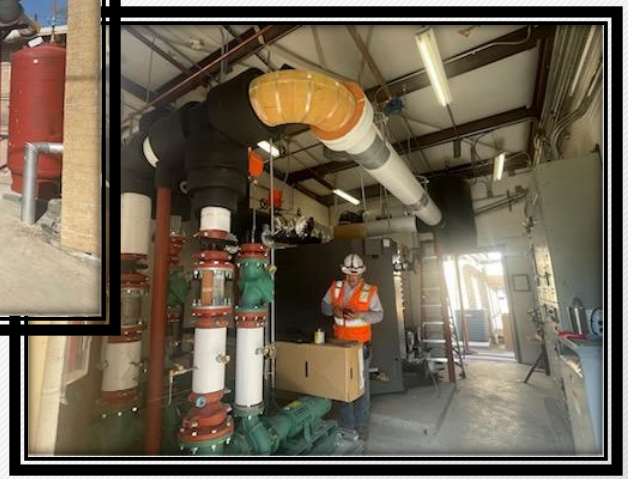
Estimated Substantial Completion Date 8/2023

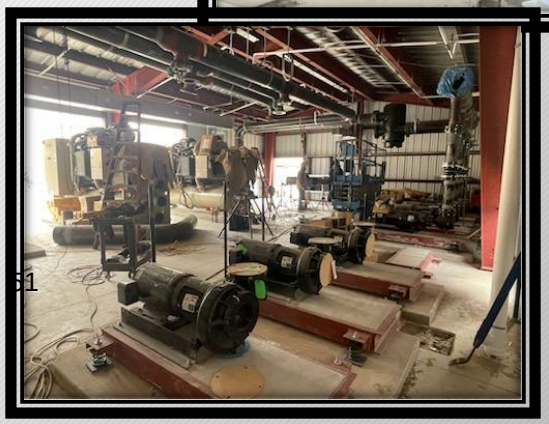














Ongoing Projects: Middle Schools

- **Travis MS Roof Upgrade**
  - Estimated Substantial Completion Date 2/2024
- **Surveillance Camera Upgrades @**
  - De Leon MS and Morris MS
  - Estimated Substantial Completion Date 8/2023
- **Chiller Replacements @**
  - Fossum MS and Morris MS 8/2023



Ongoing Projects: Middle Schools

Cafeteria and Kitchen Upgrades @ De Leon MS

Estimated Substantial Completion Date 5/2023



Ongoing Projects: Middle Schools

Cafeteria and Kitchen Upgrades @ Brown MS

Estimated Substantial Completion Date 5/2023









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Ongoing Projects: Elementary Schools

Cafeteria and Kitchen Upgrades @ Gonzales ES

Estimated Substantial Completion Date 5/2023







Ongoing Projects: Elementary Schools

Cafeteria and Kitchen Upgrades @ Jackson ES

Estimated Substantial Completion Date 5/2023







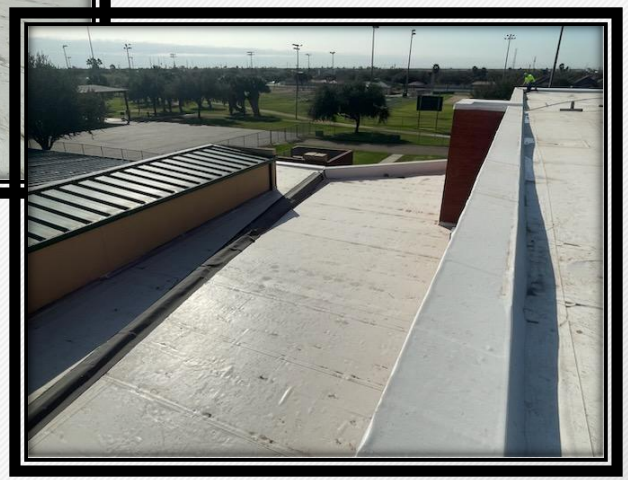


Ongoing Projects: Elementary Schools

Roof Replacement @

- Houston ES Estimated Substantial Completion Date 4/2023
- Roosevelt ES Estimated Substantial Completion Date 8/2023









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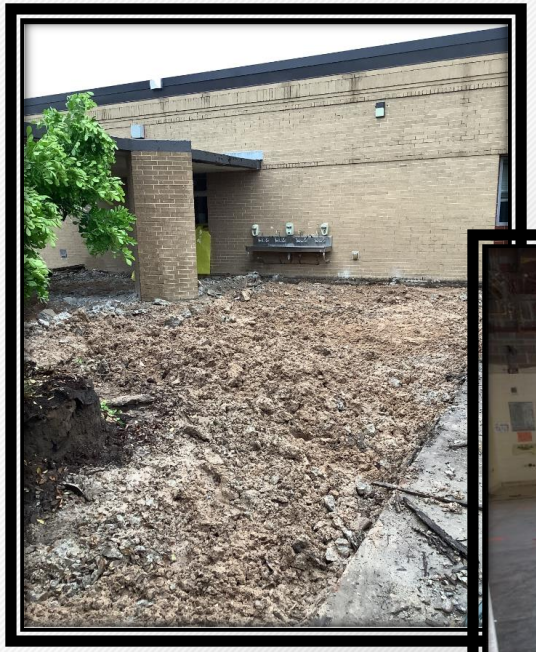
Ongoing Projects: Elementary Schools

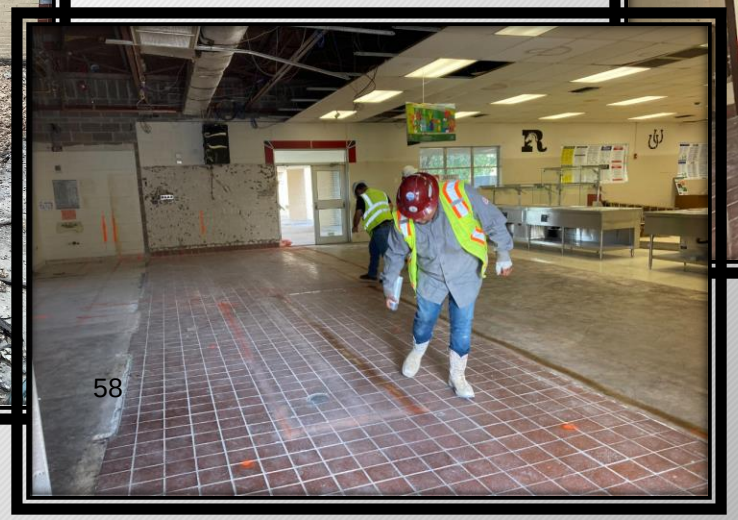
Cafeteria Expansion and or Modifications @

Garza ES Wilson ES Rayburn ES Roosevelt ES

Estimated Substantial Completion Date 12/2023







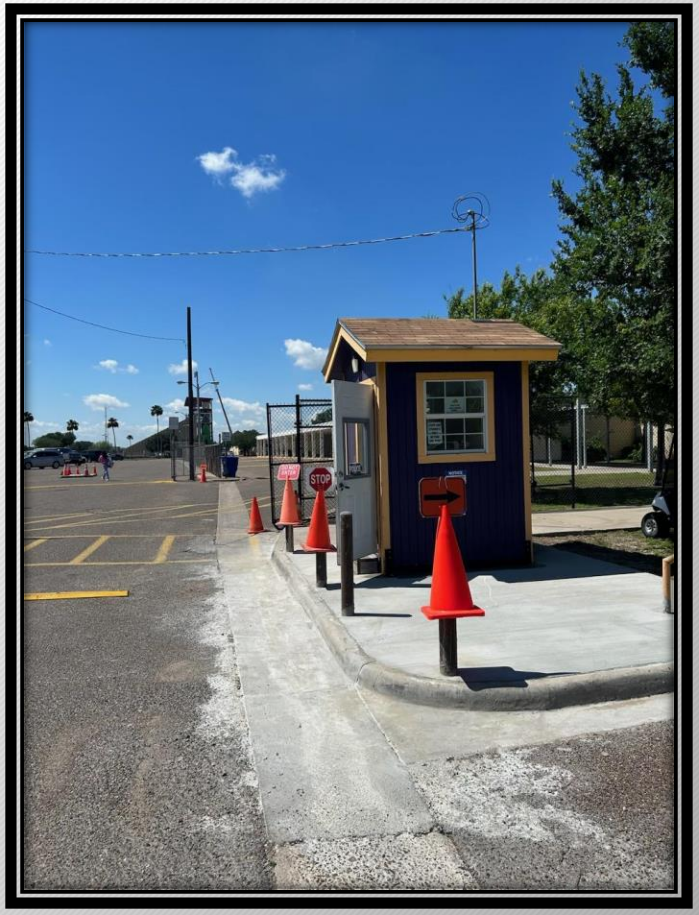


Ongoing Projects: Security Upgrades

McAllen High School

- Security Hut Relocation
- Fence

District Wide Security Upgrades

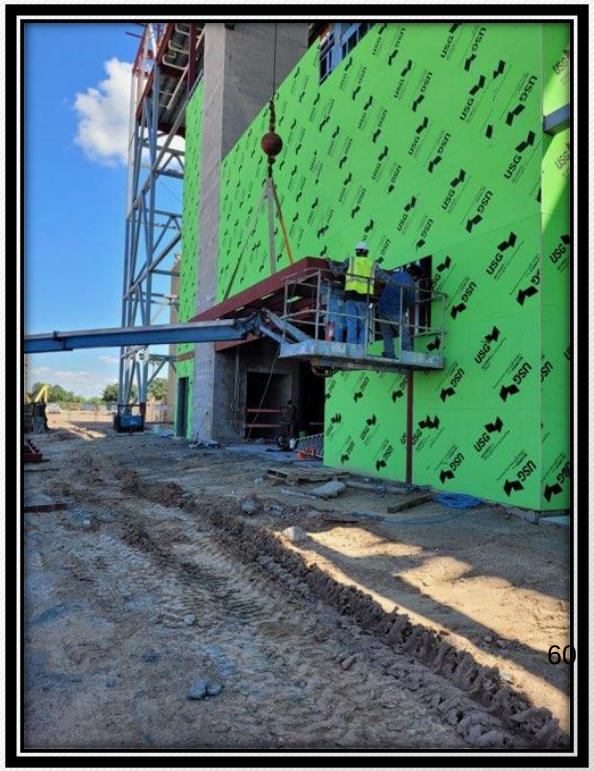


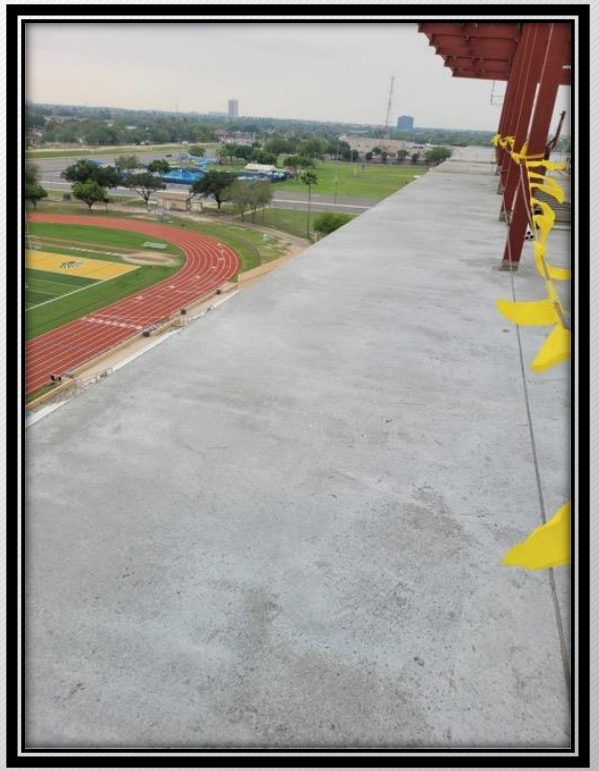
Ongoing Projects: District Wide

- **McAllen Veterans Memorial Stadium Press Box**

Estimated Substantial Completion Date 7/2023





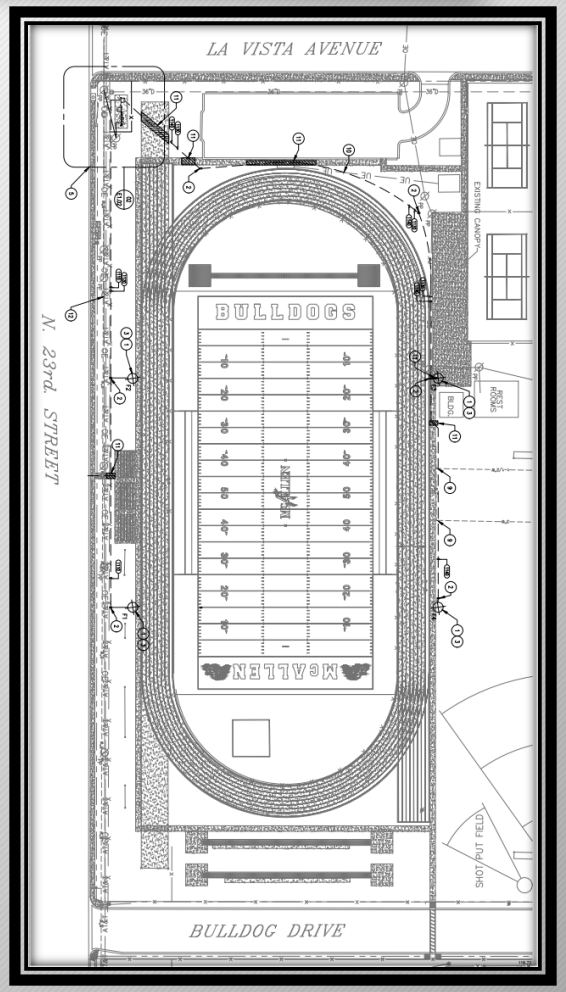




Upcoming Projects: High Schools

McAllen High Practice Field Sports Lighting

Estimated Substantial Completion Date June 2023



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Castle Rounds Summary Report

Cleanliness, A/C, Safety, Technology, Lighting, Exterior

- Weekly Campus Reports
- Work Orders Generated

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Report Regarding Intention to Apply for Grants through the U.S. Department of Justice and the Substance Abuse and Mental Health Services Administration

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The United States Department of Justice is seeking applications for funding to assist school districts in implementing a safer school environment. This program furthers the Department's mission by combating victimization and reducing violent crime. These programs objectives are to increase school safety using evidence-based solutions to prevent violence against schools, staff, and students and ensure a positive school climate. Through the efforts of these funding opportunities agencies will acquire the intervention strategies for addressing student trauma with a trauma-informed approach. School staff training is another component that will be implemented through these programs to increase capacity for: mental health awareness, suicide prevention, violence prevention, and trauma informed care. The Substance Abuse and Mental Health Service Administration (SAMHSA) is seeking applications for programs to increase student access to evidence-based and culturally relevant trauma support services and mental health care by developing innovative initiatives, activities, and programs to link local school systems with local trauma-informed support and mental health systems. School districts will establish partnerships to implement mental health-related promotion, awareness, prevention, intervention, and resilience activities to ensure that school-aged youth have access and are connected to appropriate and effective behavioral health services. With these programs, SAMHSA aims to promote the healthy social and emotional development of school-aged youth and prevent youth violence in school settings.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
The Substance Abuse and Mental Health Service Administration and the Department of Justice published guidance regarding how these funds can be used and local compliance requirements school districts must follow, including a recommendation that districts develop a budget to address how the district will utilize funding to meet the goals of the grant.

LEGAL REVIEW: N/A

BUDGETARY CONSIDERATIONS: N/A

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

SUBMITTED BY: Adrian Garza (Fam Treat)

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Adrian Garza
Office: Family Treatment Program (956) 926-4813
eMail: adrian.garza@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools Apr 18, 2023

Grant Name	Department of Justice Fiscal Year 2023 Grant Funding to Prevent and Reduce Crime
Term of Grant	10/1/2023 - 09/30/2026
Grant Amount	Up to minimum $500,000 for 3 Years - maximum of $1,000,000 for 3 Years
Grant Manager	Adrian Garza
Purpose and Use of Funds	Through this opportunity, the U.S. Department of Justice is seeking applications for funding for the fiscal year 2023 to assist school districts in implementing a safer school environment. This program furthers the Department's mission by combating victimization and reducing violent crime. These programs objectives are to increase school safety using evidence-based solutions to prevent violence against schools, staff, and students and ensure a positive school climate. Through the efforts of these funding opportunities agencies will acquire the intervention strategies for addressing student trauma with a trauma-informed approach. School staff training is another component that will be implemented through these programs to increase capacity for: mental health awareness, suicide prevention, violence prevention, and trauma informed awareness.

Grant Name	Substance Abuse and Mental Health Service Administration (SAMHSA) Fiscal Year 2023 Grant Funding for Mental Health Awareness and Intervention
Term of Grant	09/30/2023 - 09/30/2028, 09/30/2023 – 09/30/2027
Grant Amount	Up to $1,800,000 per year for 5 Years, $970,000 per year for 4 years
Grant Manager	Adrian Garza
Purpose and Use of Funds	Through these opportunities SAMHSA is seeking applications for programs to increase student access to evidence-based and culturally relevant trauma support services and mental health care by developing innovative initiatives, activities, and programs to link local school systems with local trauma-informed support and mental health systems. School districts will establish partnerships to implement mental health-related promotion, awareness, prevention, intervention, and resilience activities to ensure that school-aged youth have access and are connected to appropriate and effective behavioral health services. With these programs, SAMHSA aims to promote the healthy social and emotional development of school-aged youth and prevent youth violence in school settings.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Report Regarding Intention to Apply for United States Department of Justice, Fiscal Year 2023 Body-Worn Camera Policy and Implementation Program to Support Law Enforcement Agencies Grant

REFERENCE: Goal 4; Strategy 7: Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA) seeks applications for funding law enforcement agencies, prosecutors' offices, and correctional agencies performing law enforcement functions to purchase or lease body-worn cameras (BWCs) to establish or expand comprehensive body-worn camera programs with a specific and demonstrated plan to implement this technology to maximize the benefits of BWCs.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Applications for grant funding to purchase sixty-two body-worn cameras.

LEGAL REVIEW:

N/A

BUDGETARY CONSIDERATIONS:

The United States Department of Justice, Office of Justice Programs, and Bureau of Justice Assistance will make available forty awards with an anticipated maximum dollar amount of awards to be $2,000,000.

RECOMMENDED BOARD ACTION:

The Report Regarding Intention to Apply for United States Department of Justice, Fiscal Year 2023 Body-Worn Camera Policy and Implementation Program to Support Law Enforcement Agencies Grant is submitted for information purposes only, no action required.

SUBMITTED BY: Laura Williams
Laura Williams (Apr 19, 2023 16:44 CDT)

SUPERVISOR:

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

Approved for presentation to the Board of Education:

Superintendent of Schools

Report Regarding Intent to Apply for United States Department of Justice, Office of Justice Programs, and Bureau of Justice Assistance

FY 2023 Body–Worn Camera Policy and Implementation Program to Support Law Enforcement Agencies

Board Meeting
April 24, 2023

Highlights of the FY 2023 Body-Worn Camera Policy and Implementation Program to Support Law Enforcement Agencies

Key Dates:

- Grants.gov application deadline was April 4, 2023
- JustGrants application deadline was April 11, 2023
- Grant period start date 10/1/23
- 50% Match = $26,904
- Purchase 62 Body Cameras - $53,808

Purpose:

The purpose of this announcement is to solicit applications from law enforcement agencies to equip peace officers with body-worn cameras.

Thank you.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Report Regarding Intention to Apply for the Department of Education and Office of Elementary and Secondary Education Fiscal Year 2023 Well-Rounded Education Programs: Innovative Approaches to Literacy Program Grant

REFERENCE: Goal 4; Strategy 7: Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Innovative Approaches to Literacy (IAL) program supports high-quality programs designed to develop and improve literacy skills for children and students from birth through 12th grade in high need local educational agencies (LEAs) and schools. IAL promotes innovative literacy programs that support the development of literacy skills in low income communities, including programs that (1) develop and enhance effective school library programs, which may include providing professional development for school librarians, books, and up-to-date materials to high need schools; (2) provide early literacy services, including pediatric literacy programs and (3) provide high-quality books on a regular basis to children and adolescents from low-income communities to increase reading motivation, performance, and frequency.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Application for grant funding to support campuses district wide with professional development for school librarians, books, and up-to-date materials.

LEGAL REVIEW:

N/A

BUDGETARY CONSIDERATIONS:

The Department of Education and Office of Elementary and Secondary Education anticipates making available fifteen to twenty awards with an estimated range of awards being $175,000 to $750,000.

RECOMMENDED BOARD ACTION:

Report Regarding Intention to Apply for the Department of Education and Office of Elementary and Secondary Education Fiscal Year 2023 Well-Rounded Education Programs: Innovative Approaches to Literacy Program Grant is submitted for information purposes only, no action required.

SUBMITTED BY: Laura Williams (Apr 19, 2023 16:44 CDT)

SUPERVISOR:

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

Approved for presentation to the Board of Education:

Superintendent of Schools

Report Regarding Intent to Apply for Department of Education and Office of Elementary & Secondary Education

FY 2023 Well-Rounded Education Programs: Innovative Approaches to Literacy (IAL) Program

Board Meeting
April 24, 2023

Highlights of the FY 2023 Well-Rounded Education Programs: Innovative Approach to Literacy (IAL) Program

Key Dates:

- Grants.gov application deadline is May 15, 2023
- Grant period 60 months
- 15-20 awards made available ranging from $175,000 to $750,000
- Awards expected September 30, 2023

Purpose:

The IAL program supports high-quality programs designed to develop and improve literacy skills for children and students from birth through 12th grade in high need local educational agencies (LEAs) and schools. IAL promotes innovative literacy programs that support the development of literacy skills in low-income communities, including programs that:

(1) develop and enhance effective school library programs, which may include providing professional development for school librarians, books, and up-to-date materials to high need schools;

(2) provide early literacy services, including pediatric literacy programs through which, during well child visits, medical providers trained in research-based methods of early language and literacy promotion provide developmentally appropriate books and recommendations to parents to encourage them to read aloud to their children starting in infancy; and

(3) provide high-quality books on a regular basis to children and adolescents from low-income communities to increase reading motivation, performance, and frequency.

Thank you.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Report Regarding Taxes Collected for March 2023

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Hidalgo County Tax Office has been collecting the District's current taxes since 1996.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Tax roll modifications are due to late homestead exemptions, properties under protest, omitted properties and rollbacks. These modifications resulted in a monthly net decrease to taxes receivable of $93,355.12 for March 2023. Modifications are posted to the general ledger on a monthly basis and are included as part of the monthly tax report.

The March 2023 Tax Collections Report is attached. The amount collected was $2,649,429.83.

March:

Local Maintenance Collection $2,465,906.43
Debt Service Collection $183,523.40

LEGAL REVIEW:
Not required.

BUDGETARYCONSIDERATIONS:
Not required.

RECOMMENDED BOARD ACTION: The Report Regarding Taxes Collected for March 2023 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: Business Office (956) 618-6016
eMail: iris.luna@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

PREPARED BY: M.A.M Mark Martinez

PABLO "PAUL" VILLARREAL JR., ASSESSOR & COLLECTOR
MCALLEN I.S.D. TAXES COLLECTED FOR:
MARCH 2023

COMPARATIVE RATE OF COLLECTIONS

MCALLEN I.S.D. SML - 47	ORIGINAL TAX LEVY	COLLECTED TO DATE	DROPPED YRS AFTER PURGE	MODIF. TO DATE	TAXES OUTSTANDING	PERCENT 2022/2023	COLLECTED 2021/2022
2022 TAX ROLL	96,621,135.70	92,398,815.03	-	469,255.83	4,691,576.50	95.17%	95.72%
2021 & PRIOR YRS	6,780,691.39	1,598,663.01	(118,494.16)	(409,819.69)	4,653,714.53	25.57%	30.87%
ROLLBACK	5,614.49	30,109.62	-	25,712.25	1,217.12	96.11%	73.34%
TOTALS	103,407,441.58	94,027,587.66	(118,494.16)	85,148.39	9,346,508.15		

BREAKDOWN OF TAX COLLECTIONS AND FEES FOR THE MONTH OF MARCH 2023

	MCALLEN ISD	MONTHLY MODIFICATIONS	
CURRENT YEAR-BASE TAX	2,486,145.66	(69,073.41)	CURRENT
CURRENT YEAR-P&I	114,486.28		
PRIOR YEARS-BASE TAX	163,284.17	(24,281.71)	PRIOR
PRIOR YEARS-P&I	77,794.32		
ROLLBACK	-	-	ROLLBACK
ROLLBACK P&I	-		
ATTORNEY FEES	36,118.33	-	PURGED
TOTAL COLLECTIONS	2,877,828.76	(93,355.12)	
LESS TRANSFERRED	2,146,745.92		
LESS IN TRANSIT	716,803.07		
LESS DUE TO HCAD COMM FEES	425.77		
LESS DUE TO CO TREASURER	13,854.00		
LESS COURT ORDER INTEREST	-		
BALANCE	(0.00)		

**********AFFIDAVIT**********

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

HIDALGO COUNTY ASSESSOR & COLL. OF TEXAS

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

SWORN AND SUBSCRIBED BEFORE ME THIS 12TH DAY OF APRIL 2023 A.D.

NOTARY PUBLIC, HIDALGO COUNTY, TEXAS

NOTARY PUBLIC
Jose Edgar Jaramillo
Notary ID# 12911866-7
My Comm. Exp. 9-10-2024
STATE OF TEXAS

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Report Regarding the Monthly Financial and Quarterly Investment Report for March 2023

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 March 2023 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 MARCH 31, 2023

	A APPROVED BUDGET 2021-22 03/31/22	B YTD ACTUAL 07/01/21 TO 03/31/22	C APPROVED BUDGET 2022-23 03/31/23	D YTD ACTUAL 07/01/22 TO 03/31/23	E DIFFERENCE C - D	F OUTSTANDING ENCUMBRANCES 04/01/23 06/30/23	G YTD REVENUES, EXPENSES AND ENCUMBRANCES D + F	H BUDGET LESS EXPENSES AND ENCUMBRANCES C - G
REVENUES:								
LOCAL AND INTERMEDIATE SOURCES	$3,215,079	$1,971,011	$4,523,706	$5,219,473	($695,767)		$5,219,473	($695,767)
PROPERTY TAXES	84,196,013	84,052,745	87,656,209	87,517,761	138,448		87,517,761	138,448
STATE PROGRAM REVENUES	117,328,186	66,791,483	119,192,024	73,595,473	45,596,551		73,595,473	45,596,551
FEDERAL PROGRAM REVENUES	26,142,402	21,136,577	25,287,804	20,453,952	4,833,852		20,453,952	4,833,852
OTHER RESOURCES/NON-OPERATING REVENUES	202,697	218,742	75,052	211,301	(136,249)		211,301	(136,249)
SUB TOTAL	$231,084,377	$174,170,558	$236,734,795	$186,997,959	$49,736,836		$186,997,959	$49,736,836
EXPENDITURES:								
11 INSTRUCTION	$125,783,362	$33,956,271	$118,537,429	$67,774,720	$50,762,709	$43,652,116	$111,426,836	$7,110,593
12 INST. RES. & MEDIA SERVICES	3,438,151	2,093,712	3,540,086	2,205,071	1,335,015	1,173,897	3,378,968	161,118
13 CURRICULUM DEV. & INST. STAFF DEV.	4,837,620	2,750,570	5,177,343	2,872,134	2,305,209	1,014,858	3,886,992	1,290,351
21 INST. LEADERSHIP	3,285,801	2,117,117	3,304,854	2,310,780	994,074	820,920	3,131,700	173,154
23 SCHOOL LEADERSHIP	13,337,929	8,984,617	13,839,227	9,568,058	4,271,169	3,704,074	13,272,131	567,096
31 GUID., COUNSELING & EVAL. SER.	9,992,089	5,954,320	10,581,105	6,544,693	4,036,412	3,277,337	9,822,030	759,075
32 SOCIAL WORK SERVICES	2,070,105	1,306,594	2,167,762	1,468,470	699,292	629,385	2,097,855	69,907
33 HEALTH SERVICES	3,044,329	1,706,371	3,147,640	1,876,812	1,270,828	1,028,917	2,905,729	241,911
34 STUDENT (PUPIL) TRANS.	4,518,638	4,001,529	6,152,366	4,635,903	1,516,463	273,962	4,909,865	1,242,501
35 FOOD SERVICES	19,559,170	11,816,307	23,005,889	14,951,404	8,054,485	5,334,808	20,286,212	2,719,677
36 CURRICULAR/EXTRACURRICULAR ACT.	10,315,942	5,664,595	11,372,412	6,736,563	4,635,849	2,541,196	9,277,759	2,094,653
41 GENERAL ADMINISTRATION	8,647,912	5,733,451	9,105,890	6,377,410	2,728,480	1,530,991	7,908,401	1,197,489
51 PLANT MAINT. & OPERATIONS	25,655,873	15,091,337	23,349,819	15,130,333	8,219,486	3,201,141	18,331,474	5,018,345
52 SECURITY AND MONITORING SERV.	5,511,627	3,511,742	8,080,344	4,078,058	4,002,286	1,713,383	5,791,441	2,288,903
53 DATA PROCESSING SERVICES	6,430,547	4,085,519	6,337,242	4,139,826	2,197,416	1,689,703	5,829,529	507,713
61 COMMUNITY SERVICES	95,327	46,037	151,728	79,571	72,157	28,752	108,323	43,405
71 DEBT SERVICE	7,197,528	5,879,228	4,463,418	2,893,244	1,570,174	21,786	2,915,030	1,548,388
81 FAC. ACQUISITION & CONST.	3,700,652	515,676	29,395,447	7,501,746	21,893,701	3,447,152	10,948,898	18,446,549
95 PMT. TO JUV. JUSTICE ALT. ED. PRG.	40,000	40,000	40,000	40,000	0	0	40,000	0
99 OTHER INTERGOVERNMENTAL CHARGES	939,270	931,378	984,211	977,661	6,550	0	977,661	6,550
00 OTHER USES/NON-OPERATING EXPENSES	133,780	48,780	12,500,000	4,545,619	7,954,381	0	4,545,619	7,954,381
SUB TOTAL	$258,535,652	$116,235,151	$295,234,212	$166,708,075	$128,526,137	$75,084,378	$241,792,453	$53,441,759
REVENUES OVER (UNDER) EXPENDITURES		$57,935,407		$20,289,884				
BEGINNING FUND BALANCE		107,594,997		149,933,573				
PRELIMINARY ENDING FUND BALANCE		$165,530,404		$170,223,457				
OPTIMUM FUND BALANCE FOR UNFORESEEN EVENTS		$104,077,381		$143,823,106				



QUARTERLY INVESTMENT REPORT

McAllen ISD

MARCH 31, 2023

MEEDER

PUBLIC FUNDS

PATTERSON GROUP

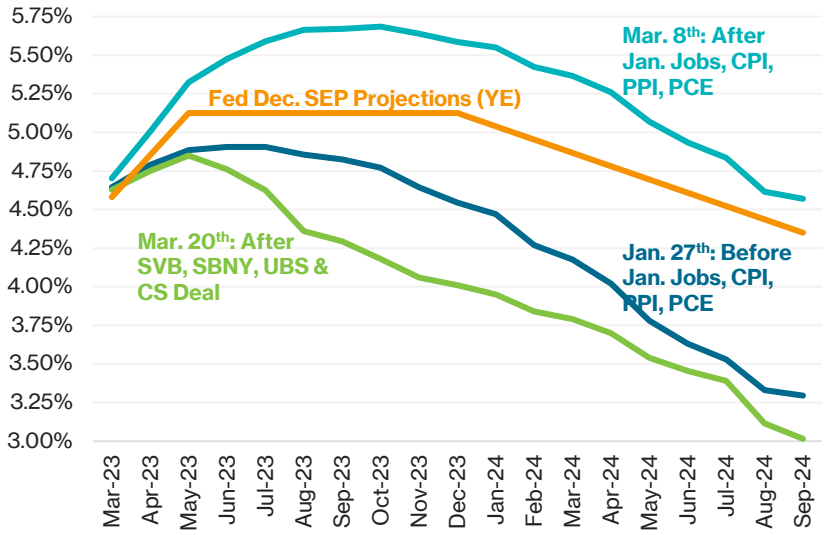
Higher still?

Solid economic data in March was overshadowed by two bank failures and the subsequent repricing of rate hike expectations. The March Federal Open Market Committee (FOMC) meeting saw the committee unanimously raise rates by 0.25%. However, the hike has been interpreted as dovish due to comments from Jerome Powell, conveying concern about tightening credit conditions.

The Employment Situation Summary surprised again to the upside, showing the US economy added 311 thousand jobs in February. The unemployment rate increased from 3.4% to 3.6% as labor force participation increased. Along with a slowdown in wage growth, the report pointed to a strong job market that is showing signs of cooling. The Consumer Price Index (CPI) Report for February showed both headline and core inflation increased during the month by 0.4%, evidencing inflation is not gone yet. The Personal Consumption Index (PCE), the Federal Reserve's preferred inflation measure, painted a slightly softer inflation picture. The PCE index increased by 0.3% during the month and brought the year-over-year rate to 5.0%, down from a 5.3% pace the prior month.

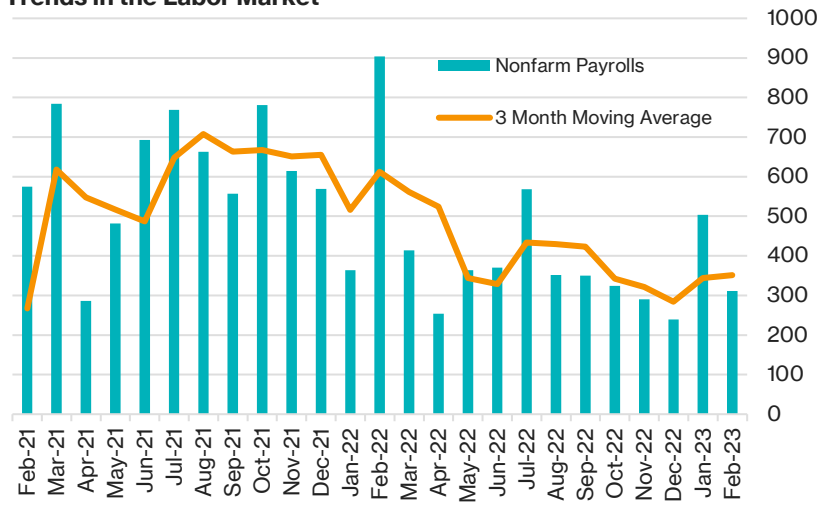
However, the failures of Silicon Valley Bank and Signature Bank, and the subsequent forced acquisition of Credit Suisse by UBS altered market expectations for monetary policy. Before the noted banking issues, on March 8th, markets were pricing in another 1% in rate hikes and a terminal rate of 5.75% in September. In response to the bank turmoil, by March 15th, markets were pricing in rate cuts as early as June. However, as regulators responded to the events, and concerns of a spillover to the real economy abated, by March 31st, markets reversed course to price in a 60% chance of another 0.25% interest rate hike in May.

FED FUNDS EXPECTATIONS



SOURCE: BLOOMBERG

Trends in the Labor Market



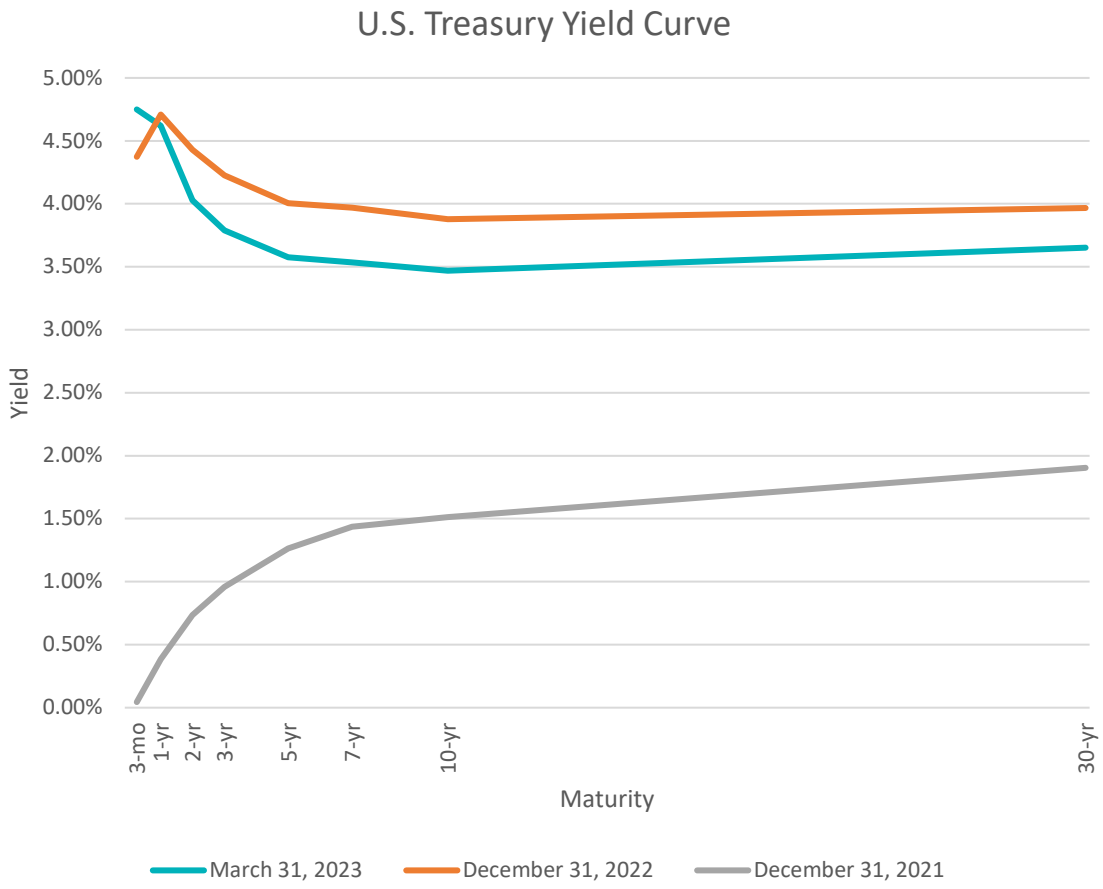
SOURCE: BLOOMBERG

Expectations Drive Rates

Treasury rates were volatile throughout the month as market participants tried to get a handle on the bank failure's implications. During the month, the yield on the 2-year Treasury moved a full 1.00% lower, and the yield on the 5-year Treasury moved 0.61% lower.

Spreads on corporate bonds, commercial paper, municipal bonds, and agency bonds moved wider during the month as a flight to safety saw investors move into treasuries. These moves created opportunities to pick up additional yield on high quality bonds, including agency debt.

Although overall yields are lower than they were a month ago, the opportunity set in fixed income is still positive. Locking in current yields and income levels will benefit portfolios when the yield curve eventually normalizes, and rates fall when this hiking cycle ends.



McAllen Independent School District
Quarterly Investment Report
January 1, 2023 – March 31, 2023

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 12/31/22:		**Portfolio as of 03/31/23:**	
Beginning Book Value	$ 171,406,437	Ending Book Value	$ 181,611,837
Beginning Market Value	$ 170,255,458	Ending Market Value	$ 180,791,973
		Investment Income for quarter	$ 1,776,141
		Unrealized Gain/Loss	$ (819,864)
WAM at Beginning Period Date[1]	86 days	WAM at Ending Period Date[1]	73 days
(Increase in market value is due to seasonal cash inflows)		Change in Market Value[2]	$ 10,536,515

Average Yield to Maturity for period	**3.886%**
Average Yield 1-Year Treasury Bill for period	**4.760%**
Average Yield 2-Year Treasury Note for period	**4.340%**

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

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

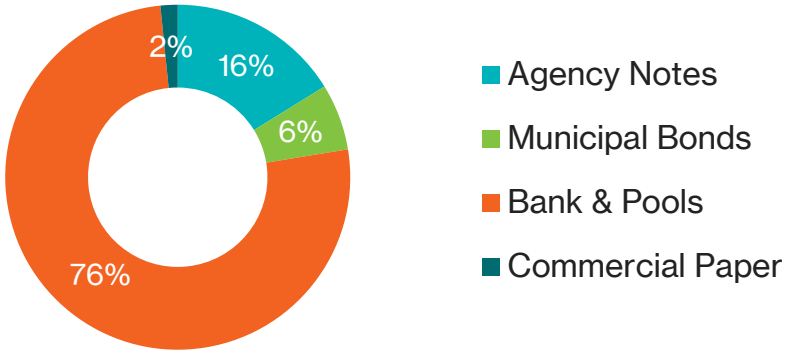
As of March 31, 2023

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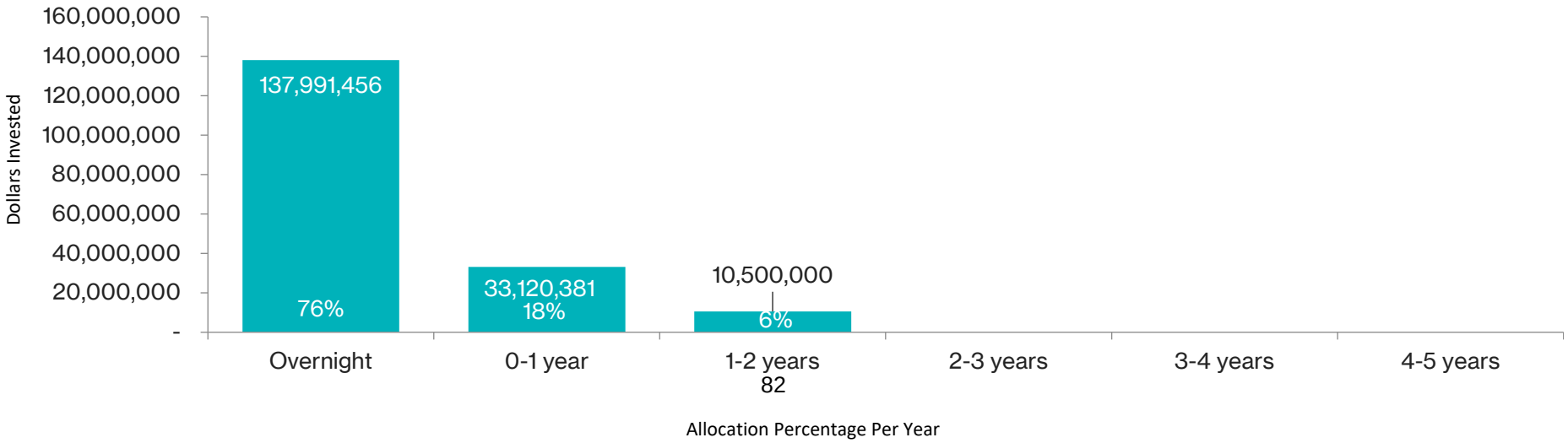
Your Portfolio Statistics

Weighted Average Maturity	0.20 years
Weighted Average Yield (All Funds)	3.99%

Your Asset Allocation



Your Maturity Distribution



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McAllen ISD
Portfolio Management
Portfolio Summary
March 31, 2023

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
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Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 365 Equiv.
BNY Mellon	2,542,282.46	2,542,282.46	2,542,282.46	1.40	1	1	0.000
Frost Bank	19,229,916.39	19,229,916.39	19,229,916.39	10.59	1	1	4.310
Commercial Paper Disc. -Amortizing	3,000,000.00	2,914,395.00	2,918,490.00	1.61	262	198	5.221
Federal Agency Coupon Securities	29,400,000.00	28,733,336.16	29,399,566.04	16.19	720	371	2.349
Municipal Bonds	11,285,000.00	11,152,785.75	11,302,324.61	6.22	675	149	0.629
Texpool/Texpool Prime	21,770,029.32	21,770,029.32	21,770,029.32	11.99	1	1	4.706
Lone Star	94,449,227.96	94,449,227.96	94,449,227.96	52.01	1	1	4.737
Investments	**181,676,456.13**	**180,791,973.04**	**181,611,836.78**	**100.00%**	**164**	**73**	**3.987**
Cash and Accrued Interest							
Accrued Interest at Purchase		4,106.67	4,106.67				
Subtotal		4,106.67	4,106.67				
Total Cash and Investments	**181,676,456.13**	**180,796,079.71**	**181,615,943.45**		**164**	**73**	**3.987**

Total Earnings	March 31 Month Ending	Fiscal Year To Date
Current Year	640,347.86	3,758,281.89

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.

Adelita Felix, Asst Sup't of Business Oper

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
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McAllen ISD
Summary by Type
March 31, 2023
Grouped by Fund

Security Type	Number of Investments	Par Value	Remaining Cost	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Activity Fund						
Frost Bank	1	2,399,124.37	2,399,124.37	1.32	4.310	1
Subtotal	**1**	**2,399,124.37**	**2,399,124.37**	**1.32**	**4.310**	**1**
Fund: Clearing Fund						
Frost Bank	1	4,703,634.10	4,703,634.10	2.59	4.310	1
Subtotal	**1**	**4,703,634.10**	**4,703,634.10**	**2.59**	**4.310**	**1**
Fund: Capital Projects Fund						
Frost Bank	2	4,545,645.79	4,545,645.79	2.50	4.310	1
Lone Star	4	10,559,692.89	10,559,692.89	5.81	4.738	1
Subtotal	**6**	**15,105,338.68**	**15,105,338.68**	**8.31**	**4.609**	**1**
Fund: Debt Service Fund						
Frost Bank	1	98,189.55	98,189.55	0.05	4.310	1
Lone Star	2	3,388,033.38	3,388,033.38	1.86	4.742	1
Subtotal	**3**	**3,486,222.93**	**3,486,222.93**	**1.91**	**4.730**	**1**
Fund: General Fund						
Frost Bank	1	4,064,490.61	4,064,490.61	2.24	4.310	1
Federal Agency Coupon Securities	7	24,400,000.00	24,399,000.00	13.43	2.651	353
Commercial Paper Disc. -Amortizing	1	3,000,000.00	2,892,143.33	1.59	5.221	198
Lone Star	3	73,691,254.75	73,691,254.75	40.56	4.736	1
Municipal Bonds	4	5,185,000.00	5,257,994.50	2.89	0.338	90
Texpool/Texpool Prime	2	21,770,029.32	21,770,029.32	11.98	4.706	1
Subtotal	**18**	**132,110,774.68**	**132,074,912.51**	**72.69**	**4.170**	**74**
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
March 31, 2023
Grouped by Fund

Security Type	Number of Investments	Par Value	Remaining Cost	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Proprietary Fund						
Frost Bank	1	3,418,831.97	3,418,831.97	1.88	4.310	1
Lone Star	2	6,810,246.94	6,810,246.94	3.75	4.740	1
Subtotal	**3**	**10,229,078.91**	**10,229,078.91**	**5.63**	**4.596**	**1**
Fund: QSCB - Reserve Fund						
BNY Mellon	1	2,542,282.46	2,542,282.46	1.40	0.000	1
Federal Agency Coupon Securities	2	5,000,000.00	4,996,100.00	2.75	0.877	456
Municipal Bonds	3	6,100,000.00	6,143,894.00	3.38	0.876	200
Subtotal	**6**	**13,642,282.46**	**13,682,276.46**	**7.53**	**0.713**	**257**
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	**40**	**181,676,456.13**	**181,680,587.96**	**100.00**	**3.987**	**73**

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McAllen ISD
Fund ACT - Activity Fund
Investments by Fund
March 31, 2023

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	2,399,124.37	2,399,124.37	2,399,124.37	4.310	4.250	4.310	1
		Subtotal and Average		**2,399,124.37**	**2,399,124.37**	**2,399,124.37**		**4.251**	**4.310**	**1**
		Total Investments and Average		**2,399,124.37**	**2,399,124.37**	**2,399,124.37**		**4.251**	**4.310**	**1**

Fund CLEAR - Clearing Fund
Investments by Fund
March 31, 2023

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	4,703,634.10	4,703,634.10	4,703,634.10	4.310	4.250	4.310	1
		Subtotal and Average		**4,703,634.10**	**4,703,634.10**	**4,703,634.10**		**4.251**	**4.310**	**1**
		Total Investments and Average		**4,703,634.10**	**4,703,634.10**	**4,703,634.10**		**4.251**	**4.310**	**1**

Fund CP - Capital Projects Fund
Investments by Fund
March 31, 2023

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	4,458,707.92	4,458,707.92	4,458,707.92	4.310	4.250	4.310	1
SYS10109	10109	Frost Bank Public Checking	07/01/2022	86,937.87	86,937.87	86,937.87	4.310	4.250	4.310	1
		Subtotal and Average		**4,545,645.79**	**4,545,645.79**	**4,545,645.79**		**4.251**	**4.310**	**1**
Lone Star										
108906G	10101	Lone Star Corporate Overnight	12/18/2019	394,116.74	394,116.74	394,116.74	4.840	4.773	4.840	1
108906I	10108	Lone Star Corporate Overnight	02/21/2020	4,791,421.19	4,791,421.19	4,791,421.19	4.840	4.773	4.840	1
108906H	10102	Lone Star Government ON	12/18/2019	387,976.39	387,976.39	387,976.39	4.640	4.576	4.640	1
108906J	10113	Lone Star Government ON	03/12/2020	4,986,178.57	4,986,178.57	4,986,178.57	4.640	4.576	4.640	1
		Subtotal and Average		**10,559,692.89**	**10,559,692.89**	**10,559,692.89**		**4.673**	**4.738**	**1**
		Total Investments and Average		**15,105,338.68**	**15,105,338.68**	**15,105,338.68**		**4.546**	**4.609**	**1**

Fund DS - Debt Service Fund
Investments by Fund
March 31, 2023

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	98,189.55	98,189.55	98,189.55	4.310	4.250	4.310	1
		Subtotal and Average		**98,189.55**	**98,189.55**	**98,189.55**		**4.251**	**4.310**	**1**
Lone Star										
108906B	10032	Lone Star Corporate Overnight	10/22/2015	1,727,941.45	1,727,941.45	1,727,941.45	4.840	4.773	4.840	1
108906C	10089	Lone Star Government ON	08/05/2019	1,660,091.93	1,660,091.93	1,660,091.93	4.640	4.576	4.640	1
		Subtotal and Average		**3,388,033.38**	**3,388,033.38**	**3,388,033.38**		**4.677**	**4.742**	**1**
		Total Investments and Average		**3,486,222.93**	**3,486,222.93**	**3,486,222.93**		**4.665**	**4.730**	**1**

Fund GEN - General Fund
Investments by Fund
March 31, 2023

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	4,064,490.61	4,064,490.61	4,064,490.61	4.310	4.250	4.310		1
		Subtotal and Average		**4,064,490.61**	**4,064,490.61**	**4,064,490.61**		**4.251**	**4.310**		**1**
Commercial Paper Disc. -Amortizing											
4497W1XG6	10163	ING Funding CP	01/27/2023	2,918,490.00	3,000,000.00	2,914,395.00		5.149	5.221	10/16/2023	198
		Subtotal and Average		**2,918,490.00**	**3,000,000.00**	**2,914,395.00**		**5.150**	**5.221**		**198**
Federal Agency Coupon Securities											
3133ENV98	10162	FFCB Call Note	10/31/2022	4,999,566.04	5,000,000.00	4,991,918.10	4.670	4.641	4.706	07/26/2023	116
3130AUQC1	10164	FHLB Note	01/30/2023	5,000,000.00	5,000,000.00	5,003,993.75	4.875	4.808	4.875	01/30/2024	304
3130ANDP2	10143	FHLB Call Note	08/18/2021	2,400,000.00	2,400,000.00	2,356,138.22	0.250	0.246	0.250	08/18/2023	139
3130APQM0	10150	FHLB Call Note	11/18/2021	3,000,000.00	3,000,000.00	2,839,828.11	1.000	0.986	1.000	11/18/2024	597
3130APQU2	10151	FHLB Call Note	11/22/2021	2,000,000.00	2,000,000.00	1,944,771.58	0.650	0.641	0.650	11/22/2023	235
3130AQLR2	10153	FHLB Call Note	02/07/2022	2,500,000.00	2,500,000.00	2,419,276.88	1.000	0.986	1.000	02/07/2024	312
3130AQYM9	10156	FHLB Step Note	02/28/2022	4,500,000.00	4,500,000.00	4,393,705.37	2.500	2.054	2.083	02/28/2025	699
		Subtotal and Average		**24,399,566.04**	**24,400,000.00**	**23,949,632.01**		**2.615**	**2.651**		**353**
Municipal Bonds											
678720KM4	10145	Oklahoma County OK ISD	09/23/2021	1,100,912.46	1,100,000.00	1,080,728.00	0.500	0.234	0.238	09/01/2023	153
73358W4V3	10148	Port Authority of NY & NJ	10/15/2021	1,507,493.51	1,505,000.00	1,490,476.75	1.086	0.414	0.420	07/01/2023	91
8717027U4	10141	Syracuse NY	06/30/2021	1,583,368.89	1,580,000.00	1,578,420.00	2.000	0.246	0.249	05/15/2023	44
953107AB5	10142	West Hartford CT	07/08/2021	1,000,000.00	1,000,000.00	989,190.00	0.466	0.459	0.465	07/01/2023	91
		Subtotal and Average		**5,191,774.86**	**5,185,000.00**	**5,138,814.75**		**0.334**	**0.338**		**89**
Texpool/Texpool Prime											
999921	10092	Texpool	08/05/2019	10,847,551.77	10,847,551.77	10,847,551.77	4.611	4.547	4.610		1
999920	10034	Texpool Prime	11/03/2015	10,922,477.55	10,922,477.55	10,922,477.55	4.801	4.734	4.800		1
		Subtotal and Average		**21,770,029.32**	**21,770,029.32**	**21,770,029.32**		**4.642**	**4.706**		**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	35,418,188.71	35,418,188.71	35,418,188.71	4.840	4.773	4.840		1
108906D	10090	Lone Star Government ON	08/05/2019	38,273,066.04	38,273,066.04	38,273,066.04	4.640	4.576	4.640		1

Fund GEN - General Fund
Investments by Fund
March 31, 2023

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
			Subtotal and Average	**73,691,254.75**	**73,691,254.75**	**73,691,254.75**		**4.671**	**4.736**	**1**
			Total Investments and Average	**132,035,605.58**	**132,110,774.68**	**131,528,616.44**		**4.113**	**4.170**	**73**

Fund PLAN457 - Plan 457 Fund
Investments by Fund
March 31, 2023

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
March 31, 2023

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	3,418,831.97	3,418,831.97	3,418,831.97	4.310	4.250	4.310	1
		Subtotal and Average		**3,418,831.97**	**3,418,831.97**	**3,418,831.97**		**4.251**	**4.310**	**1**
Lone Star										
108906A	10025	Lone Star Corporate Overnight	08/05/2015	3,408,208.26	3,408,208.26	3,408,208.26	4.840	4.773	4.840	1
108906E	10091	Lone Star Government ON	08/05/2019	3,402,038.68	3,402,038.68	3,402,038.68	4.640	4.576	4.640	1
		Subtotal and Average		**6,810,246.94**	**6,810,246.94**	**6,810,246.94**		**4.675**	**4.740**	**1**
		Total Investments and Average		**10,229,078.91**	**10,229,078.91**	**10,229,078.91**		**4.533**	**4.596**	**1**

Fund QSCB - QSCB - Reserve Fund
Investments by Fund
March 31, 2023

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	2,542,282.46	2,542,282.46	2,542,282.46					1
		Subtotal and Average		**2,542,282.46**	**2,542,282.46**	**2,542,282.46**		**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	1,963,448.52	0.250	0.246	0.250	08/18/2023	139
3130AQJM6	10152	FHLB Call Note	01/28/2022	3,000,000.00	3,000,000.00	2,820,255.63	1.250	1.276	1.294	01/28/2025	668
		Subtotal and Average		**5,000,000.00**	**5,000,000.00**	**4,783,704.15**		**0.865**	**0.877**		**456**
Municipal Bonds											
578060EQ4	10161	Mayes County OK ISD	06/29/2022	1,604,748.67	1,600,000.00	1,573,136.00	3.300	2.351	2.384	06/01/2024	427
678720KM4	10146	Oklahoma County OK ISD	09/23/2021	2,001,659.03	2,000,000.00	1,964,960.00	0.500	0.234	0.238	09/01/2023	153
73358W4V3	10149	Port Authority of NY & NJ	10/15/2021	2,504,142.05	2,500,000.00	2,475,875.00	1.086	0.414	0.420	07/01/2023	91
		Subtotal and Average		**6,110,549.75**	**6,100,000.00**	**6,013,971.00**		**0.864**	**0.876**		**199**
		Total Investments and Average		**13,652,832.21**	**13,642,282.46**	**13,339,957.61**		**0.703**	**0.713**		**256**

Fund QSCBDS - QSCB - Debt Service
Investments by Fund
March 31, 2023

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**

McAllen ISD
Cash Reconciliation Report
For the Period January 1, 2023 - March 31, 2023

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

Trans. Date	Investment #	Fund	Trans. Type	Security ID	Par Value	Security Description	Maturity Date	Purchases	Interest	Redemptions	Cash
01/01/2023	10142	GEN	Interest	953107AB5	1,000,000.00	WESTHT 1.0M 0.47% Mat.	07/01/2023	0.00	2,330.00	0.00	2,330.00
01/01/2023	10148	GEN	Interest	73358W4V3	1,505,000.00	PORTNW 1.5M 1.09% Mat.	07/01/2023	0.00	8,172.15	0.00	8,172.15
01/01/2023	10149	QSCB	Interest	73358W4V3	2,500,000.00	PORTNW 2.5M 1.09% Mat.	07/01/2023	0.00	13,575.00	0.00	13,575.00
01/26/2023	10162	GEN	Interest	3133ENV98	5,000,000.00	FFCBC 5.0M 4.67% Mat. 07/26/2023	07/26/2023	0.00	58,375.00	0.00	58,375.00
01/27/2023	10163	GEN	Purchase	4497W1XG6	3,000,000.00	INGFD 3.0M 0.00% Mat. 10/16/2023	10/16/2023	-2,892,143.33	0.00	0.00	-2,892,143.33
01/28/2023	10152	QSCB	Interest	3130AQJM6	3,000,000.00	FHLBC 3.0M 1.25% Mat. 01/28/2025	01/28/2025	0.00	18,750.00	0.00	18,750.00
01/30/2023	10164	GEN	Purchase	3130AUQC1	5,000,000.00	FHLB 5.0M 4.88% Mat. 01/30/2024	01/30/2024	-5,000,000.00	0.00	0.00	-5,000,000.00
02/07/2023	10153	GEN	Interest	3130AQLR2	2,500,000.00	FHLBC 2.5M 1.00% Mat. 02/07/2024	02/07/2024	0.00	12,500.00	0.00	12,500.00
02/18/2023	10143	GEN	Interest	3130ANDP2	2,400,000.00	FHLBC 2.4M 0.25% Mat. 08/18/2023	08/18/2023	0.00	3,000.00	0.00	3,000.00
02/18/2023	10144	QSCB	Interest	3130ANDP2	2,000,000.00	FHLBC 2.0M 0.25% Mat. 08/18/2023	08/18/2023	0.00	2,500.00	0.00	2,500.00
02/28/2023	10156	GEN	Interest	3130AQYM9	4,500,000.00	FHLBS 4.5M 1.25% Mat. 02/28/2025	02/28/2025	0.00	28,125.00	0.00	28,125.00
03/01/2023	10145	GEN	Interest	678720KM4	1,100,000.00	OKCOSD 1.1M 0.50% Mat.	09/01/2023	0.00	8,250.00	0.00	8,250.00
03/01/2023	10146	QSCB	Interest	678720KM4	2,000,000.00	OKCOSD 2.0M 0.50% Mat.	09/01/2023	0.00	15,000.00	0.00	15,000.00
03/01/2023	10147	GEN	Interest	678553AP3	1,000,000.00	OKECON 1.0M 3.20% Mat.	03/01/2023	0.00	16,020.00	0.00	16,020.00
03/01/2023	10147	GEN	Maturity	678553AP3	1,000,000.00	OKECON 1.0M 3.20% Mat.	03/01/2023	0.00	0.00	1,000,000.00	1,000,000.00
03/16/2023	10158	GEN	Interest	476637AR4	2,200,000.00	JERSEY 2.2M 2.00% Mat.	03/16/2023	0.00	44,000.00	0.00	44,000.00
03/16/2023	10159	QSCB	Interest	476637AR4	1,250,000.00	JERSEY 1.3M 2.00% Mat.	03/16/2023	0.00	25,000.00	0.00	25,000.00
03/16/2023	10158	GEN	Maturity	476637AR4	2,200,000.00	JERSEY 2.2M 2.00% Mat.	03/16/2023	0.00	0.00	2,200,000.00	2,200,000.00
03/16/2023	10159	QSCB	Maturity	476637AR4	1,250,000.00	JERSEY 1.3M 2.00% Mat.	03/16/2023	0.00	0.00	1,250,000.00	1,250,000.00
							Subtotal	**-7,892,143.33**	**255,597.15**	**4,450,000.00**	**-3,186,546.18**
							Total	**-7,892,143.33**	**255,597.15**	**4,450,000.00**	**-3,186,546.18**

MEEDER
PUBLIC FUNDS | PATTERSON GROUP

McAllen ISD
Purchases Report
Sorted by Fund - Fund
January 1, 2023 - March 31, 2023

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
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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													
4497W1XG6	10163	GEN	ACP	INGFD	3,000,000.00	01/27/2023	10/16 - At Maturity	2,892,143.33			10/16/2023	5.150	2,918,490.00
3130AUQC1	10164	GEN	FAC	FHLB	5,000,000.00	01/30/2023	07/30 - 01/30	5,000,000.00		4.875	01/30/2024	4.875	5,000,000.00
				Subtotal	**8,000,000.00**			**7,892,143.33**	**0.00**				**7,918,490.00**
				Total Purchases	**8,000,000.00**			**7,892,143.33**	**0.00**				**7,918,490.00**

MEEDER
PUBLIC FUNDS | PATTERSON GROUP

McAllen ISD
Maturity Report
Sorted by Maturity Date
Amounts due during January 1, 2023 - March 31, 2023

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
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CUSIP	Investment #	Fund	Sec. Type	Issuer	Par Value	Maturity Date	Purchase Date	Rate at Maturity	Book Value at Maturity	Interest	Maturity Proceeds	Net Income
678553AP3	10147	GEN	MC2	OKECON	1,000,000.00	03/01/2023	09/27/2021	3.204	1,000,000.00	16,020.00	1,016,020.00	16,020.00
476637AR4	10158	GEN	MC2	JERSEY	2,200,000.00	03/16/2023	03/16/2022	2.000	2,200,000.00	44,000.00	2,244,000.00	44,000.00
476637AR4	10159	QSCB	MC2	JERSEY	1,250,000.00	03/16/2023	03/16/2022	2.000	1,250,000.00	25,000.00	1,275,000.00	25,000.00
			Total Maturities		**4,450,000.00**				**4,450,000.00**	**85,020.00**	**4,535,020.00**	**85,020.00**

MEEDER
PUBLIC FUNDS | PATTERSON GROUP

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
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McAllen ISD
Interest Earnings
Sorted by Fund - Fund
January 1, 2023 - March 31, 2023
Yield on Beginning Book Value

CUSIP	Investment #	Fund	Security Type	Ending Par Value	Beginning Book Value	Ending Book Value	Maturity Date	Current Rate	Annualized Yield	Adjusted Interest Earnings: Interest Earned	Adjusted Interest Earnings: Amortization/ Accretion	Adjusted Interest Earnings: Adjusted Interest Earnings
Fund: Activity Fund												
999915	10020	ACT	LA2	2,399,124.37	2,376,025.07	2,399,124.37		4.310	3.688	21,605.64	0.00	21,605.64
			Subtotal	**2,399,124.37**	**2,376,025.07**	**2,399,124.37**			**3.688**	**21,605.64**	**0.00**	**21,605.64**
Fund: Clearing Fund												
999914	10019	CLEAR	LA2	4,703,634.10	4,359,121.50	4,703,634.10		4.310	3.302	35,496.26	0.00	35,496.26
			Subtotal	**4,703,634.10**	**4,359,121.50**	**4,703,634.10**			**3.302**	**35,496.26**	**0.00**	**35,496.26**
Fund: Capital Projects Fund												
108906I	10108	CP	RR2	4,791,421.19	4,736,213.47	4,791,421.19		4.840	4.727	55,207.72	0.00	55,207.72
108906G	10101	CP	RR2	394,116.74	789,201.55	394,116.74		4.840	4.754	9,250.34	0.00	9,250.34
999922	10103	CP	LA2	4,458,707.92	83,401.24	4,458,707.92		4.310	20.208	4,155.65	0.00	4,155.65
SYS10109	10109	CP	LA2	86,937.87	160,852.45	86,937.87		4.310	2.651	1,051.53	0.00	1,051.53
108906J	10113	CP	RR2	4,986,178.57	5,081,129.05	4,986,178.57		4.640	4.474	56,049.52	0.00	56,049.52
108906H	10102	CP	RR2	387,976.39	1,236,971.19	387,976.39		4.640	3.608	11,005.20	0.00	11,005.20
			Subtotal	**15,105,338.68**	**12,087,768.95**	**15,105,338.68**			**4.587**	**136,719.96**	**0.00**	**136,719.96**
Fund: Debt Service Fund												
108906B	10032	DS	RR2	1,727,941.45	3,596,430.69	1,727,941.45		4.840	3.845	34,097.25	0.00	34,097.25
999918	10023	DS	LA2	98,189.55	88,858.24	98,189.55		4.310	3.947	864.87	0.00	864.87
108906C	10089	DS	RR2	1,660,091.93	1,265,665.73	1,660,091.93		4.640	4.623	14,426.20	0.00	14,426.20
			Subtotal	**3,486,222.93**	**4,950,954.66**	**3,486,222.93**			**4.046**	**49,388.32**	**0.00**	**49,388.32**
Fund: General Fund												
3130AUQC1	10164	GEN	FAC	5,000,000.00	0.00	5,000,000.00	01/30/2024	4.875	4.943	41,302.08	0.00	41,302.08
999921	10092	GEN	RRP	10,847,551.77	10,729,397.09	10,847,551.77		4.611	4.466	118,154.68	0.00	118,154.68
108906	10003	GEN	RR2	35,418,188.71	43,488,922.60	35,418,188.71		4.840	4.974	533,409.52	0.00	533,409.52
999917	10022	GEN	LA2	4,064,490.61	7,281,310.19	4,064,490.61		4.310	3.270	58,718.09	0.00	58,718.09
999920	10034	GEN	RRP	10,922,477.55	10,797,324.76	10,922,477.55		4.801	4.701	125,152.79	0.00	125,152.79
3130APQU2	10151	GEN	FAC	2,000,000.00	2,000,000.00	2,000,000.00	11/22/2023	0.650	0.659	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	Annualized Yield	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	1.014	6,250.00	0.00	6,250.00
3130APQM0	10150	GEN	FAC	3,000,000.00	3,000,000.00	3,000,000.00	11/18/2024	1.000	1.014	7,500.00	0.00	7,500.00
3130ANDP2	10143	GEN	FAC	2,400,000.00	2,400,000.00	2,400,000.00	08/18/2023	0.250	0.253	1,500.00	0.00	1,500.00
3133ENV98	10162	GEN	FAC	5,000,000.00	4,999,226.42	4,999,566.04	07/26/2023	4.670	4.763	58,375.00	339.62	58,714.62
108906D	10090	GEN	RR2	38,273,066.04	26,281,635.58	38,273,066.04		4.640	6.040	391,430.46	0.00	391,430.46
476637AR4	10158	GEN	MC2	0.00	2,203,167.08	0.00	03/16/2023	2.000	1.343	9,166.67	-3,167.08	5,999.59
8717027U4	10141	GEN	MC2	1,580,000.00	1,590,259.79	1,583,368.89	05/15/2023	2.000	0.257	7,900.00	-6,890.90	1,009.10
953107AB5	10142	GEN	MC2	1,000,000.00	1,000,000.00	1,000,000.00	07/01/2023	0.466	0.472	1,165.00	0.00	1,165.00
678720KM4	10145	GEN	MC2	1,100,000.00	1,101,459.94	1,100,912.46	09/01/2023	0.500	0.305	1,375.00	-547.48	827.52
678553AP3	10147	GEN	MC2	0.00	1,004,910.89	0.00	03/01/2023	3.204	0.264	5,340.00	-4,910.89	429.11
73358W4V3	10148	GEN	MC2	1,505,000.00	1,509,987.02	1,507,493.51	07/01/2023	1.086	0.428	4,086.08	-2,493.51	1,592.57
3130AQYM9	10156	GEN	FAC	4,500,000.00	4,500,000.00	4,500,000.00	02/28/2025	2.500	1.732	19,218.75	0.00	19,218.75
4497W1XG6	10163	GEN	ACP	3,000,000.00	0.00	2,918,490.00	10/16/2023		5.195	0.00	26,346.67	26,346.67
			Subtotal	**132,110,774.68**	**126,387,601.36**	**132,035,605.58**			**4.337**	**1,393,294.12**	**8,676.43**	**1,401,970.55**
Fund: Proprietary Fund												
108906A	10025	PROP	RR2	3,408,208.26	3,368,937.94	3,408,208.26		4.840	4.727	39,270.32	0.00	39,270.32
999919	10024	PROP	LA2	3,418,831.97	2,105,448.94	3,418,831.97		4.310	4.604	23,901.74	0.00	23,901.74
108906E	10091	PROP	RR2	3,402,038.68	3,364,617.05	3,402,038.68		4.640	4.511	37,421.63	0.00	37,421.63
			Subtotal	**10,229,078.91**	**8,839,003.93**	**10,229,078.91**			**4.615**	**100,593.69**	**0.00**	**100,593.69**
Fund: QSCB - Reserve Fund												
882521	10014	QSCB	LA1	2,542,282.46	37,457.46	2,542,282.46				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	0.253	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	1.267	9,375.00	0.00	9,375.00
476637AR4	10159	QSCB	MC2	0.00	1,251,799.48	0.00	03/16/2023	2.000	1.343	5,208.33	-1,799.48	3,408.85
678720KM4	10146	QSCB	MC2	2,000,000.00	2,002,654.44	2,001,659.03	09/01/2023	0.500	0.305	2,500.00	-995.41	1,504.59
73358W4V3	10149	QSCB	MC2	2,500,000.00	2,508,284.09	2,504,142.05	07/01/2023	1.086	0.428	6,787.50	-4,142.04	2,645.46
578060EQ4	10161	QSCB	MC2	1,600,000.00	1,605,766.24	1,604,748.67	06/01/2024	3.300	3.077	13,200.00	-1,017.57	12,182.43
			Subtotal	**13,642,282.46**	**12,405,961.71**	**13,652,832.21**			**1.011**	**38,320.83**	**-7,954.50**	**30,366.33**
			Total	**181,676,456.13**	**171,406,437.18**	**181,611,836.78**			**4.095**	**1,775,418.82**	**721.93**	**1,776,140.75**

Patterson & Associates
901 S. MoPac
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Austin, TX 78746
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McAllen ISD
Amortization Schedule
January 1, 2023 - March 31, 2023
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 01/01/2023	Amount Amortized This Period	Amt Amortized Through 03/31/2023	Amount Unamortized Through 03/31/2023
General Fund										
10162 FFCB Call Note	GEN	07/26/2023	5,000,000.00 4.670	4,999,000.00	-1,000.00	4,999,566.04	226.42 -773.58	339.62	566.04	-433.96
10163 ING Funding CP	GEN	10/16/2023	3,000,000.00	2,892,143.33	-107,856.67	2,918,490.00	0.00 -107,856.67	26,346.67	26,346.67	-81,510.00
10158 Jersey City NJ Redev Agy	GEN	03/16/2023	2,200,000.00 2.000	2,215,202.00	15,202.00	0.00	-12,034.92 3,167.08	-3,167.08	-15,202.00	0.00
10145 Oklahoma County OK ISD	GEN	09/01/2023	1,100,000.00 0.500	1,104,246.00	4,246.00	1,100,912.46	-2,786.06 1,459.94	-547.48	-3,333.54	912.46
10147 Oklahoma City Econ Dev Trust	GEN	03/01/2023	1,000,000.00 3.204	1,042,070.00	42,070.00	0.00	-37,159.11 4,910.89	-4,910.89	-42,070.00	0.00
10148 Port Authority of NY & NJ	GEN	07/01/2023	1,505,000.00 1.086	1,522,066.70	17,066.70	1,507,493.51	-12,079.68 4,987.02	-2,493.51	-14,573.19	2,493.51
10141 Syracuse NY	GEN	05/15/2023	1,580,000.00 2.000	1,631,681.80	51,681.80	1,583,368.89	-41,422.01 10,259.79	-6,890.90	-48,312.91	3,368.89
			Subtotal	**15,406,409.83**	**21,409.83**	**12,109,830.90**	**-105,255.36** **-83,845.53**	**8,676.43**	**-96,578.93**	**-75,169.10**
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	0.00	-6,838.02 1,799.48	-1,799.48	-8,637.50	0.00
10161 Mayes County OK ISD	QSCB	06/01/2024	1,600,000.00 3.300	1,607,824.00	7,824.00	1,604,748.67	-2,057.76 5,766.24	-1,017.57	-3,075.33	4,748.67
10146 Oklahoma County OK ISD	QSCB	09/01/2023	2,000,000.00 0.500	2,007,720.00	7,720.00	2,001,659.03	-5,065.56 2,654.44	-995.41	-6,060.97	1,659.03
10149 Port Authority of NY & NJ	QSCB	07/01/2023	2,500,000.00 1.086	2,528,350.00	28,350.00	2,504,142.05	-20,065.91 8,284.09	-4,142.04	-24,207.95	4,142.05
			Subtotal	**10,398,631.50**	**48,631.50**	**9,110,549.75**	**-30,127.25** **18,504.25**	**-7,954.50**	**-38,081.75**	**10,549.75**
			Total	**25,805,041.33**	**70,041.33**	**21,220,380.65**	**-135,382.61** **-65,341.28**	**721.93**	**-134,660.68**	**-64,619.35**

MEEDER
PUBLIC FUNDS | PATTERSON GROUP

McAllen ISD
Projected Cashflow Report
Sorted by Monthly
For the Period April 1, 2023 - October 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
April 2023										
04/07/2023	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
04/28/2023	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 April 2023	**5,500,000.00**	**5,496,100.00**	**5,500,000.00**	**0.00**	**5,500,000.00**
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	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
05/18/2023	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
05/18/2023	10150	GEN	3130APQM0	Interest	FHLB Call Note	0.00	0.00	0.00	15,000.00	15,000.00
05/18/2023	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
05/22/2023	10151	GEN	3130APQU2	Interest	FHLB Call Note	0.00	0.00	0.00	6,500.00	6,500.00
05/22/2023	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
05/28/2023	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 May 2023	**15,480,000.00**	**15,531,681.80**	**15,480,000.00**	**37,300.00**	**15,517,300.00**
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
07/30/2023	10164	GEN	3130AUQC1	Interest	FHLB Note	0.00	0.00	0.00	121,875.00	121,875.00
					Total for July 2023	**10,005,000.00**	**10,049,416.70**	**10,005,000.00**	**281,452.15**	**10,286,452.15**
August 2023										
08/07/2023	10153	GEN	3130AQLR2	Interest	FHLB Call Note	0.00	0.00	0.00	12,500.00	12,500.00
08/18/2023	10143	GEN	3130ANDP2	Maturity	FHLB Call Note	2,400,000.00	2,400,000.00	2,400,000.00	3,000.00	2,403,000.00
08/18/2023	10144	QSCB	3130ANDP2	Maturity	FHLB Call Note	2,000,000.00	2,000,000.00	2,000,000.00	2,500.00	2,002,500.00
08/28/2023	10156	GEN	3130AQYM9	Interest	FHLB Step Note	0.00	0.00	0.00	56,250.00	56,250.00

Projected Trans. Date	Investment #	Fund	Security ID	Transaction Type	Issuer	Par Value	Original Cost	Principal	Interest	Total
					Total for August 2023	**4,400,000.00**	**4,400,000.00**	**4,400,000.00**	**74,250.00**	**4,474,250.00**
September 2023										
09/01/2023	10145	GEN	678720KM4	Maturity	Oklahoma County OK ISD	1,100,000.00	1,104,246.00	1,100,000.00	2,750.00	1,102,750.00
09/01/2023	10146	QSCB	678720KM4	Maturity	Oklahoma County OK ISD	2,000,000.00	2,007,720.00	2,000,000.00	5,000.00	2,005,000.00
					Total for September 2023	**3,100,000.00**	**3,111,966.00**	**3,100,000.00**	**7,750.00**	**3,107,750.00**
October 2023										
10/16/2023	10163	GEN	4497W1XG6	Maturity	ING Funding CP	3,000,000.00	2,892,143.33	3,000,000.00	0.00	3,000,000.00
					Total for October 2023	**3,000,000.00**	**2,892,143.33**	**3,000,000.00**	**0.00**	**3,000,000.00**
					GRAND TOTALS:	**41,485,000.00**	**41,481,307.83**	**41,485,000.00**	**453,552.15**	**41,938,552.15**

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
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McAllen ISD
Texas Compliance Change in Val Report
Sorted by Fund
January 1, 2023 - March 31, 2023

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	21,605.64	2,376,025.07	588,040.98	564,941.68	23,099.30	2,399,124.37
999915	2,399,124.37	4.310	/ /	35,622.59	2,376,025.07	588,040.98	564,941.68	23,099.30	2,399,124.37
	Sub Totals For: Fund: Activity Fund			21,605.64	2,376,025.07	588,040.98	564,941.68	23,099.30	2,399,124.37
				35,622.59	2,376,025.07	588,040.98	564,941.68	23,099.30	2,399,124.37
Fund: Clearing Fund									
10019	FBPC	CLEAR	07/01/2022	35,496.26	4,359,121.50	69,258,449.08	68,913,936.48	344,512.60	4,703,634.10
999914	4,703,634.10	4.310	/ /	70,456.15	4,359,121.50	69,258,449.08	68,913,936.48	344,512.60	4,703,634.10
	Sub Totals For: Fund: Clearing Fund			35,496.26	4,359,121.50	69,258,449.08	68,913,936.48	344,512.60	4,703,634.10
				70,456.15	4,359,121.50	69,258,449.08	68,913,936.48	344,512.60	4,703,634.10
Fund: Capital Projects Fun									
10101	LSCORP	CP	12/18/2019	9,250.34	789,201.55	229,250.34	624,335.15	-395,084.81	394,116.74
108906G	394,116.74	4.840	/ /	9,250.34	789,201.55	229,250.34	624,335.15	-395,084.81	394,116.74
10102	LSGOVT	CP	12/18/2019	11,005.20	1,236,971.19	171,005.20	1,020,000.00	-848,994.80	387,976.39
108906H	387,976.39	4.640	/ /	11,005.20	1,236,971.19	171,005.20	1,020,000.00	-848,994.80	387,976.39
10103	FBPC	CP	07/01/2022	4,155.65	83,401.24	6,624,972.61	2,249,665.93	4,375,306.68	4,458,707.92
999922	4,458,707.92	4.310	/ /	11,662.80	83,401.24	6,624,972.61	2,249,665.93	4,375,306.68	4,458,707.92
10108	LSCORP	CP	02/21/2020	55,207.72	4,736,213.47	55,207.72	0.00	55,207.72	4,791,421.19
108906I	4,791,421.19	4.840	/ /	55,207.72	4,736,213.47	55,207.72	0.00	55,207.72	4,791,421.19
10109	FBPC	CP	07/01/2022	1,051.53	160,852.45	155,179.23	226,092.37	-73,914.58	86,937.87
SYS10109	86,937.87	4.310	/ /	3,001.44	160,852.45	155,179.23	226,092.37	-73,914.58	86,937.87
10113	LSGOVT	CP	03/12/2020	56,049.52	5,081,129.05	56,049.52	151,000.00	-94,950.48	4,986,178.57
108906J	4,986,178.57	4.640	/ /	56,049.52	5,081,129.05	56,049.52	151,000.00	-94,950.48	4,986,178.57

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			136,719.96	12,087,768.95	7,291,664.62	4,271,093.45	3,017,569.73	15,105,338.68
				146,177.02	12,087,768.95	7,291,664.62	4,271,093.45	3,017,569.73	15,105,338.68
Fund: Debt Service Fund									
10023	FBPC	DS	07/01/2022	864.87	88,858.24	6,003,162.52	5,993,831.21	9,331.31	98,189.55
999918	98,189.55	4.310	/ /	1,286.21	88,858.24	6,003,162.52	5,993,831.21	9,331.31	98,189.55
10032	LSCORP	DS	10/22/2015	34,097.25	3,596,430.69	6,272,764.30	8,141,253.54	-1,868,489.24	1,727,941.45
108906B	1,727,941.45	4.840	/ /	34,097.25	3,596,430.69	6,272,764.30	8,141,253.54	-1,868,489.24	1,727,941.45
10089	LSGOVT	DS	08/05/2019	14,426.20	1,265,665.73	3,894,426.20	3,500,000.00	394,426.20	1,660,091.93
108906C	1,660,091.93	4.640	/ /	14,426.20	1,265,665.73	3,894,426.20	3,500,000.00	394,426.20	1,660,091.93
	Sub Totals For: Fund: Debt Service Fund			49,388.32	4,950,954.66	16,170,353.02	17,635,084.75	-1,464,731.73	3,486,222.93
				49,809.66	4,950,954.66	16,170,353.02	17,635,084.75	-1,464,731.73	3,486,222.93
Fund: General Fund									
10003	LSCORP	GEN	11/01/2014	533,409.52	43,488,922.60	76,930,116.24	85,000,850.13	-8,070,733.89	35,418,188.71
108906	35,418,188.71	4.840	/ /	533,409.52	43,488,922.60	76,930,116.24	85,000,850.13	-8,070,733.89	35,418,188.71
10022	FBPC	GEN	07/01/2022	58,718.09	7,281,310.19	97,965,747.70	101,182,567.28	-3,216,819.58	4,064,490.61
999917	4,064,490.61	4.310	/ /	118,843.17	7,281,310.19	97,965,747.70	101,182,567.28	-3,216,819.58	4,064,490.61
10034	TXPPRM	GEN	11/03/2015	125,152.79	10,797,324.76	125,152.79	0.00	125,152.79	10,922,477.55
999920	10,922,477.55	4.800	/ /	125,152.79	10,797,324.76	125,152.79	0.00	125,152.79	10,922,477.55
10090	LSGOVT	GEN	08/05/2019	391,430.46	26,281,635.58	11,991,430.46	0.00	11,991,430.46	38,273,066.04
108906D	38,273,066.04	4.640	/ /	391,430.46	26,281,635.58	11,991,430.46	0.00	11,991,430.46	38,273,066.04
10092	TXPOOL	GEN	08/05/2019	118,154.68	10,729,397.09	118,154.68	0.00	118,154.68	10,847,551.77
999921	10,847,551.77	4.610	/ /	118,154.68	10,729,397.09	118,154.68	0.00	118,154.68	10,847,551.77
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	1,590,259.79	0.00	0.00	-6,890.90	1,583,368.89
8717027U4	1,580,000.00	0.249	05/15/2023	0.00	1,571,578.60	0.00	0.00	6,841.40	1,578,420.00

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	2,330.00	980,200.00	0.00	0.00	8,990.00	989,190.00
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	3,000.00	2,333,075.62	0.00	0.00	23,062.60	2,356,138.22
10145	OKCOSD	GEN	09/23/2021	1,375.00	1,101,459.94	0.00	0.00	-547.48	1,100,912.46
678720KM4	1,100,000.00	0.238	09/01/2023	7,913.89	1,071,598.00	0.00	0.00	9,130.00	1,080,728.00
10147	OKECON	GEN	09/27/2021	5,340.00	1,004,910.89	0.00	1,000,000.00	-1,004,910.89	0.00
678553AP3	0.00	0.000	03/01/2023	16,020.00	997,600.00	0.00	1,000,000.00	-997,600.00	0.00
10148	PORTNW	GEN	10/15/2021	4,086.08	1,509,987.02	0.00	0.00	-2,493.51	1,507,493.51
73358W4V3	1,505,000.00	0.420	07/01/2023	8,172.15	1,478,271.20	0.00	0.00	12,205.55	1,490,476.75
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	0.00	2,796,835.35	0.00	0.00	42,992.76	2,839,828.11
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	0.00	1,922,808.00	0.00	0.00	21,963.58	1,944,771.58
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	12,500.00	2,397,785.10	0.00	0.00	21,491.78	2,419,276.88
10156	FHLBS	GEN	02/28/2022	19,218.75	4,500,000.00	0.00	0.00	0.00	4,500,000.00
3130AQYM9	4,500,000.00	2.083	02/28/2025	28,125.00	4,342,735.76	0.00	0.00	50,969.61	4,393,705.37
10158	JERSEY	GEN	03/16/2022	9,166.67	2,203,167.08	0.00	2,200,000.00	-2,203,167.08	0.00
476637AR4	0.00	0.000	03/16/2023	44,000.00	2,187,482.00	0.00	2,200,000.00	-2,187,482.00	0.00
10162	FFCBC	GEN	10/31/2022	58,375.00	4,999,226.42	0.00	0.00	339.62	4,999,566.04
3133ENV98	5,000,000.00	4.706	07/26/2023	55,131.94	4,996,015.85	0.00	0.00	-4,097.75	4,991,918.10
10163	INGFD	GEN	01/27/2023	0.00	0.00	2,892,143.33	0.00	2,918,490.00	2,918,490.00
4497W1XG6	3,000,000.00	5.149	10/16/2023	0.00	0.00	2,892,143.33	0.00	2,914,395.00	2,914,395.00
10164	FHLB	GEN	01/30/2023	41,302.08	0.00	5,000,000.00	0.00	5,000,000.00	5,000,000.00
3130AUQC1	5,000,000.00	4.875	01/30/2024	0.00	0.00	5,000,000.00	0.00	5,003,993.75	5,003,993.75

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: General Fund			1,393,294.12	126,387,601.36	195,022,745.20	189,383,417.41	5,648,004.22	132,035,605.58
				1,464,183.60	125,654,575.70	195,022,745.20	189,383,417.41	5,874,040.74	131,528,616.44
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	23,901.74	2,105,448.94	7,850,505.93	6,537,122.90	1,313,383.03	3,418,831.97
999919	3,418,831.97	4.310	/ /	36,311.89	2,105,448.94	7,850,505.93	6,537,122.90	1,313,383.03	3,418,831.97
10025	LSCORP	PROP	08/05/2015	39,270.32	3,368,937.94	39,270.32	0.00	39,270.32	3,408,208.26
108906A	3,408,208.26	4.840	/ /	39,270.32	3,368,937.94	39,270.32	0.00	39,270.32	3,408,208.26
10091	LSGOVT	PROP	08/05/2019	37,421.63	3,364,617.05	37,421.63	0.00	37,421.63	3,402,038.68
108906E	3,402,038.68	4.640	/ /	37,421.63	3,364,617.05	37,421.63	0.00	37,421.63	3,402,038.68
	Sub Totals For: Fund: Proprietary Fund			100,593.69	8,839,003.93	7,927,197.88	6,537,122.90	1,390,074.98	10,229,078.91
				113,003.84	8,839,003.93	7,927,197.88	6,537,122.90	1,390,074.98	10,229,078.91
Fund: QSCB - Reserve Fund									
10014	BNYC	QSCB	07/01/2022	0.00	37,457.46	2,504,825.00	0.00	2,504,825.00	2,542,282.46
882521	2,542,282.46	0.000	/ /	0.00	37,457.46	2,504,825.00	0.00	2,504,825.00	2,542,282.46
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	2,500.00	1,944,229.68	0.00	0.00	19,218.84	1,963,448.52
10146	OKCOSD	QSCB	09/23/2021	2,500.00	2,002,654.44	0.00	0.00	-995.41	2,001,659.03
678720KM4	2,000,000.00	0.238	09/01/2023	14,388.89	1,948,360.00	0.00	0.00	16,600.00	1,964,960.00
10149	PORTNW	QSCB	10/15/2021	6,787.50	2,508,284.09	0.00	0.00	-4,142.04	2,504,142.05
73358W4V3	2,500,000.00	0.420	07/01/2023	13,575.00	2,455,600.00	0.00	0.00	20,275.00	2,475,875.00

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
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	18,750.00	2,787,313.23	0.00	0.00	32,942.40	2,820,255.63
10159	JERSEY	QSCB	03/16/2022	5,208.33	1,251,799.48	0.00	1,250,000.00	-1,251,799.48	0.00
476637AR4	0.00	0.000	03/16/2023	25,000.00	1,242,887.50	0.00	1,250,000.00	-1,242,887.50	0.00
10161	MAYES	QSCB	06/29/2022	13,200.00	1,605,766.24	0.00	0.00	-1,017.57	1,604,748.67
578060EQ4	1,600,000.00	2.384	06/01/2024	0.00	1,572,160.00	0.00	0.00	976.00	1,573,136.00
Sub Totals For: Fund: QSCB - Reserve Fund				38,320.83	12,405,961.71	2,504,825.00	1,250,000.00	1,246,870.50	13,652,832.21
				74,213.89	11,988,007.87	2,504,825.00	1,250,000.00	1,351,949.74	13,339,957.61
Fund: QSCB - Debt Service									
10040	BNYC	QSCBDS	07/01/2022	0.00	0.00	1,564,100.50	1,564,100.50	0.00	0.00
882520	0.00	0.000	/ /	0.00	0.00	1,564,100.50	1,564,100.50	0.00	0.00
Sub Totals For: Fund: QSCB - Debt Service				0.00	0.00	1,564,100.50	1,564,100.50	0.00	0.00
				0.00	0.00	1,564,100.50	1,564,100.50	0.00	0.00
Report Grand Totals:				1,775,418.82	171,406,437.18	300,327,376.28	290,119,697.17	10,205,399.60	181,611,836.78
				1,953,466.75	170,255,457.68	300,327,376.28	290,119,697.17	10,536,515.36	180,791,973.04

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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



MONTHLY INVESTMENT REPORT

McAllen ISD

MARCH 31, 2023

MEEDER
PUBLIC FUNDS
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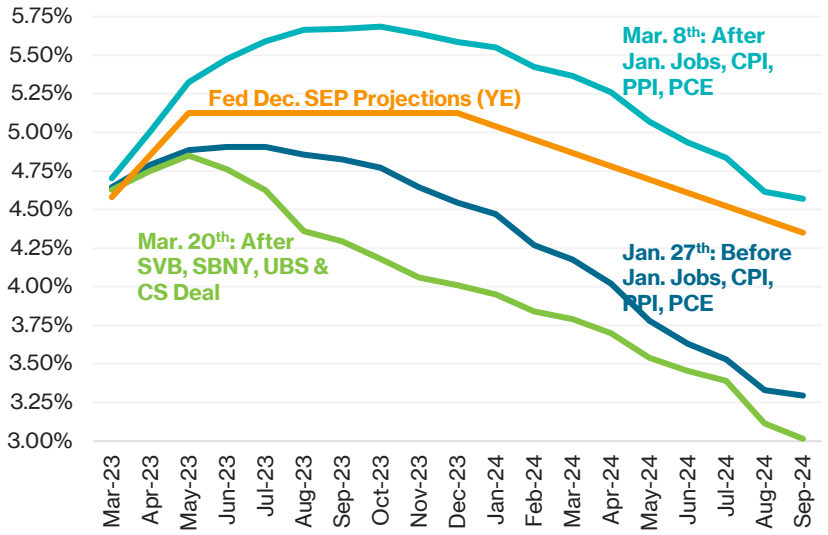
Higher still?

Solid economic data in March was overshadowed by two bank failures and the subsequent repricing of rate hike expectations. The March Federal Open Market Committee (FOMC) meeting saw the committee unanimously raise rates by 0.25%. However, the hike has been interpreted as dovish due to comments from Jerome Powell, conveying concern about tightening credit conditions.

The Employment Situation Summary surprised again to the upside, showing the US economy added 311 thousand jobs in February. The unemployment rate increased from 3.4% to 3.6% as labor force participation increased. Along with a slowdown in wage growth, the report pointed to a strong job market that is showing signs of cooling. The Consumer Price Index (CPI) Report for February showed both headline and core inflation increased during the month by 0.4%, evidencing inflation is not gone yet. The Personal Consumption Index (PCE), the Federal Reserve's preferred inflation measure, painted a slightly softer inflation picture. The PCE index increased by 0.3% during the month and brought the year-over-year rate to 5.0%, down from a 5.3% pace the prior month.

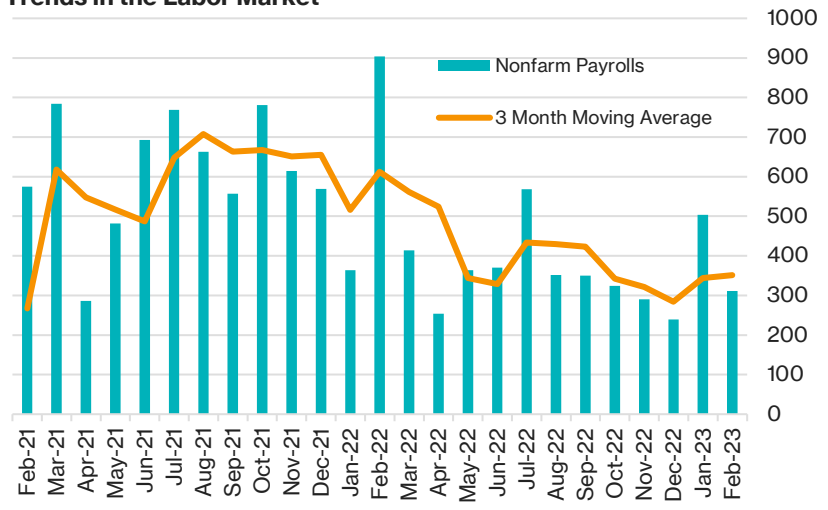
However, the failures of Silicon Valley Bank and Signature Bank, and the subsequent forced acquisition of Credit Suisse by UBS altered market expectations for monetary policy. Before the noted banking issues, on March 8th, markets were pricing in another 1% in rate hikes and a terminal rate of 5.75% in September. In response to the bank turmoil, by March 15th, markets were pricing in rate cuts as early as June. However, as regulators responded to the events, and concerns of a spillover to the real economy abated, by March 31st, markets reversed course to price in a 60% chance of another 0.25% interest rate hike in May.

FED FUNDS EXPECTATIONS



SOURCE: BLOOMBERG

Trends in the Labor Market



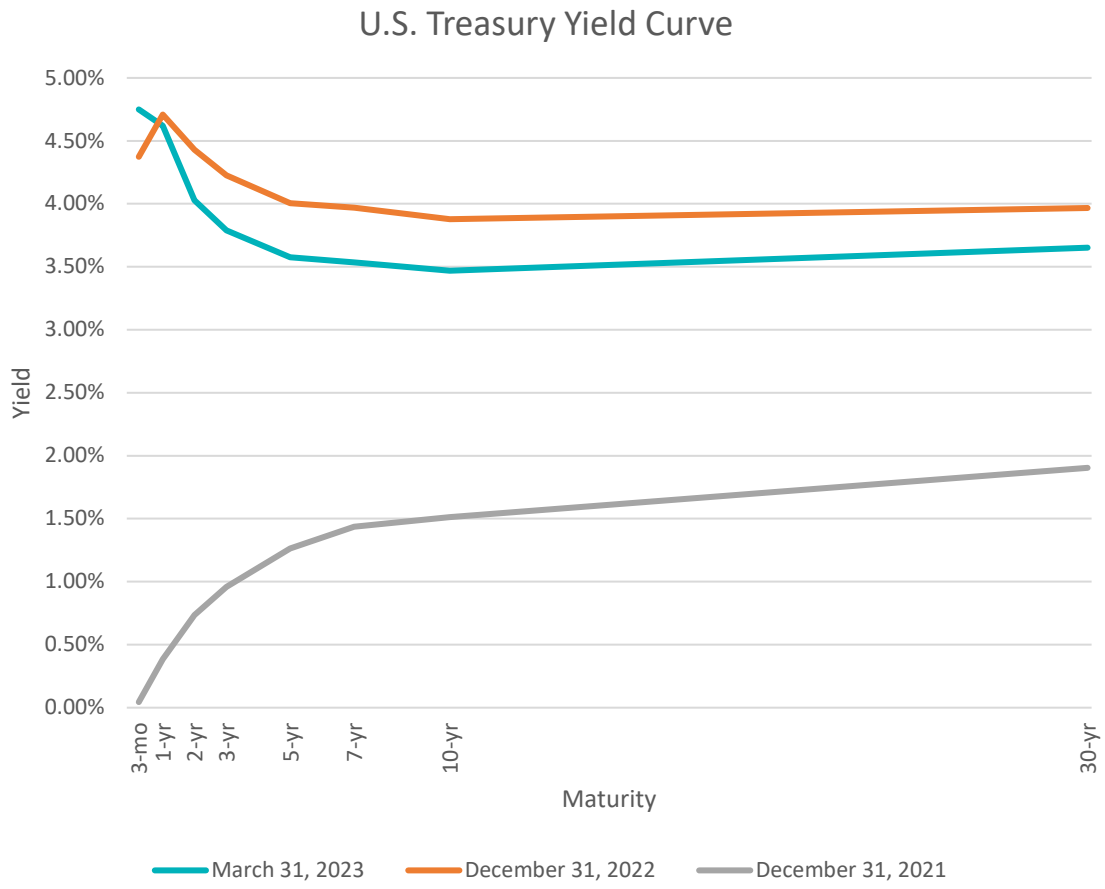
SOURCE: BLOOMBERG

Expectations Drive Rates

Treasury rates were volatile throughout the month as market participants tried to get a handle on the bank failure's implications. During the month, the yield on the 2-year Treasury moved a full 1.00% lower, and the yield on the 5-year Treasury moved 0.61% lower.

Spreads on corporate bonds, commercial paper, municipal bonds, and agency bonds moved wider during the month as a flight to safety saw investors move into treasuries. These moves created opportunities to pick up additional yield on high quality bonds, including agency debt.

Although overall yields are lower than they were a month ago, the opportunity set in fixed income is still positive. Locking in current yields and income levels will benefit portfolios when the yield curve eventually normalizes, and rates fall when this hiking cycle ends.



McAllen Independent School District
Monthly Investment Report
March 1, 2023 – March 31, 2023

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 02/28/23:		**Portfolio as of 03/31/23:**	
Beginning Book Value	$ 193,823,922	Ending Book Value	$ 181,611,837
Beginning Market Value	$ 192,762,340	Ending Market Value	$ 180,791,973
		Unrealized Gain/Loss	$ (819,864)
WAM at Beginning Period Date[1]	76 days	WAM at Ending Period Date[1]	73 days
(Decrease in market value is due to seasonal cash outflows)		Change in Market Value[2]	$ (11,970,367)

Average Yield to Maturity for period	**3.987%**
Average Yield 1-year Treasury Bill for period	**4.680%**
Average Yield 2-year Treasury Note for period	**4.300%**

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

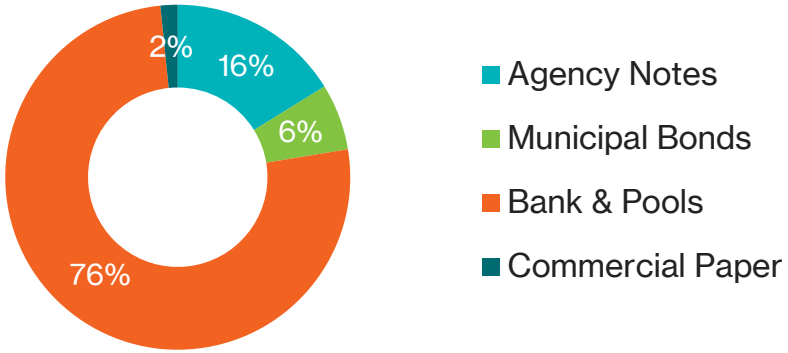
As of March 31, 2023

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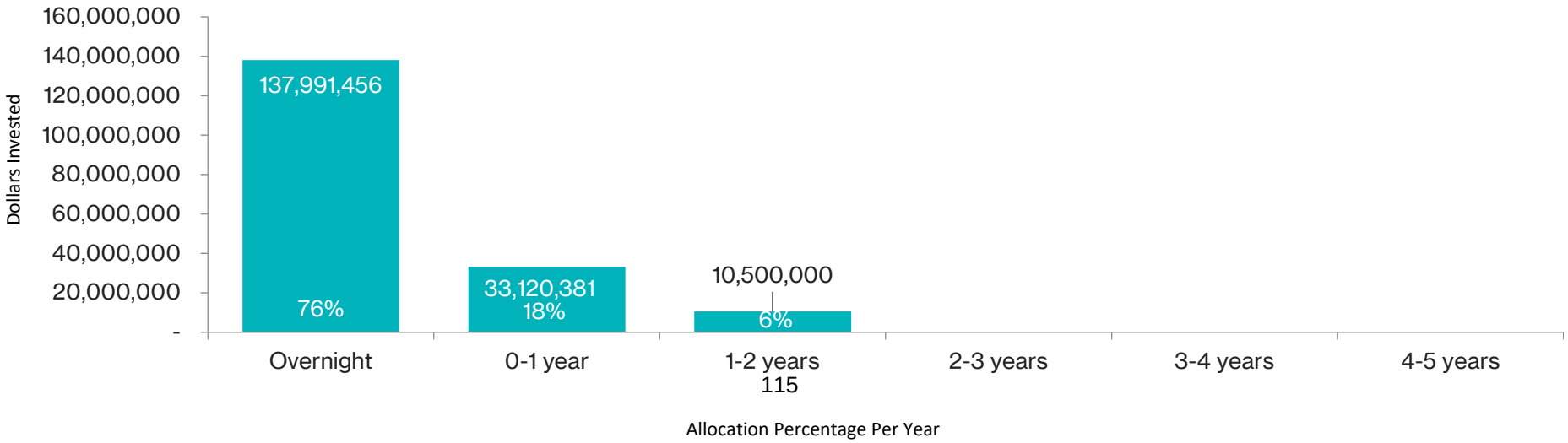
Your Portfolio Statistics

Weighted Average Maturity	0.20 years
Weighted Average Yield (All Funds)	3.99%

Your Asset Allocation



Your Maturity Distribution



MEEDER
PUBLIC FUNDS | PATTERSON GROUP

McAllen ISD
Portfolio Management
Portfolio Summary
March 31, 2023

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	2,542,282.46	2,542,282.46	2,542,282.46	1.40	1	1	0.000
Frost Bank	19,229,916.39	19,229,916.39	19,229,916.39	10.59	1	1	4.310
Commercial Paper Disc. -Amortizing	3,000,000.00	2,914,395.00	2,918,490.00	1.61	262	198	5.221
Federal Agency Coupon Securities	29,400,000.00	28,733,336.16	29,399,566.04	16.19	720	371	2.349
Municipal Bonds	11,285,000.00	11,152,785.75	11,302,324.61	6.22	675	149	0.629
Texpool/Texpool Prime	21,770,029.32	21,770,029.32	21,770,029.32	11.99	1	1	4.706
Lone Star	94,449,227.96	94,449,227.96	94,449,227.96	52.01	1	1	4.737
Investments	**181,676,456.13**	**180,791,973.04**	**181,611,836.78**	**100.00%**	**164**	**73**	**3.987**
Cash and Accrued Interest							
Accrued Interest at Purchase		4,106.67	4,106.67				
Subtotal		4,106.67	4,106.67				
Total Cash and Investments	**181,676,456.13**	**180,796,079.71**	**181,615,943.45**		**164**	**73**	**3.987**

Total Earnings	March 31 Month Ending	Fiscal Year To Date
Current Year	640,347.86	3,758,281.89

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.

Adelita Felix, Asst Sup't of Business Oper

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

McAllen ISD
Summary by Type
March 31, 2023
Grouped by Fund

Security Type	Number of Investments	Par Value	Remaining Cost	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Activity Fund						
Frost Bank	1	2,399,124.37	2,399,124.37	1.32	4.310	1
Subtotal	**1**	**2,399,124.37**	**2,399,124.37**	**1.32**	**4.310**	**1**
Fund: Clearing Fund						
Frost Bank	1	4,703,634.10	4,703,634.10	2.59	4.310	1
Subtotal	**1**	**4,703,634.10**	**4,703,634.10**	**2.59**	**4.310**	**1**
Fund: Capital Projects Fund						
Frost Bank	2	4,545,645.79	4,545,645.79	2.50	4.310	1
Lone Star	4	10,559,692.89	10,559,692.89	5.81	4.738	1
Subtotal	**6**	**15,105,338.68**	**15,105,338.68**	**8.31**	**4.609**	**1**
Fund: Debt Service Fund						
Frost Bank	1	98,189.55	98,189.55	0.05	4.310	1
Lone Star	2	3,388,033.38	3,388,033.38	1.86	4.742	1
Subtotal	**3**	**3,486,222.93**	**3,486,222.93**	**1.91**	**4.730**	**1**
Fund: General Fund						
Frost Bank	1	4,064,490.61	4,064,490.61	2.24	4.310	1
Federal Agency Coupon Securities	7	24,400,000.00	24,399,000.00	13.43	2.651	353
Commercial Paper Disc. -Amortizing	1	3,000,000.00	2,892,143.33	1.59	5.221	198
Lone Star	3	73,691,254.75	73,691,254.75	40.56	4.736	1
Municipal Bonds	4	5,185,000.00	5,257,994.50	2.89	0.338	90
Texpool/Texpool Prime	2	21,770,029.32	21,770,029.32	11.98	4.706	1
Subtotal	**18**	**132,110,774.68**	**132,074,912.51**	**72.69**	**4.170**	**74**
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
March 31, 2023
Grouped by Fund

Security Type	Number of Investments	Par Value	Remaining Cost	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Proprietary Fund						
Frost Bank	1	3,418,831.97	3,418,831.97	1.88	4.310	1
Lone Star	2	6,810,246.94	6,810,246.94	3.75	4.740	1
Subtotal	**3**	**10,229,078.91**	**10,229,078.91**	**5.63**	**4.596**	**1**
Fund: QSCB - Reserve Fund						
BNY Mellon	1	2,542,282.46	2,542,282.46	1.40	0.000	1
Federal Agency Coupon Securities	2	5,000,000.00	4,996,100.00	2.75	0.877	456
Municipal Bonds	3	6,100,000.00	6,143,894.00	3.38	0.876	200
Subtotal	**6**	**13,642,282.46**	**13,682,276.46**	**7.53**	**0.713**	**257**
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	**40**	**181,676,456.13**	**181,680,587.96**	**100.00**	**3.987**	**73**

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PUBLIC FUNDS | PATTERSON GROUP

McAllen ISD
Fund ACT - Activity Fund
Investments by Fund
March 31, 2023

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	2,399,124.37	2,399,124.37	2,399,124.37	4.310	4.250	4.310	1
		Subtotal and Average		**2,399,124.37**	**2,399,124.37**	**2,399,124.37**		**4.251**	**4.310**	**1**
		Total Investments and Average		**2,399,124.37**	**2,399,124.37**	**2,399,124.37**		**4.251**	**4.310**	**1**

Fund CLEAR - Clearing Fund
Investments by Fund
March 31, 2023

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	4,703,634.10	4,703,634.10	4,703,634.10	4.310	4.250	4.310	1
		Subtotal and Average		**4,703,634.10**	**4,703,634.10**	**4,703,634.10**		**4.251**	**4.310**	**1**
		Total Investments and Average		**4,703,634.10**	**4,703,634.10**	**4,703,634.10**		**4.251**	**4.310**	**1**

Fund CP - Capital Projects Fund
Investments by Fund
March 31, 2023

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	4,458,707.92	4,458,707.92	4,458,707.92	4.310	4.250	4.310	1
SYS10109	10109	Frost Bank Public Checking	07/01/2022	86,937.87	86,937.87	86,937.87	4.310	4.250	4.310	1
		Subtotal and Average		**4,545,645.79**	**4,545,645.79**	**4,545,645.79**		**4.251**	**4.310**	**1**
Lone Star										
108906G	10101	Lone Star Corporate Overnight	12/18/2019	394,116.74	394,116.74	394,116.74	4.840	4.773	4.840	1
108906I	10108	Lone Star Corporate Overnight	02/21/2020	4,791,421.19	4,791,421.19	4,791,421.19	4.840	4.773	4.840	1
108906H	10102	Lone Star Government ON	12/18/2019	387,976.39	387,976.39	387,976.39	4.640	4.576	4.640	1
108906J	10113	Lone Star Government ON	03/12/2020	4,986,178.57	4,986,178.57	4,986,178.57	4.640	4.576	4.640	1
		Subtotal and Average		**10,559,692.89**	**10,559,692.89**	**10,559,692.89**		**4.673**	**4.738**	**1**
		Total Investments and Average		**15,105,338.68**	**15,105,338.68**	**15,105,338.68**		**4.546**	**4.609**	**1**

Fund DS - Debt Service Fund
Investments by Fund
March 31, 2023

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	98,189.55	98,189.55	98,189.55	4.310	4.250	4.310	1
		Subtotal and Average		**98,189.55**	**98,189.55**	**98,189.55**		**4.251**	**4.310**	**1**
Lone Star										
108906B	10032	Lone Star Corporate Overnight	10/22/2015	1,727,941.45	1,727,941.45	1,727,941.45	4.840	4.773	4.840	1
108906C	10089	Lone Star Government ON	08/05/2019	1,660,091.93	1,660,091.93	1,660,091.93	4.640	4.576	4.640	1
		Subtotal and Average		**3,388,033.38**	**3,388,033.38**	**3,388,033.38**		**4.677**	**4.742**	**1**
		Total Investments and Average		**3,486,222.93**	**3,486,222.93**	**3,486,222.93**		**4.665**	**4.730**	**1**

Fund GEN - General Fund
Investments by Fund
March 31, 2023

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	4,064,490.61	4,064,490.61	4,064,490.61	4.310	4.250	4.310		1
		Subtotal and Average		**4,064,490.61**	**4,064,490.61**	**4,064,490.61**		**4.251**	**4.310**		**1**
Commercial Paper Disc. -Amortizing											
4497W1XG6	10163	ING Funding CP	01/27/2023	2,918,490.00	3,000,000.00	2,914,395.00		5.149	5.221	10/16/2023	198
		Subtotal and Average		**2,918,490.00**	**3,000,000.00**	**2,914,395.00**		**5.150**	**5.221**		**198**
Federal Agency Coupon Securities											
3133ENV98	10162	FFCB Call Note	10/31/2022	4,999,566.04	5,000,000.00	4,991,918.10	4.670	4.641	4.706	07/26/2023	116
3130AUQC1	10164	FHLB Note	01/30/2023	5,000,000.00	5,000,000.00	5,003,993.75	4.875	4.808	4.875	01/30/2024	304
3130ANDP2	10143	FHLB Call Note	08/18/2021	2,400,000.00	2,400,000.00	2,356,138.22	0.250	0.246	0.250	08/18/2023	139
3130APQM0	10150	FHLB Call Note	11/18/2021	3,000,000.00	3,000,000.00	2,839,828.11	1.000	0.986	1.000	11/18/2024	597
3130APQU2	10151	FHLB Call Note	11/22/2021	2,000,000.00	2,000,000.00	1,944,771.58	0.650	0.641	0.650	11/22/2023	235
3130AQLR2	10153	FHLB Call Note	02/07/2022	2,500,000.00	2,500,000.00	2,419,276.88	1.000	0.986	1.000	02/07/2024	312
3130AQYM9	10156	FHLB Step Note	02/28/2022	4,500,000.00	4,500,000.00	4,393,705.37	2.500	2.054	2.083	02/28/2025	699
		Subtotal and Average		**24,399,566.04**	**24,400,000.00**	**23,949,632.01**		**2.615**	**2.651**		**353**
Municipal Bonds											
678720KM4	10145	Oklahoma County OK ISD	09/23/2021	1,100,912.46	1,100,000.00	1,080,728.00	0.500	0.234	0.238	09/01/2023	153
73358W4V3	10148	Port Authority of NY & NJ	10/15/2021	1,507,493.51	1,505,000.00	1,490,476.75	1.086	0.414	0.420	07/01/2023	91
8717027U4	10141	Syracuse NY	06/30/2021	1,583,368.89	1,580,000.00	1,578,420.00	2.000	0.246	0.249	05/15/2023	44
953107AB5	10142	West Hartford CT	07/08/2021	1,000,000.00	1,000,000.00	989,190.00	0.466	0.459	0.465	07/01/2023	91
		Subtotal and Average		**5,191,774.86**	**5,185,000.00**	**5,138,814.75**		**0.334**	**0.338**		**89**
Texpool/Texpool Prime											
999921	10092	Texpool	08/05/2019	10,847,551.77	10,847,551.77	10,847,551.77	4.611	4.547	4.610		1
999920	10034	Texpool Prime	11/03/2015	10,922,477.55	10,922,477.55	10,922,477.55	4.801	4.734	4.800		1
		Subtotal and Average		**21,770,029.32**	**21,770,029.32**	**21,770,029.32**		**4.642**	**4.706**		**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	35,418,188.71	35,418,188.71	35,418,188.71	4.840	4.773	4.840		1
108906D	10090	Lone Star Government ON	08/05/2019	38,273,066.04	38,273,066.04	38,273,066.04	4.640	4.576	4.640		1

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
			Subtotal and Average	**73,691,254.75**	**73,691,254.75**	**73,691,254.75**		**4.671**	**4.736**	**1**
			Total Investments and Average	**132,035,605.58**	**132,110,774.68**	**131,528,616.44**		**4.113**	**4.170**	**73**

Fund PLAN457 - Plan 457 Fund
Investments by Fund
March 31, 2023

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
March 31, 2023

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	3,418,831.97	3,418,831.97	3,418,831.97	4.310	4.250	4.310	1
		Subtotal and Average		**3,418,831.97**	**3,418,831.97**	**3,418,831.97**		**4.251**	**4.310**	**1**
Lone Star										
108906A	10025	Lone Star Corporate Overnight	08/05/2015	3,408,208.26	3,408,208.26	3,408,208.26	4.840	4.773	4.840	1
108906E	10091	Lone Star Government ON	08/05/2019	3,402,038.68	3,402,038.68	3,402,038.68	4.640	4.576	4.640	1
		Subtotal and Average		**6,810,246.94**	**6,810,246.94**	**6,810,246.94**		**4.675**	**4.740**	**1**
		Total Investments and Average		**10,229,078.91**	**10,229,078.91**	**10,229,078.91**		**4.533**	**4.596**	**1**

Fund QSCB - QSCB - Reserve Fund
Investments by Fund
March 31, 2023

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	2,542,282.46	2,542,282.46	2,542,282.46					1
		Subtotal and Average		**2,542,282.46**	**2,542,282.46**	**2,542,282.46**		**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	1,963,448.52	0.250	0.246	0.250	08/18/2023	139
3130AQJM6	10152	FHLB Call Note	01/28/2022	3,000,000.00	3,000,000.00	2,820,255.63	1.250	1.276	1.294	01/28/2025	668
		Subtotal and Average		**5,000,000.00**	**5,000,000.00**	**4,783,704.15**		**0.865**	**0.877**		**456**
Municipal Bonds											
578060EQ4	10161	Mayes County OK ISD	06/29/2022	1,604,748.67	1,600,000.00	1,573,136.00	3.300	2.351	2.384	06/01/2024	427
678720KM4	10146	Oklahoma County OK ISD	09/23/2021	2,001,659.03	2,000,000.00	1,964,960.00	0.500	0.234	0.238	09/01/2023	153
73358W4V3	10149	Port Authority of NY & NJ	10/15/2021	2,504,142.05	2,500,000.00	2,475,875.00	1.086	0.414	0.420	07/01/2023	91
		Subtotal and Average		**6,110,549.75**	**6,100,000.00**	**6,013,971.00**		**0.864**	**0.876**		**199**
		Total Investments and Average		**13,652,832.21**	**13,642,282.46**	**13,339,957.61**		**0.703**	**0.713**		**256**

Fund QSCBDS - QSCB - Debt Service
Investments by Fund
March 31, 2023

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

McAllen ISD
Cash Reconciliation Report
For the Period March 1, 2023 - March 31, 2023

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
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Trans. Date	Investment #	Fund	Trans. Type	Security ID	Par Value	Security Description	Maturity Date	Purchases	Interest	Redemptions	Cash
03/01/2023	10145	GEN	Interest	678720KM4	1,100,000.00	OKCOSD 1.1M 0.50% Mat.	09/01/2023	0.00	8,250.00	0.00	8,250.00
03/01/2023	10146	QSCB	Interest	678720KM4	2,000,000.00	OKCOSD 2.0M 0.50% Mat.	09/01/2023	0.00	15,000.00	0.00	15,000.00
03/01/2023	10147	GEN	Interest	678553AP3	1,000,000.00	OKECON 1.0M 3.20% Mat.	03/01/2023	0.00	16,020.00	0.00	16,020.00
03/01/2023	10147	GEN	Maturity	678553AP3	1,000,000.00	OKECON 1.0M 3.20% Mat.	03/01/2023	0.00	0.00	1,000,000.00	1,000,000.00
03/16/2023	10158	GEN	Interest	476637AR4	2,200,000.00	JERSEY 2.2M 2.00% Mat.	03/16/2023	0.00	44,000.00	0.00	44,000.00
03/16/2023	10159	QSCB	Interest	476637AR4	1,250,000.00	JERSEY 1.3M 2.00% Mat.	03/16/2023	0.00	25,000.00	0.00	25,000.00
03/16/2023	10158	GEN	Maturity	476637AR4	2,200,000.00	JERSEY 2.2M 2.00% Mat.	03/16/2023	0.00	0.00	2,200,000.00	2,200,000.00
03/16/2023	10159	QSCB	Maturity	476637AR4	1,250,000.00	JERSEY 1.3M 2.00% Mat.	03/16/2023	0.00	0.00	1,250,000.00	1,250,000.00
							Subtotal	**0.00**	**108,270.00**	**4,450,000.00**	**4,558,270.00**
							Total	**0.00**	**108,270.00**	**4,450,000.00**	**4,558,270.00**

MEEDER
PUBLIC FUNDS | PATTERSON GROUP

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
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McAllen ISD
Maturity Report
Sorted by Maturity Date
Amounts due during March 1, 2023 - March 31, 2023

CUSIP	Investment #	Fund	Sec. Type	Issuer	Par Value	Maturity Date	Purchase Date	Rate at Maturity	Book Value at Maturity	Interest	Maturity Proceeds	Net Income
678553AP3	10147	GEN	MC2	OKECON	1,000,000.00	03/01/2023	09/27/2021	3.204	1,000,000.00	16,020.00	1,016,020.00	16,020.00
476637AR4	10158	GEN	MC2	JERSEY	2,200,000.00	03/16/2023	03/16/2022	2.000	2,200,000.00	44,000.00	2,244,000.00	44,000.00
476637AR4	10159	QSCB	MC2	JERSEY	1,250,000.00	03/16/2023	03/16/2022	2.000	1,250,000.00	25,000.00	1,275,000.00	25,000.00
			Total Maturities		**4,450,000.00**				**4,450,000.00**	**85,020.00**	**4,535,020.00**	**85,020.00**

MEEDER
PUBLIC FUNDS | PATTERSON GROUP

McAllen ISD
Interest Earnings
Sorted by Fund - Fund
March 1, 2023 - March 31, 2023
Yield on Beginning Book Value

Patterson & Associates
901 S. MoPac
Suite 195
Austin, TX 78746
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CUSIP	Investment #	Fund	Security Type	Ending Par Value	Beginning Book Value	Ending Book Value	Maturity Date	Current Rate	Annualized Yield	Adjusted Interest Earnings: Interest Earned	Adjusted Interest Earnings: Amortization/ Accretion	Adjusted Interest Earnings: Adjusted Interest Earnings
Fund: Activity Fund												
999915	10020	ACT	LA2	2,399,124.37	2,364,314.15	2,399,124.37		4.310	3.928	7,887.04	0.00	7,887.04
			Subtotal	**2,399,124.37**	**2,364,314.15**	**2,399,124.37**			**3.928**	**7,887.04**	**0.00**	**7,887.04**
Fund: Clearing Fund												
999914	10019	CLEAR	LA2	4,703,634.10	4,731,623.30	4,703,634.10		4.310	2.700	10,849.27	0.00	10,849.27
			Subtotal	**4,703,634.10**	**4,731,623.30**	**4,703,634.10**			**2.700**	**10,849.27**	**0.00**	**10,849.27**
Fund: Capital Projects Fund												
108906I	10108	CP	RR2	4,791,421.19	4,771,800.64	4,791,421.19		4.840	4.841	19,620.55	0.00	19,620.55
108906G	10101	CP	RR2	394,116.74	815,522.90	394,116.74		4.840	4.229	2,928.99	0.00	2,928.99
999922	10103	CP	LA2	4,458,707.92	899,827.18	4,458,707.92		4.310	4.356	3,329.05	0.00	3,329.05
SYS10109	10109	CP	LA2	86,937.87	106,995.26	86,937.87		4.310	3.461	314.49	0.00	314.49
108906J	10113	CP	RR2	4,986,178.57	5,117,472.55	4,986,178.57		4.640	4.534	19,706.02	0.00	19,706.02
108906H	10102	CP	RR2	387,976.39	1,024,922.17	387,976.39		4.640	3.509	3,054.22	0.00	3,054.22
			Subtotal	**15,105,338.68**	**12,736,540.70**	**15,105,338.68**			**4.525**	**48,953.32**	**0.00**	**48,953.32**
Fund: Debt Service Fund												
108906B	10032	DS	RR2	1,727,941.45	2,846,041.30	1,727,941.45		4.840	4.086	9,877.43	0.00	9,877.43
999918	10023	DS	LA2	98,189.55	98,628.53	98,189.55		4.310	3.851	322.59	0.00	322.59
108906C	10089	DS	RR2	1,660,091.93	156,798.49	1,660,091.93		4.640	24.731	3,293.44	0.00	3,293.44
			Subtotal	**3,486,222.93**	**3,101,468.32**	**3,486,222.93**			**5.123**	**13,493.46**	**0.00**	**13,493.46**
Fund: General Fund												
3130AUQC1	10164	GEN	FAC	5,000,000.00	5,000,000.00	5,000,000.00	01/30/2024	4.875	4.783	20,312.50	0.00	20,312.50
999921	10092	GEN	RRP	10,847,551.77	10,805,238.19	10,847,551.77		4.611	4.611	42,313.58	0.00	42,313.58
108906	10003	GEN	RR2	35,418,188.71	48,707,624.81	35,418,188.71		4.840	4.566	188,907.31	0.00	188,907.31
999917	10022	GEN	LA2	4,064,490.61	3,077,109.69	4,064,490.61		4.310	6.265	16,372.13	0.00	16,372.13
999920	10034	GEN	RRP	10,922,477.55	10,878,124.90	10,922,477.55		4.801	4.801	44,352.65	0.00	44,352.65
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	Annualized Yield	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
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
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
3133ENV98	10162	GEN	FAC	5,000,000.00	4,999,452.83	4,999,566.04	07/26/2023	4.670	4.609	19,458.33	113.21	19,571.54
108906D	10090	GEN	RR2	38,273,066.04	38,122,813.59	38,273,066.04		4.640	4.641	150,252.45	0.00	150,252.45
476637AR4	10158	GEN	MC2	0.00	2,200,633.42	0.00	03/16/2023	2.000	1.327	1,833.33	-633.42	1,199.91
8717027U4	10141	GEN	MC2	1,580,000.00	1,585,665.86	1,583,368.89	05/15/2023	2.000	0.250	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	1,101,094.96	1,100,912.46	09/01/2023	0.500	0.295	458.33	-182.50	275.83
678553AP3	10147	GEN	MC2	0.00	1,000,000.00	0.00	03/01/2023	3.204		0.00	0.00	0.00
73358W4V3	10148	GEN	MC2	1,505,000.00	1,508,324.68	1,507,493.51	07/01/2023	1.086	0.414	1,362.03	-831.17	530.86
3130AQYM9	10156	GEN	FAC	4,500,000.00	4,500,000.00	4,500,000.00	02/28/2025	2.500	2.453	9,375.00	0.00	9,375.00
4497W1XG6	10163	GEN	ACP	3,000,000.00	2,905,728.33	2,918,490.00	10/16/2023		5.171	0.00	12,761.67	12,761.67
			Subtotal	**132,110,774.68**	**147,291,811.26**	**132,035,605.58**			**4.161**	**504,185.97**	**8,930.82**	**513,116.79**
Fund: Proprietary Fund												
108906A	10025	PROP	RR2	3,408,208.26	3,394,251.88	3,408,208.26		4.840	4.841	13,956.38	0.00	13,956.38
999919	10024	PROP	LA2	3,418,831.97	3,199,985.73	3,418,831.97		4.310	3.337	9,068.28	0.00	9,068.28
108906E	10091	PROP	RR2	3,402,038.68	3,388,682.95	3,402,038.68		4.640	4.641	13,355.73	0.00	13,355.73
			Subtotal	**10,229,078.91**	**9,982,920.56**	**10,229,078.91**			**4.291**	**36,380.39**	**0.00**	**36,380.39**
Fund: QSCB - Reserve Fund												
882521	10014	QSCB	LA1	2,542,282.46	72,282.46	2,542,282.46				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	0.00	1,250,359.90	0.00	03/16/2023	2.000	1.327	1,041.67	-359.90	681.77
678720KM4	10146	QSCB	MC2	2,000,000.00	2,001,990.83	2,001,659.03	09/01/2023	0.500	0.295	833.33	-331.80	501.53
73358W4V3	10149	QSCB	MC2	2,500,000.00	2,505,522.73	2,504,142.05	07/01/2023	1.086	0.414	2,262.50	-1,380.68	881.82
578060EQ4	10161	QSCB	MC2	1,600,000.00	1,605,087.86	1,604,748.67	06/01/2024	3.300	2.979	4,400.00	-339.19	4,060.81
			Subtotal	**13,642,282.46**	**12,435,243.78**	**13,652,832.21**			**0.965**	**12,079.16**	**-2,411.57**	**9,667.59**
Fund: QSCB - Debt Service												
882520	10040	QSCBDS	LA1	0.00	1,180,000.00	0.00				0.00	0.00	0.00
			Subtotal	**0.00**	**1,180,000.00**	**0.00**				**0.00**	**0.00**	**0.00**
			Total	**181,676,456.13**	**193,823,922.07**	**181,611,836.78**			**3.946**	**633,828.61**	**6,519.25**	**640,347.86**

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McAllen ISD
Amortization Schedule
March 1, 2023 - March 31, 2023
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 03/01/2023	Amount Amortized This Period	Amt Amortized Through 03/31/2023	Amount Unamortized Through 03/31/2023
General Fund										
10162 FFCB Call Note	GEN	07/26/2023	5,000,000.00 4.670	4,999,000.00	-1,000.00	4,999,566.04	452.83 -547.17	113.21	566.04	-433.96
10163 ING Funding CP	GEN	10/16/2023	3,000,000.00	2,892,143.33	-107,856.67	2,918,490.00	13,585.00 -94,271.67	12,761.67	26,346.67	-81,510.00
10158 Jersey City NJ Redev Agy	GEN	03/16/2023	2,200,000.00 2.000	2,215,202.00	15,202.00	0.00	-14,568.58 633.42	-633.42	-15,202.00	0.00
10145 Oklahoma County OK ISD	GEN	09/01/2023	1,100,000.00 0.500	1,104,246.00	4,246.00	1,100,912.46	-3,151.04 1,094.96	-182.50	-3,333.54	912.46
10148 Port Authority of NY & NJ	GEN	07/01/2023	1,505,000.00 1.086	1,522,066.70	17,066.70	1,507,493.51	-13,742.02 3,324.68	-831.17	-14,573.19	2,493.51
10141 Syracuse NY	GEN	05/15/2023	1,580,000.00 2.000	1,631,681.80	51,681.80	1,583,368.89	-46,015.94 5,665.86	-2,296.97	-48,312.91	3,368.89
			Subtotal	**14,364,339.83**	**-20,660.17**	**12,109,830.90**	**-63,439.75** **-84,099.92**	**8,930.82**	**-54,508.93**	**-75,169.10**
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	0.00	-8,277.60 359.90	-359.90	-8,637.50	0.00
10161 Mayes County OK ISD	QSCB	06/01/2024	1,600,000.00 3.300	1,607,824.00	7,824.00	1,604,748.67	-2,736.14 5,087.86	-339.19	-3,075.33	4,748.67
10146 Oklahoma County OK ISD	QSCB	09/01/2023	2,000,000.00 0.500	2,007,720.00	7,720.00	2,001,659.03	-5,729.17 1,990.83	-331.80	-6,060.97	1,659.03
10149 Port Authority of NY & NJ	QSCB	07/01/2023	2,500,000.00 1.086	2,528,350.00	28,350.00	2,504,142.05	-22,827.27 5,522.73	-1,380.68	-24,207.95	4,142.05
			Subtotal	**10,398,631.50**	**48,631.50**	**9,110,549.75**	**-35,670.18** **12,961.32**	**-2,411.57**	**-38,081.75**	**10,549.75**
			Total	**24,762,971.33**	**27,971.33**	**21,220,380.65**	**-99,109.93** **-71,138.60**	**6,519.25**	**-92,590.68**	**-64,619.35**

MEEDER
PUBLIC FUNDS | PATTERSON GROUP

McAllen ISD
Projected Cashflow Report
Sorted by Monthly
For the Period April 1, 2023 - October 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
April 2023										
04/07/2023	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
04/28/2023	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 April 2023	**5,500,000.00**	**5,496,100.00**	**5,500,000.00**	**0.00**	**5,500,000.00**
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	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
05/18/2023	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
05/18/2023	10150	GEN	3130APQM0	Interest	FHLB Call Note	0.00	0.00	0.00	15,000.00	15,000.00
05/18/2023	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
05/22/2023	10151	GEN	3130APQU2	Interest	FHLB Call Note	0.00	0.00	0.00	6,500.00	6,500.00
05/22/2023	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
05/28/2023	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 May 2023	**15,480,000.00**	**15,531,681.80**	**15,480,000.00**	**37,300.00**	**15,517,300.00**
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
07/30/2023	10164	GEN	3130AUQC1	Interest	FHLB Note	0.00	0.00	0.00	121,875.00	121,875.00
					Total for July 2023	**10,005,000.00**	**10,049,416.70**	**10,005,000.00**	**281,452.15**	**10,286,452.15**
August 2023										
08/07/2023	10153	GEN	3130AQLR2	Interest	FHLB Call Note	0.00	0.00	0.00	12,500.00	12,500.00
08/18/2023	10143	GEN	3130ANDP2	Maturity	FHLB Call Note	2,400,000.00	2,400,000.00	2,400,000.00	3,000.00	2,403,000.00
08/18/2023	10144	QSCB	3130ANDP2	Maturity	FHLB Call Note	2,000,000.00	2,000,000.00	2,000,000.00	2,500.00	2,002,500.00
08/28/2023	10156	GEN	3130AQYM9	Interest	FHLB Step Note	0.00	0.00	0.00	56,250.00	56,250.00

Projected Trans. Date	Investment #	Fund	Security ID	Transaction Type	Issuer	Par Value	Original Cost	Principal	Interest	Total
					Total for August 2023	**4,400,000.00**	**4,400,000.00**	**4,400,000.00**	**74,250.00**	**4,474,250.00**
September 2023										
09/01/2023	10145	GEN	678720KM4	Maturity	Oklahoma County OK ISD	1,100,000.00	1,104,246.00	1,100,000.00	2,750.00	1,102,750.00
09/01/2023	10146	QSCB	678720KM4	Maturity	Oklahoma County OK ISD	2,000,000.00	2,007,720.00	2,000,000.00	5,000.00	2,005,000.00
					Total for September 2023	**3,100,000.00**	**3,111,966.00**	**3,100,000.00**	**7,750.00**	**3,107,750.00**
October 2023										
10/16/2023	10163	GEN	4497W1XG6	Maturity	ING Funding CP	3,000,000.00	2,892,143.33	3,000,000.00	0.00	3,000,000.00
					Total for October 2023	**3,000,000.00**	**2,892,143.33**	**3,000,000.00**	**0.00**	**3,000,000.00**
					GRAND TOTALS:	**41,485,000.00**	**41,481,307.83**	**41,485,000.00**	**453,552.15**	**41,938,552.15**

Disclosures

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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: April 24, 2023

SUBJECT: Possible action on Request for Proposal No. 2021-1005 Professional Development, Site Licenses, Supplemental Materials, and Other Related Products and Services (Round 23)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The District solicited proposals for professional development, site licenses, supplemental materials, and other related products and services. This Request for Proposal ("RFP") is an extended response-period, multiple award contract, solicited in accordance with FASRG, section 5.16 titled "Multiple/Catalog/Discount-from-List Contract Awards". This allows vendors to submit responses throughout the year through the contract term. Vendors are awarded on an incremental basis, upon the Board of Trustees ("Board") approval. The Board, with some exceptions, previously awarded this RFP on a monthly basis. Two hundred eighty four (284) vendors were previously awarded through this RFP.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Seven hundred one (701) vendors were invited to submit responses, and fifteen (15) vendors responded, including one (1) previously awarded and eleven (11) no bid. The evaluation committee, comprised of Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services; Alexandra Molina, Executive Director for Child Nutrition and Purchasing; Elizabeth Cabrera, Purchasing Coordinator; and Gracie Garza, Senior Buyer, evaluated the proposals. Administration is recommending that the three (3) vendors listed on the attached list, be awarded, for a total of two hundred eighty seven (287) vendors.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

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

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2021-1005 Professional Development, Site Licenses, Supplemental Materials, and Other Related Products and Services (Round 23) and award vendors on the attached list, for a coterminous term through June 30, 2024.

SUBMITTED BY: Alexandra Molina (Apr 18, 2023 11:10 CDT)

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Alexandra Molina
Office: 956-657-4480
Email: alexandra.molina@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

Request for Proposal No. 2021-1005 Professional Development, Site Licenses, Supplemental Materials, and Other Related Products and Services (Round 23)

No.	Responding Supplier	City	State	Recommendation
1	engage2learn (Engage! Learning LLC)	Austin	TX	Qualified
2	Smart Start Curriculum LLC	Laredo	TX	Qualified
3	William H. Sadlier, Inc	New York	NY	Qualified

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Possible Action on Request for Proposal No. 2022-1038 Special Education Equipment, Supplies, Services, and Related Products (Round 11)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited proposals for special education equipment, supplies, services, and related products. This Request for Proposal ("RFP") is an extended response period, multiple award contract, solicited in accordance with FASRG, section 5.16 titled "Multiple/Catalog/Discount-from-List Contract Awards". This allows vendors to submit responses throughout the year through the contract term. Vendors are awarded on an incremental basis, upon Board approval. The Board, with some exceptions, historically awarded this RFP on a monthly basis. Thirty-eight (38) vendors were previously awarded through this RFP.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Four hundred forty (440) vendors were invited to submit proposals, and ten (10) vendors responded, including nine (9) no bid responses. The evaluation committee, comprised of Maribelle Elizondo, Executive Director of Special Education; Liza Lara, Director of Regional Day School Program for the Deaf; Alexandra Molina, Executive Director of Child Nutrition and Purchasing; Elizabeth Cabrera, Coordinator for Purchasing Services; and Sandra Pulido, Buyer evaluated the proposals. Administration is recommending the one (1) vendor listed on the attached list, be awarded on this RFP for a total of thirty-nine (39) vendors.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

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

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2022-1038 Special Education Equipment, Supplies, Services, and Related Products (Round 11), and award vendors on the attached list, for a coterminous term through June 30, 2025.

SUBMITTED BY: Maribelle Elizondo (Apr 19, 2023 13:25 CDT)

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Maribelle Elizondo
Office: 956-632-3285
email: maribelle.elizondo@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

RFP 2022-1038 Special Education Equipment, Supplies, Services, and Related Products (Round 11)

No.	Responding Supplier	City	State	Recommendation
1	Math Teachers Press, Inc	Minneapolis	MN	Qualified

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Possible Action on Training Agreement No. 2024-005 Supported Transition and Road to Independence: Development and Employment for Students ("STRIDES") Training and Educational Services with South Texas College.

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

South Texas College will provide STRIDES participants training and educational services for the following courses: Fundamentals of Cake Decorating, Advanced Cake Decorating, Silk Floral Design, Advanced Silk Floral Design, Introduction to Photography, Intermediate Photography, Basic Sewing, Intermediate Sewing, Introduction to Agriculture, Intermediate Agriculture, Dining Room Service I, Dining Room Service II, ServSafe Manager I, ServSafe Manager II, Cooking Healthy I, Cooking Healthy II, Beginning Computer, Intermediate Computer, Child Care I, and Child Care II.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The courses will run from September 2023 through May 2024. Upon successful completion of each course, students will receive CEU's (Continuing Education Units) and a Certificate of Completion.

LEGAL REVIEW:

The Agreement has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

Funds for these services have been budgeted through local, state, and federal funds. The total program participation cost will be $76,944.00

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Training Agreement No. 2024-005 Supported Transition and Road to Independence: Development and Employment for Students ("STRIDES") Training and Educational Services with South Texas College for a term of nine (9) months, from September 2023 through May 2024.

SUBMITTED BY: Maribelle Elizondo (Apr 19, 2023 16:34 CDT)

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Maribelle Elizondo
Office: 956-632-3285
eMail: maribelle.elizondo@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

CONTRACT TRAINING AGREEMENT
South Texas College

This **Contract Training Agreement** is made and entered into as of the 27th day of March, 2023 and is by and between **SOUTH TEXAS COLLEGE** (**STC**), an institution of higher education authorized by the laws and Constitution of the State of Texas, and **MCALLEN INDEPENDENT SCHOOL DISTRICT (ISD)**, a Texas public school district.

WHEREAS, the ISD requires training and educational services, as more fully described in **Attachment "A,"** and STC has the expertise, resources, personnel, and experience required to provide such services;

WHEREAS, this Agreement is of mutual interest and benefit to STC and the ISD;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the ISD and STC (sometimes collectively referred to herein as the "Parties") agree as follows:

1. Services and Fees

a. During the term of this Agreement, STC shall provide training services to the ISD as set forth in **Attachment "A"** (the "Services") which is incorporated herein by reference. The Services may be modified with the advance written consent of the Parties. If there is any conflict between the terms and conditions of the Services described in **Attachment "A"** and those contained in the body of this Agreement, the terms of the Agreement shall control.

b. The ISD shall pay STC for the Services in accordance with the terms and conditions set forth in **Attachment "A."**

2. STC's Responsibilities and Representations

a. STC represents that all persons connected with STC who are directly in charge of providing the Services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

b. STC represents that to the best of its actual knowledge, as a result of providing the Services, there are no conflicts of interest between the ISD and any other person or entity for whom STC is providing or has provided training services. If, during the course of this Agreement, STC becomes aware of facts that constitute or may reasonably lead to a conflict of interest, STC shall promptly notify the ISD.

c. Except as may be expressly set forth in **Attachment "A**," STC represents that its performance does not depend on the acquisition of rights from any third party and that the conveyance of any deliverables described as part of the Services will not knowingly infringe on the intellectual property rights of any third party.

d. STC shall: i) designate an administrator to oversee and administer STC's performance of the Services; ii) provide one or more qualified trainers, training materials and equipment

appropriate for the Services; iii) assume full responsibility for complying with the requirements of the U.S. Copyright Act with respect to any training materials provided by STC in connection with providing the Services; iv) ensure that any facilities that will be used for the Services will be open and ready for use on the date(s) and time(s) specified for the Services, if the Services will take place at STC; and v) provide certificates of completion for the participants who complete the training requirements as outlined in the Services.

3. ISD's Responsibilities and Representations

The ISD shall: i) designate a contact person to communicate with STC about any specific requirements of the training program for which the Services are being provided and in connection with general planning and coordination; ii) refrain from copying, reproducing, creating derivative works, publishing, or further distributing any training materials provided by STC; iii) make all required payments to STC in accordance with the Texas Prompt Payment Act (Texas Govt. Code Chapter 2251); and, iv) pay 25% of the total fee to STC if the ISD cancels the Services within 30 days of the first day on which the Services were to be provided, unless the cancellation is permitted by the terms of this Agreement.

4. Default and Termination

a. If a party breaches this Agreement, the other party may, so long as such party has not caused the breach, terminate this Agreement upon ten (10) days written notice describing the details of the breach. The termination shall, however, not be effective if the breach is fully cured prior to the end of the ten-day period.

b. STC or ISD may for any reason, or no reason, terminate this Agreement at any time upon giving thirty (30) days advance written notice to the other party. If either party terminates this Agreement for convenience, it shall have no financial liability to the other party of any kind other than refunding any sums paid for any services that were not performed.

c. The ISD acknowledges and agrees that by providing the Services, STC is not making any representation or warranty concerning the ISD's future performance or success and that STC is not responsible in any way for the operation of the ISD's business.

d. If STC breaches its obligations under this Agreement, STC may correct or replace any of the Services or repay the portion of the compensation paid by the ISD corresponding to the non-conforming Services. STC shall not be liable to the ISD for any other damages, either special, direct, indirect, incidental, consequential or otherwise, and in no event shall the liability of STC exceed the total amount paid by the ISD under this Agreement.

e. Neither party will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character.

5. Miscellaneous

a. The relationship created by this Agreement shall be that of independent contractor. Nothing in this Agreement shall be read to make the employees or agents of either party an employee or an agent of the other.

b. This Agreement constitutes all representations, oral and written, of the work to be performed, replaces all previous agreements, and constitutes the entire agreement between the Parties; this Agreement may be modified only in writing, signed by each party, after reasonable notice.

c. {Intentionally Omitted}

d. As a public community college of the state of Texas, STC is immune from actions in tort, except those arising from the use and operation of a motor vehicle. ISD, a public school district, is immune from actions in tort, except those arising from the use and operation of a motor vehicle. Nothing in this Agreement shall be interpreted to constitute a waiver of this immunity by either party

e. This Agreement shall inure to the benefit of and be binding upon the respective heirs, executors, successors, representatives, and assigns of the Parties, as the case may be.

f. STC, as part of an institution of higher education and recipient of federal and state funding, is subject to federal and state civil rights laws and regulations prohibiting it from discriminating on the basis of race, ethnicity, gender, creed, age, disability or Veterans status in any program or activity of STC. This Agreement, and the Services offered pursuant to this Agreement, are subject to the provisions of those laws and regulations, and the ISD agrees that it will cooperate in any civil rights investigation conducted by STC or any external agency regarding the Services or STC's performance of this Agreement.

g. This Agreement shall be governed by and construed in accordance with the laws of the state of Texas. Each party submits to the exclusive jurisdiction of the courts located in Hidalgo County, Texas for the purpose of any action or proceeding brought by either of them in connection with this Agreement or any alleged breach thereof.

h. Neither party shall assign its rights or obligations hereunder without the prior written consent of the other party. STC shall not subcontract, either directly or indirectly, any of its responsibilities hereunder without the prior written consent of the ISD.

IN WITNESS WHEREOF, South Texas College and McAllen ISD have executed and delivered this Agreement as of the date first above written.

(STC) SOUTH TEXAS COLLEGE:

By: _____
Dr. Ricardo Solis, President

By: _____
Dr. Anahid Petrosian, Vice President

By: _____
Olivia de la Rosa, Dean

MCALLEN INDEPENDENT SCHOOL DISTRICT:

By: _____
Tony Forina, Board of Trustees, President

Approved as to form:
Walsh Gallegos Treviño Kyle & Robinson P.C.

By: Leandra C. Ortiz
Leandra C. Ortiz (Apr 18, 2023 10:54 CDT)
Leandra C. Ortiz

Type of Funding: *Federal **X;** CFDA __; State __; Local __; Private __*

Upon the execution of this Agreement, please return both copies in the envelope provided for your convenience. When all signatures are obtained, one fully executed original will be returned for your records. Please mail to:

South Texas College
Department of Continuing Education
Attn. Olivia de la Rosa, Dean
2621 W. Pecan Blvd.
McAllen, TX 78501
Phone (956) 872-3856
Fax (956) 872-6753

ATTACHMENT A
SERVICES AND COSTS

South Texas College will provide Fundamentals of Cake Decorating, Advanced Cake Decorating Silk Floral Design, Advanced Silk Floral Design, Intro to Photography, Intermediate Photography Basic Sewing, Intermediate Sewing, Introduction Agriculture, Intermediate Agriculture, Dining Room Service I, Dining Room Service II, ServSafe Manager I, ServSafe Manager II Cooking Healthy I, Cooking Healthy II, Beginning Computer, Intermediate Computer, Child Care I and Child Care II training to McAllen ISD S.T.R.I.D.E.S. participants. Upon successful completion of each course, students will receive CEU's (Continuing Education Units) and a Certificate of Completion.

Program Title: McAllen ISD, S.T.R.I.D.E.S. Programs

Total No. of Hours: Fundamentals of Cake Decorating, Advanced Cake Decorating Silk Floral Design, Advanced Silk Floral Design
Intro to Photography, Intermediate Photography Basic Sewing, Intermediate Sewing, Introduction Agriculture, Intermediate Agriculture, Dining Room Service I, Dining Room Service II, ServSafe Manager I, ServSafe Manager II, Cooking Healthy I, Cooking Healthy II, Beginning Computer, Intermediate Computer, Child Care I and Child Care II for 40 hours each class.

Administrator Responsible: Jose Raul Ruiz, Program Developer/Coordinator

MISD Contact: Maribelle Elizondo, Special Education Director

MISD Billing: 1619 Galveston Avenue, McAllen, TX 78501

Dates: September 2023 through May 2024

Time: TBD

Location: McAllen Independent School District

Program	Number of Sessions	Min # of Students	Tuition	Supplies	Total per Student	Total per Session
Fundamentals of Cake Decorating	1	12	$280.00	$110.00	$390.00	$4,680.00
Advanced Cake Decorating	1	12	$280.00	$110.00	$390.00	$4,680.00
Silk Floral Design I	1	12	$280.00	$170.00	$450.00	$5,400.00
Advanced Silk Floral Design	1	12	$280.00	$170.00	$450.00	$5,400.00
Intro to Photography	1	12	$280.00	-	$280.00	$3,360.00
Intermediate Photography	1	12	$280.00	-	$280.00	$3,360.00
Basic Sewing	1	12	$280.00	$90.00	$370.00	$4,440.00
Intermediate Sewing	1	12	$280.00	$90.00	$370.00	$4,440.00
Introduction Agriculture *	1	12	$280.00	-	$280.00	$3,360.00

Program	Number of Sessions	Min # of Students	Tuition	Supplies	Total per Student	Total per Session
Intermediate Agriculture *	1	12	$280.00	-	$280.00	$3,360.00
Dining Room Service I	1	12	$280.00	-	$280.00	$3,360.00
Dining Room Service II	1	12	$280.00	-	$280.00	$3,360.00
Serv Safe Manager I	1	12	$280.00	$36.00	$316.00	$3,792.00
Serv Safe Manager II	1	12	$280.00	$36.00	$316.00	$3,792.00
Basic Cooking Healthy *	1	12	$280.00	-	$280.00	$3,360.00
Intermediate Cooking Healthy *	1	12	$280.00	-	$280.00	$3,360.00
Beginning Computer	1	12	$280.00	-	$280.00	$3,360.00
Intermediate Computer	1	12	$280.00	-	$280.00	$3,360.00
Child Care Training I	1	12	$280.00	-	$280.00	$3,360.00
Child Care Training II	1	12	$280.00	-	$280.00	$3,360.00
				GRAND TOTAL	**$76,944.00**	

The minimum cost per session per program shall remain as shown in the *Total per Session* column as the "Recovery of Cost" in order for STC to complete training for all remaining students. Additional students will be charged at the rate listed in the *Total per Student* column for each program.

*** McAllen ISD will provide Supplies for the Cooking Healthy and Agriculture classes.**

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Possible Action on Request for Proposal No. 2023-1029 Districtwide Vending Machine Services

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On January 18, 2023, the McAllen Independent School District ("District") solicited proposals for vending machine services.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
Forty-three (43) vendors were invited to submit responses, and two (2) vendors responded, including one (1) no bid. On February 20, 2023, the evaluation committee comprised of Alejandra Gonzalez, Assistant Superintendent for District Operations; Alexandra Molina, Executive Director for Child Nutrition & Purchasing; Elizabeth Cabrera, Coordinator for Purchasing Services; and Krystal Mercado, Senior Buyer, met to evaluate the proposals. Administration is recommending that the Board of Trustees award Contract No. 2023-175 to STX Snacktime Vending, LLC, the sole respondent, for a term of three (3) years.

LEGAL REVIEW:

The agreement has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

STX Snacktime Vending, LLC is offering a 15% commission on full service vending sales for a term of three (3) years.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposals No. 2023-1029 Districtwide Vending Machine Services and award Contract 2023-175 to STX Snacktime Vending, LLC, for a term of three (3) years.

SUBMITTED BY: Alejandra Gonzalez (Apr 20, 2023 15:17 CDT) **SUPERVISOR:**

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

Evaluation Matrix

2023-1029 - Districtwide Vending Machine Services

No.	Criteria	Max. Pts. 100	STX Snacktime Vending LLC
	Total Points	**100**	**69**
	Ranking		
1	**Price (Revenue to District)**	**70**	**50**
	Commission (LI#1.1-1.3)	50	50
	Scholarships (LI#3.6-3.8)	20	0
2	**Reputation of the vendor and of the vendor's goods or services;**	**9**	**9**
	References (LI #4.1-4.15)	9	9
3	**The extent to which the goods or services meet District's needs**	**15**	**5**
	Additional Payment/Compensation Plan - Upfront Payment (LI #3.2-3.4)	5	0
	Additional Payment/Compensation Plan - Product Donation (LI #3.10-3.12)	5	5
	Additional Payment/Compensation Plan - Fundraising (LI #3.14-3.16)	5	0
4	**The quality of the vendor's goods or services;**	**3**	**3**
	Current School District Services (LI #5.1-5.3)	3	3
5	**Past Relationship with District**	**1**	**1**
	Past experience = 1 pt; No experience/Negative experience = 0 (LI #6.1)	1	1
6	**HUB**	**1**	**0**
	Yes = 1; No = 0 (Attribute #33)	1	0
			I am neither
7	**Total long-term cost to the district to acquire the vendor's goods or services**	**0**	**0**
	N/A	0	0
8	**Vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state**	**1**	**1**
	Texas Vendor or Employs 500+ in Texas = 1; Out of State Vendor = 0 (Attribute #12)	1	1
			Principal place of business in TX
9	**Any other relevant factor specifically listed in the request for bids or proposals.**	**0**	**0**

VENDING SERVICES AGREEMENT

Agreement, dated as of_____ between STX Snacktime Vending Company LLC ("Snacktime") and McAllen ISD ("Client").

WHEREAS, Snacktime desires to provide facilities owned and/or operated by Client with refreshment vending services.

WHEREAS, Client desires to engage the services of the exclusive provider of said vending machine services at designated Locations.

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual promises and agreements herein set forth, Snacktime and Client agree as follows:

Snacktime shall install, maintain and service all vending and market equipment ("Machines") at designated Client Locations. At no time shall the Machines be deemed the possession of Client; they are, and will remain, under the control of Snacktime. Furthermore, Client shall have the right to approve/disapprove of the specific placement of Machines at Locations in Client sole discretion. During the term of this Agreement, Snacktime shall pay Client Facility Rental Income (FRI) as follows:

During the term of this Agreement, Snacktime will pay a commission to McAllen ISD equal to 15 percent of all gross revenues (less applicable State imposed sales tax and deposits) collected from the sale of beverages/snacks vended from the Machines at McAllen ISD designated locations.

1. The initial term of this agreement shall be thirty-six (36) months commencing as of the date written above.
2. If Snacktime undertakes to deliver a required vending service at designated Client Locations, i.e., beverages., Client shall not permit competing vending machine service vendors to operate at said designated Locations.
3. Client shall furnish all necessary electrical connections, suitable space, etc., for the operation of the Machines. Client shall allow Snacktime and its contracted personnel access to Client Locations during normal business hours to install, fill, and service the Machines at said Locations provided that each individual complies with all safety and security requirements upon entry of district buildings and campuses.
4. All Terms and Conditions and Scope of Work attached hereto as Exhibit A and included within the District's Request for Proposal are incorporated herein by reference and shall be adhered to at all times by Snacktime.
5. Snacktime shall deliver the required vending service in accordance with the Snack Product Lists attached as Exhibits B, C and D.

6. Client may elect to give Snacktime detailed notice of non-performance hereunder. Upon the receipt of such written notice, Snacktime shall have at least sixty (60) days to remedy or cure the facts giving rise to such alleged non-performance hereunder. If Snacktime has not affected such a remedy or cure within the prescribed time period, Client may terminate this Agreement. Said termination shall be effective thirty (30) days after Snacktime's receipt of Client said written termination election.
7. If any term or portion of this Agreement shall be deemed invalid or unenforceable, the remainder of this Agreement shall not be affected. No waiver by Snacktime of any breach by Client hereof shall be construed as a waiver of any other breach. This contract is binding upon the heirs, successors and assigns of both parties. This contract shall be construed under the laws of the State of Texas, with venue in Hidalgo County, Texas.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first written above.

Client: McAllen ISD	**STX Snacktime Vending Co LLC**
By:_____	By:_____
Tony Forina, Board President	Edgar A Vargas
Authorized Signatory	Authorized Signatory

Approved as to form:
Walsh Gallegos Treviño Kyle & Robinson P.C.
by: Leandra C. Ortiz
Leandra C. Ortiz (Apr 19, 2023 09:17 CDT)
Leandra C. Ortiz

2023-1029 Addendum 1

Districtwide Vending Machine Services

Issue Date: 1/18/2023
Questions Deadline: 2/10/2023 10:00 AM (CT)
Response Deadline: 2/15/2023 10:00 AM (CT)

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

Event Information

Number:	2023-1029 Addendum 1
Title:	Districtwide Vending Machine Services
Type:	Request for Proposal
Issue Date:	1/18/2023
Question Deadline:	2/10/2023 10:00 AM (CT)
Response Deadline:	2/15/2023 10:00 AM (CT)
Notes:	c llen In e en ent Sch l istrict (the " istrict") in ites ur su ittal n the a e 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. n uesti ns re ar in this s licitati n ust e su itte thr u h the " uesti ns" ti n located on the Ionwave website, no later than the date and time specified on the solicitation. Questions/clarifications regarding this solicitation will not be answered by phone nor email.

Ship To Information

Contact: Alejandra Gonzalez, Assistant Superintendent
Address: District Operations
Administration Office
2000 N. 23rd Street
McAllen, TX 78501
Phone: (956) 688-5445
Email: alejandra.gonzalez@mcallenisd.net

Billing Information

Contact: Dyanira Diaz, Director
Address: Accounting
2000 N. 23rd Street
McAllen, TX 78501
Phone: (956) 632-8403
Email: Dyanira.farias@mcallenisd.net

Bid Attachments

2023-1029 Addendum #1.pdf View Online

2023-1029 Addendum #1

2023-1029 Districtwide Vending Machine Services SOW.pdf View Online

2023-1029 Districtwide Vending Machine Services - Scope of Work (SOW)

General Terms and Conditions RFP.pdf View Online

General Terms and Conditions RFP

IRS FORM W-9 Revised Oct 2018 (Fillable Form).pdf View Online

W-9 Form

CIQ FORM FILLABLE R1.1.2021.pdf View Online

Conflict of Interest Questionnaire (CIQ) form

Draft_Service_Contract.pdf View Online

Draft Service Contract

Attachment A - 2023-1029 Evaluation Matrix.pdf View Online

Attachment A - 2023-1029 Evaluation Matrix

Attachment B - Location of Vending Machines.pdf View Online

Attachment B - Location of Vending Machines

Attachment C - Commissions Report.pdf View Online

Attachment C - Commissions Report

Requested Attachments

Assumed Name Certificate/Fictitious Name Documentation/Disregarded Entity Documentation

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

Completed Conflict of Interest Questionnaire.

(Attachment required)

Please upload your completed CIQ.

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

Completed Form 1295 Form or Exemption Statement

(Attachment required)

Please upload your completed 1295 Form.
Form must be completed online: http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

If not applicable to your company, please attach a statement indicating the reason.

Completed W9 Form

(Attachment required)

Please upload your completed W9 form.

HUB Certificate

Upload your HUB Certificate, if applicable.

Proof of Insurance (Acord Certificate of Insurance Form)

(Attachment required)

Please upload your certificate of insurance in Acord form.

Restocking Schedule

(Attachment required)

Please attach a restocking schedule for vending machines. (See Section 9.14 of SOW).

Inventory List/Charges -Snack Products

(Attachment required)

Please supply a full list of available snack products, complete with a list of proposed charges for each item. (See Section 9.35 of SOW)

Inventory List/Charges -Beverage Products

(Attachment required)

Please supply a full list of available beverage products, complete with a list of proposed charges for each item. (See Section 9.35 of SOW)

Contract

(Attachment required)

Please upload proposed contract (three (3) Year Contract).

Bid Attributes

1 General Terms and Conditions

Please download and read the General Terms and Conditions for this solicitation. Acknowledge you have read, understand and accept the general terms and conditions.

**This is your electronic signature.

☐ I have read, understand and accept.
(Required: Check if applicable)

2 Specifications and Scope of Work

Please download and read the Specifications and Scope of Work for this solicitation. Acknowledge you have read, understand and accept the specifications and scope of work.

**This is your electronic signature.

☐ I hereby acknowledge.
(Required: Check if applicable)

3 Deviations and Exceptions

If your company intends to deviate from the Specifications listed in the solicitation attached documents, all such deviations and exceptions must be listed here, with complete and detailed conditions and information included. The District reserves the right to accept or reject any proposals based upon any deviations indicated below. **If none, enter N/A (Not Applicable)**.

(Required: Maximum 4000 characters allowed)

4 Form 1295 - Certificate of Interested Parties

The Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 before the District may enter into a contract with that business entity. Form 1295 must be submitted with your proposal and is required as condition of award. Form must be completed online.

Access form at:

- http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
- Complete the form
- Enter solicitation number and name
- Print and sign form
- Attach form on "Response Attachments" tab

If exempt, attach documentation.

☐ I have read and understand.
(Required: Check if applicable)

5 **Delinquent Taxpayers**

In accordance with law, the District shall not enter into a contract or other transaction with a person indebted to the District, nor shall the District award a contract to or enter into a transaction with any proposer indebted to the District.

**This is your electronic signature.

☐ I am NOT a delinquent taxpayer to McAllen ISD ☐ I AM a delinquent taxpayer to McAllen ISD

(Required: Check only one)

6 **Provide the business name as it is registered with the Texas Comptroller, or similar. *Note: the name must match IRS registration and W-9 form.**

(Required: Maximum 1000 characters allowed)

7 **Does your company have a business name on Line 2 of the W-9? If yes, attach an Assumed Name Certificate/Fictitious Name issued by the State/County (on the "Response Attachments" tab).**

☐ Yes (upload Assumed Name Certificate)

☐ No

(Required: Check all that apply)

8 **Felony Conviction Notification**

Texas Education Agency Code, Section 44.034, Notification of Criminal History, Subsection (a), states, "A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states, "A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." This notice is not required of a publicly held corporation.

Select where applicable:

A. My company is a publicly held corporation; therefore, this reporting requirement is not applicable.

B. My company is not owned nor operated by anyone who has been convicted of a felony.

C. My company is owned and operated by an individual who has/have been convicted of a felony.

**This is your electronic signature.

☐ A. My company is a publicly held corporation. ☐ B. My company is not owned nor operated by a felon

☐ C. My company is owned and operated by a felon.

(Required: Check only one)

9 **Felony Conviction Details**

If your firm is owned or operated by anyone who has been convicted of a felony, please list their names and the details of the conviction(s). If not applicable, please enter N/A (not applicable).

(Required: Maximum 4000 characters allowed)

10 **Criminal History Record Information Review of Certain Contract Employees**

Bidder agrees to comply with Section 22.0834. Criminal History Record Information Review of Certain Contract Employees, Texas Education Code if awarded a contract through this solicitation. The undersigned Bidder, if awarded a contract, shall obtain criminal history record information through the criminal history clearinghouse as provided by Section 411.0845, Government Code relating to an employee or applicant who has or will have continuing duties related to the contracted services; and the employee or applicant has or will have direct contact with students. The Bidder agrees to certify of the receipt of criminal history record information before or immediately after employing or securing the services of the employee or applicant that has or will have continuing duties related to the contracted services if the employee or applicant has or will have direct contact with students. The Bidder further agrees that if awarded a contract, shall assume all expenses associated with the criminal background check and shall immediately remove any employee or agent who was convicted of a felony or misdemeanor involving moral turpitude, as defined by Texas law, from District property or the location where students are present.

A. None of my employees and any of my subcontractors has or will have continuing duties related to the contracted services; and has or will have direct contact with students. I further certify that my company has taken precautions or imposed conditions to ensure that my employees and any subcontractor will not have continuing duties related to the contracted services; and will not have direct contact with students throughout the term of the Contract.

OR

B. **Some or all of my employees** and/or my subcontractors will have continuing duties related to the contracted services; and will have direct contact with students. I further certify that:

1. I have obtained all required criminal history record information regarding all of my employees and/or my subcontractors. None of my employees and/or my subcontractors has any conviction or other criminal history information if at the time of the offense, the victim was under 18 or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state. **If available, attach a copy of your FAST Pass Receipt**.
2. If I receive information that any of my employees and/or subcontractors subsequently has a reported criminal history, I will immediately remove the covered employee from contract duties and notify the District in writing immediately.
3. I will provide the District with the names and any other requested information regarding any of my employees and/or subcontractors so the District may obtain criminal history record information if awarded a contract.
4. If the District objects to the assignment of any of my employees and/or subcontractors, I agree to discontinue using the individual to provide services to the District.

**This is your electronic signature.

☐ A. None - I hereby agree and certify. ☐ B. Some or All - I hereby agree and certify.

(Required: Check only one)

11 **Confidential/Copyrighted Information**

Contractor agrees, if a bid is, or parts of bid is confidential, the Contractor has specified by stamping in bold letters the term “CONFIDENTIAL” on all or the confidential part of the bid. The bid may be considered public information even though all or parts are marked confidential. Furthermore, Contractor agrees a copyrighted bid is unacceptable and will be disqualified as unresponsive.

**This is your electronic signature.

☐ I have read and agree.
(Required: Check if applicable)

12 **Declaration of Business Location - Texas Education Code 44.031(b)(8)**

Bidder certifies the Bidder’s or the Bidder’s ultimate parent company or majority owner:

A. Has its principal place of business in the State of Texas; OR
B. Employs at least 500 persons in the State of Texas
C. Principal place of business is not in the State of Texas.

**This is your electronic signature.

☐ A. Principal place of business is in TX ☐ B. Principal place employs 500+ in Texas

☐ C. Principal place is NOT in Texas
(Required: Check only one)

13 **Declaration of Business Location - Texas Education Code 44.031(b)(8)**

Specify principal place of business (City/State).

If not applicable, please enter N/A (not applicable).

***This is your electronic signature.

(Required: Maximum 4000 characters allowed)

14 **Prohibition on Contracts with Companies Boycotting Certain Energy Companies (SB 13)**

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least $100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

**This is your electronic signature.

☐ I have read and hereby certify.
(Required: Check if applicable)

15 **Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries (SB 19)**

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least $100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

**This is your electronic signature.

☐ I have read and hereby certify.
(Required: Check if applicable)

16 **Entities That Boycott Israel**

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of $100,000 or more, the following certification shall apply; otherwise, this certification is not required.

Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term ''boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**This is your electronic signature.

☐ I agree and hereby certify.
(Required: Check if applicable)

17 **TEXAS GOVERNMENT CODE Sec. 2252.152. CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED.**

A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153.

**This is your electronic signature.

☐ I have read and hereby certify.
(Required: Check if applicable)

18 **TEXAS GOVERNMENT CODE Sec. 2252.153. LISTED COMPANIES**

Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter. SECTION 2. Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to a contract or purchase for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. SECTION 3 This Act takes effect September 1, 2017.

Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.

**This is your electronic signature.

☐ I have read and hereby certify.
(Required: Check if applicable)

19

Non-Collusion Statement

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or business or legal entity.

**This is your electronic signature.

☐ I have read and hereby certify.
(Required: Check if applicable)

20

Contracts in Excess of $250,000

Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**This is your electronic signature.

☐ I have read and hereby certify.
(Required: Check if applicable)

21

Contracts in Excess of $10,000

All contracts in excess of $10,000 must address termination for cause and for convenience including the manner by which it will be affected and the basis for settlement.

**This is your electronic signature.

☐ I have read and hereby certify.
(Required: Check if applicable)

22

Equal Employment Opportunity

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity”(30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

**This is your electronic signature.

☐ I have read and hereby certify.
(Required: Check if applicable)

23	**Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)** When required by Federal program legislation, all prime construction contracts in excess of $2,000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non- Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. **This is you electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*
24	**Contract Work Hours and Safety Standards Acts (40 U.S.C. 3701-3708)** Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. **This is your electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*
25	**Rights to Inventions Made Under a Contract or Agreement** If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401,“Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. **This is your electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*

26	**Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended** Contracts and subgrants of amounts in excess of $250,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). **This is your electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*
27	**(H) Debarment and Suspension (Executive Orders 12549 and 12689)** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Pursuant to Federal Rule (H) above, when federal funds are expended by the District, the vendor certifies that during the term of an award for all contracts by the District resulting from this procurement process, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas. Vendor shall immediately provide written notice to the District if at any time the vendor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The District may rely upon a certification of a vendor that the vendor is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the District knows the certification is erroneous. **This is your electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*
28	**Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** Contractors that apply or submit an offer for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the award. **This is your electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*

29

2 C.F.R. § 200.323 PROCUREMENT OF RECOVERED MATERIALS

An entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**This is your electronic signature.

☐ I have read and hereby certify.
(Required: Check if applicable)

30

2 C.F.R. § 200.216 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The District, as a non-federal entity, is prohibited from obligating or expending Federal financial assistance, to include loan or grant funds, to: (1) procure or obtain, (2) extend or renew a contract to procure or obtain, or (3) enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system. Covered telecommunications equipment is telecommunications equipment produced Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) and physical security surveillance of critical infrastructure and other national security purposes, and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes detailed in 2 CFR § 200.216. The vendor shall certify that they will not purchase equipment, services, or systems that use covered telecommunications, as defined herein, as a substantial or essential component of any system, or as critical technology as part of any system.

**This is your electronic signature.

☐ I have read and hereby certify.
(Required: Check if applicable)

31

2 C.F.R. § 200.322 CERTIFICATION OF DOMESTIC PREFERENCES FOR PROCUREMENTS AND COMPLIANCE WITH BUY AMERICA PROVISIONS

As appropriate and to the extent consistent with law, the District should, to the greatest extent practicable under a Federal award, provide has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) when spending federal funds. Vendor agrees that the requirements of this section will be included in all subawards including all contracts and purchase orders for work or products under this award, to the greatest extent practicable under a Federal award. (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

“Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

“Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**This is your electronic signature.

☐ I have read and hereby certify.
(Required: Check if applicable)

32 **2 C.F.R § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms**

CFR 200.321 requires that (a) non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (b) Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

**This is your electronic signature.

☐ I have read and hereby certify.
(Required: Check if applicable)

33 **Texas Historically Underutilized Businesses (HUB) – Texas Education Code 44.031(b)(6) or Small and Minority Firms, Women's Business Enterprises, & Labor Surplus Area Firms**

Contractor certifies the Bidder's company is HUB certified with the State of Texas.

[ ] I am an Active certified HUB vendor (attach HUB certificate):
[ ] Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms
[ ] I am neither.

**This is your electronic signature.

☐ I am an Active certified HUB vendor (attach HUB ce

☐ Small & Minority, WBE, Labor Surplus Area Firms ☐ I am neither.
(Required: Check only one)

34 **2 C.F.R § 200.334 RECORDS RETENTION REQUIREMENTS**

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Contractor certifies that Contractor is in compliance with all applicable provisions of 2 CFR 200.334.

**This is your electronic signature.

☐ I have read and hereby certify.
(Required: Check if applicable)

35 **Buy American Provision**

Contractor certifies that Contractor is in compliance with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must still follow the applicable procurement rules calling for free and open competition.

**This is your electronic signature.

☐ I have read and hereby certify.
(Required: Check if applicable)

36	**Federally Funded Purchases** Contractor certifies that Contractor is in compliance with all applicable provisions for federally funded purchases. **This is your electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*

37	**Addendum** Bidder/Respondent acknowledges that he/she will download and review all addenda issued on this project, if applicable. **This is your electronic signature. ☐ I have read and hereby acknowledge. *(Required: Check if applicable)*

Bid Lines

1	**Commission Rate** **Item Attributes** **1. Commission Rate - (3 Year Contract) - Year 1** % *(Required)* **2. Commission Rate - (3 Year Contract) - Year 2** % *(Required)* **3. Commission Rate - (3 Year Contract) - Year 3** % *(Required)*

2	**Questionnaire** **Item Attributes** **1. Describe the process, to include a timeframe, on vendor's refund practices. (See Section 9.29 of SOW)** *(Required: Maximum 4000 characters allowed)*

3 **Additional Payment/Compensation Plan**

Item Notes: List any additional payment or compensation package (i.e. upfront payment, scholarships, product donation, fundraising, etc.) your company would like to offer the District - (3 Year Contract) - Years 1, 2, and 3. (See Section 9.36 of SOW)

Item Attributes

1. Additional Payment/Compensation Plan - Upfront Payment

2. Year 1

(Optional: Numbers only)

3. Year 2

(Optional: Numbers only)

4. Year 3

(Optional: Numbers only)

5. Additional Payment/Compensation Plan - Scholarships

6. Year 1

(Optional: Numbers only)

7. Year 2

(Optional: Numbers only)

8. Year 3

(Optional: Numbers only)

9. Additional Payment/Compensation Plan - Product Donation

10. Year 1

(Optional: Numbers only)

11. Year 2

(Optional: Numbers only)

12. Year 3

(Optional: Numbers only)

13. Additional Payment/Compensation Plan - Fundraising

14. Year 1

(Optional: Numbers only)

15. Year 2

(Optional: Numbers only)

16. Year 3

(Optional: Numbers only)

4 References: Clients

Item Notes: List three (3) of your current or past clients served within the past three (3) years for which you or your company has provided or is providing vending services.

Item Attributes

1. Reference #1 - List name of School or Place of Business

(Required: Maximum 1000 characters allowed)

2. Reference #1 - Contact Person

(Required: Maximum 1000 characters allowed)

3. Reference #1 - Contact Phone Number

(__ __ __) __ __ __ - __ __ __ __ ext:

(Required)

4. Reference #1 - Services Rendered/Rendering

(Required: Maximum 4000 characters allowed)

5. Reference #1 - Length of Contract (Years)

(Required: Numbers only)

6. Reference #2 - List name of School or Place of Business

(Required: Maximum 1000 characters allowed)

7. Reference #2 - Contact Person

(Required: Maximum 1000 characters allowed)

8. Reference #2 - Contact Phone Number

(__ __ __) __ __ __ - __ __ __ __ ext:

(Required)

9. Reference #2 - Services Rendered/ Rendering

(Required: Maximum 4000 characters allowed)

10. Reference #2 - Length of Contract (Years)

(Required: Numbers only)

11. Reference #3 - List name of School or Place of Business

(Required: Maximum 1000 characters allowed)

12. Reference #3 - Contact Person

(Required: Maximum 1000 characters allowed)

13. Reference #3 - Contact Phone Number

(__ __ __) __ __ __ - __ __ __ __ ext:

(Required)

14. Reference #3 - Services Rendered/Rendering

(Optional: Maximum 4000 characters allowed)

15. Reference #3 - Length of Contract (Years)

(Required: Numbers only)

5 **Current School District Services**

Item Notes: List three (3) School District locations where you are currently providing services. If you are not currently providing services to any School Districts please answer "N/A".

Item Attributes

1. School District #1

Name of School, City, and State.

(Optional: Maximum 1000 characters allowed)

2. School District #2

Name of School, City, and State.

(Optional: Maximum 1000 characters allowed)

3. School District #3

Name of School, City, and State.

(Optional: Maximum 1000 characters allowed)

6 **Experience with the District**

Item Attributes

1. Past Relevant Experience with the District.

List past relevant experience with the District.

If not applicable, enter "N/A".

(Required: Maximum 4000 characters allowed)

Supplier Information

Company Name:

Contact Name:

Address:

Phone:

Fax:

Email:

Supplier Notes

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

Print Name

Signature

Alexandra Molina
Executive Director of Child Nutrition & Purchasing

ADDENDUM #1

McAllen Independent School District is providing the following clarification(s) and/or modification(s) to the referenced project. This information is to be considered a part of the solicitation documents. Respondents are further instructed to ***acknowledge*** *receipt of addendum on the "Attributes" tab in Ionwave.*

February 1, 2023

RE: Request for Proposal No. 2023-1027 Districtwide Vending Machine Services

Please note the following changes for the referenced project.

- **Close Date & Time**: ~~January 31, 2023 9:00 AM (CT)~~ February 15, 2023 10:00 AM (CT)
- **Question Cutoff Date:** ~~January 27, 2023 10:00 AM (CT)~~ February 10, 2023 10:00 AM (CT)

*Vendors are responsible for viewing Ionwave regularly to ensure that no addenda or additional information have been issued for the solicitation.

1.0 BACKGROUND

McAllen Independent School District (the "District") is a multicultural community of over 21,000 students. The District's vision is to educate all students to become lifelong learners and productive citizens in a global society through a program of educational excellence utilizing technology and actively involving parents and the community. The District consists of nineteen (19) elementary schools, six (6) middle schools, three (3) traditional high schools, and two (2) non-traditional high schools.

Officers of the District are:

Debbie Crane-Aliseda, Trustee
Conrado Alvarado, Trustee
Tony Forina, Trustee
Sofia Pena, Trustee
Sam Saldivar, Jr., Trustee
Marco Suarez, Trustee
Daniel D. Vela, Trustee
Dr. Jose A. Gonzalez, Superintendent

2.0 INTENT

It is the intent of the District ("District"), through this Request for Proposal ("RFP"), to select Proposer(s) ("Proposer"), offering the best value for pricing, support, and services for Districtwide Vending Machine Services ("Machines").

3.0 REQUIREMENTS

The Specifications and Scope of Work ("SOW") will take precedence over the General Terms and Conditions when they are in conflict. Please read the General Terms and Conditions and the following information carefully. Any exceptions to these General Terms and Conditions and SOW may be cause for a Proposer to be disqualified.

4.0 TERM AND TERMINATION OF AGREEMENT

The period of the contract ("Contract") resulting from this RFP will be for a term of three (3) years.

4.1 Termination without Cause. District shall have the right to terminate this contract without cause on thirty (30) days written notice to the Respondent.

4.2 Termination with Cause.

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

4.2.1.1 Any conduct of the Proposer, which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the District.

4.2.1.2 Failure to provide evidence of liability insurance, as required.

4.2.1.3 Failure of Proposer to immediately bar any individual from performing services under this Contract, if such individual does not meet the qualifications required by this Contract or if such individual commits a material breach of one of the terms of this Contract.

4.2.1.4 In addition, if the Proposer commits a material breach of any of the terms of this Contract, other than those listed in subsections 4.2.1.1 through 4.2.1.3 above, District may terminate this Contract upon no less than thirty (30) days written notice.

4.3 Proposer shall not be entitled to lost profits or any further compensation not earned prior to the time of cancellation.

5.0 PRICING, INVOICING AND PAYMENT

Pricing (revenue to the District) must remain firm for the term of the Contract. Increases in revenue to the District are acceptable at any time throughout the term of the contract. In case of a decrease in revenue tot eh District, documentation must be submitted for approval to Alexandra Molina, Executive Director of Child Nutrition & Purchasing at alexandra.molina@mcallenisd.net.

6.0 EVALUATION CRITERIA

In determining who will be awarded, the District shall consider:

6.1 the purchase price (revenue to the District);
6.2 the reputation of the vendor and of the vendor's goods or services;
6.3 the quality of the vendor's goods or services;
6.4 the extent to which the goods or services meet the District's needs;
6.5 the vendor's past relationship with the District;
6.6 the impact on the ability of the District to comply with laws and rules relating to historically underutilized businesses (in accordance with 2 CFR 200.320);
6.7 the total long-term cost to the District to acquire the vendor's goods or service;
6.8 for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:
  6.8.1 has its principal place of business in this state; or
  6.8.2 employs at least 500 persons in this state; and
6.9 any other relevant factor specifically listed in the request for bids or proposals.

Refer to Attachment "A" for weights.

7.0 EVALUATION COMMITTEE.

The evaluation committee which will be comprised of Alejandra Gonzalez, Assistant Superintendent for District Operations; Alexandra Molina, Executive Director of Child Nutrition & Purchasing; Elizabeth Cabrera, Coordinator for Purchasing Services; and Krystal Mercado, Senior Buyer, will evaluate the proposals and recommend the successful vendor(s).

8.0 COMMUNICATION WITH DISTRICT PERSONNEL

Proposer submitting a proposal shall not discuss this RFP with employees of District or members of the Board of Trustees. Communication includes, but is not limited to, unsolicited literature, email, faxes or phone calls related to any aspect of this RFP. If discussion is necessary, you will be notified in writing. Failure to abide by this requirement will result in automatic disqualification at the discretion of the District. All questions must be posted on the Questions tab.

9.0 SCOPE OF WORK

9.1 The Awarded Respondent shall furnish, install, maintain, supply, and remove various Machines in designated locations as needed.
9.2 The inventory placement of the Machines can be found in Attachment "B", however, locations are tentative. Final locations shall be determined by District, upon award.
9.3 Awarded Respondent shall supply the District with an inventory list of the vending machines and current locations/placement. Awarded Respondents shall not change the physical

location of any Machines from the designated locations(s) without prior written consent from the Assistant Superintendent of District Operations, or a designee. The District reserves the right to add or subtract from the total number of machines at any given time.

9.4 The amount of user traffic will vary by location, and include only District personnel, students and visitors.

9.5 Snacks & beverages, located in schools where students may have access to purchase, shall meet the USDA "Smart Snacks" guidelines at a minimum and any other state, local, or district guidelines established here forth and subject to change through contract period. Guidelines may be found at (http://www.squaremeals.org) and USDA Healthy Hungry Free Act Smart Snack Policy Guidelines (http://www.fns.usda.gov). District and FFA Wellness Regulations (https://pol.tab.org?Policy/Code/637?filter=FFA) will superseded state and/or Federal guidelines, if stricter.

9.6 Vending machines shall contain snacks & beverages for on-premises consumption and use. Snack & Beverage exceptions to guidelines will only take place when placing vending machines in areas where students are not allowed and/or will not be able to purchase from vending machines.

9.7 Awarded Respondent assumes all responsibility to monitor USDA Healthy Hungry Free Act Smart Snacks websites for changes to guidelines throughout the duration of the contract term. Additionally, District reserves the right to implement stricter guidelines as local policy.

9.8 If fiscal sanctions are imposed by a regulatory agency to the District as a result of a noncompliance by the Awarded Respondent, Awarded Respondent shall assume full financial responsibility.

9.9 Awarded Respondent shall provide payment for fiscal sanction(s) in full to the District within thirty (30) calendar days. Awarded Respondent shall have twenty-four (24) hours to correct noncompliance upon notification by District. Failure to comply shall result in cancellation of contract.

9.10 Machines shall not contain items in which the "sell by" date is expired.

9.11 Snacks & Beverages sold shall be in containers with current marketing themes (i.e.- no Christmas themed containers in July, etc.).

9.12 Awarded Respondent shall abide by all District, city, state, and federal laws, ordinances, rules, and regulations, expressly including, but not limited to, those relating to health and sanitation of foods, operation, and maintenance of Machines.

9.13 Awarded Respondent shall obtain and preserve all applicable state, federal and local licenses and/or permits required for the operation of Machines and disbursement of snacks & beverages.

9.14 Awarded Respondent shall include a restocking schedule for Machines with proposal (upload in Response attachments tab).

9.15 Machines shall be delivered within thirty (30) business days of notice of award.

9.16 Machines shall be new, used, or reconditioned. Used or reconditioned machines shall be in working condition, clean, and undamaged.

9.17 Machines shall be the refrigerated type.

9.18 Machines shall only include marketing logos for items being offered in the machines.

9.19 All equipment shall operate on regular wall voltage (110 watts). All plugs shall be three pronged, and properly grounded. The Awarded Respondent shall use energy efficient units.

9.20 Industry improvements to vending operations that occur during the term of this contract, shall be incorporated by the supplier in subsequent installations. Each machine shall have the following capability at a minimum:

- **9.20.1** Dispense variety of snacks & beverages, not limited to a single type item or brand of items.
- **9.20.2** Be properly equipped with non-resettable cash accounting meters for recording all sales by each machine.
- **9.20.3** Be properly equipped with bill validators with money changing units built into the Machines (receive and give change).
- **9.20.4** Have the capability to provide meter readings.
- **9.20.5** Energy efficient.
- **9.20.6** Time clock.

9.21 All equipment and utility or structural upgrades shall comply with all local, state, and deferral requirements.

9.22 All machines shall comply with all accessibility requirements established by local, state, federal guidelines, including the Americans Disability Act (ADA).

9.23 Awarded Respondent shall provide initial metered reading for all machines, upon delivery of machines.

9.24 In the event of an emergency, the District reserves the right to relocate any Machine.

9.25 Machines shall be installed at locations designated and approved by District personnel. Awarded Respondent shall be responsible for the equipment and the maintenance of equipment throughout the contract term.

9.26 A preservative maintenance program by the Awarded Respondent shall be in place. A preservative maintenance program can be defined as a series of processes, guidelines, and tools for conducting regular and routine maintenance to keep Machines in good condition to avoid failure and costly unplanned downtime. The District shall have no liability to the Awarded Respondent for maintenance of equipment or any damage to the Machines by a third party, and Awarded Respondent shall not make any claim against, or seek recovery from, the District for any loss or damage to the Machines.

9.27 Awarded Respondent shall be available to service machines, weekdays, from 8:00 a.m. (CST) through 4:00 p.m. (CST). Servicing of Machines shall be required within eight (8) hours of a reported malfunction. Any request for service after 3:00 p.m. shall be serviced no later than 12:00 p.m. the next business day.

9.28 Any necessary utility or structural upgrade to the facility required to place machines, shall be the Awarded Respondent's responsibility and shall be approved by the District, in advance. Upgrades shall not dimmish the proposed financial proceeds to the District.

9.29 Awarded Respondent shall refund any monies lost by the public in Machines operated by the Awarded Respondent under this contract. The refund process shall be defined in proposal. (see Line Item #2.1)

9.30 The District will not be liable for any loss, which may result from the interruption or failure of the power supply to any vending machine.

9.31 The District will not assert a cost for the space used by the machine nor such utilities as may be needed to operate the machines, and expect that factor to be considered in the commission rate. The District will not obligate the Awarded Respondent to pay utility costs incurred to operate the Machines; however, Awarded Respondent shall bear all other costs in connection with machine operation and related activities. Every effort shall be made by the Awarded Respondent to keep energy consumption to a minimum and comply with such conservation practices and the District policies, as appropriate.

9.32 Respondent shall propose a commission rate, payable to the District, in accordance with the requirements and specifications as specified in this RFP. The commission rate shall be a percentage of gross receipts from all Machines placed within any District building or location by the Awarded Respondent during the term of the contract.

9.32.1 Gross receipts from Machines shall be construed to include all monies received from Machines, except sales tax revenues. Commission or payment guarantee shall remain firm for the duration of the contract term regardless of whether vending prices are adjusted. An increase in commission or payment guarantees favorable to the District, is allowable at any time throughout the contract term. Attached is Attachment "C"- a historical commission report from Year 2017 through Year 2020 (May 2020). COVID may potentially have had an impact on the numerical figures of the historical commission report.

9.33 Payments shall be computed monthly and be delivered by the Awarded Respondent, along with a gross receipts report to the District. Payments shall be in the form of money order, or cashier's check. Awarded Respondent shall mail payment and computed monthly report to:

Monthly Report & Copy of Check	**Check**
Address: District Operations **Alejandra Gonzalez** **2000 N. 23rd St.** **McAllen, Tx 78501**	**Address: Accounting** **Dyanira Diaz** **2000 N. 23rd St.** **McAllen, Tx 78501**

The reports shall include the information from the first of the month through the end of the month and shall be emailed in Excel format on or before the 15th day of each succeeding month. The reports shall be as follows:

9.33.1 The monthly report shall contain all District-wide activity. The report shall be sorted by campus/location, and it shall include previous and current monthly meter reading. The report shall be emailed to alejandra.gonzalez@mcallenisd.net.

9.34 All vending prices proposed shall be firm for the duration of the contract term, unless a change is specifically requested by the District.

9.35 Respondent shall supply a full list of their available beverage and snack products, complete with a list of proposed charges for each item (upload in Response attachments tab).

9.36 Respondent may propose an additional payment or compensation package, to include, upfront payment, scholarship offerings, drink donations, incentives, etc. Additional payment or compensation package(s) may be paid at the end of the contract year. Respondent shall stipulate the conditions of the additional proposal. Additional proposals will only be considered if deemed in the best interest of the District.

9.37 The District may inspect and audit or review Awarded Respondent's books and records pertaining to this contract with prior written notice, at the Awarded Respondent's location, during regular business hours. If the audit or review reveals a difference of more than three

9.38 (3) to the District during the audit period, the Awarded Respondent shall pay any additional Commission due to the District, plus interest (calculated from the date such Commissions were actually payable at the rate specified in contract), within ten (10) days after Awarded Respondent's receipt of written notice of the result of such audit or review.

9.39 The Awarded Respondent shall be required to enter into a Contract with the District.

9.40 The Contract shall be monitored for acceptable services rendered through the contract period.

9.41 Respondent shall submit a proposed contract (upload in Response attachments tab).

10.0 AWARD INFORMATION

Award information will be available for download from our website within ninety (90) days of opening: https://mcallenisdtx.sites.thrillshare.com/page/awarded-vendors.

11.0 INSTRUCTIONS FOR SUBMITTING A PROPOSAL

The District prefers and encourages Proposers to submit their response through Ionwave (https://mcallenisd.ionwave.net), however, we will accept submittals in a sealed envelope via mail or hand delivered. Email Krystal Mercado, Senior Buyer at krystal.mercado@mcallenisd.net for address and mailing instructions.

Please read the following information carefully. Any exceptions to these terms and conditions will be cause for a proposal to be disqualified. Additionally, please read the Specifications and Scope of Work contained in each Invitation for Request for Proposal ("RFP"). The Specifications and Scope of Work in the RFP will take precedence over the General Terms and Conditions when they are in conflict. Prospective Proposers are responsible for familiarizing themselves with all aspects of the process for the Request for Proposal.

1. Proposer Guarantee:
   - 1.1 Proposer agrees to comply with all terms and conditions contained in this document and the RFP.
   - 1.2 Proposal must comply with all federal, state, county, and local laws concerning these types of goods/services.
   - 1.3 Proposer guarantees products/services offered will meet or exceed the written specifications identified in the RFP.
   - 1.4 Proposer agrees to protect the District from claims involving infringement of patents or copyrights.
   - 1.5 Minimum Standards for Responsible Prospective Proposers: The business must be a well- established organization and have an adequate number of trained personnel to ensure quality and performance and completion of contract within a specified time period. A prospective Proposer must affirmatively demonstrate Proposer's responsibility. District may request representation and other information sufficient to determine Proposer's ability to meet the following minimum standards:
     - 1.5.1 that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in district, state or federal procurements or contracts;
     - 1.5.2 are not identified in the "Debarment and Suspension" issued by the General Services Administration;
     - 1.5.3 have adequate financial resources, or the ability to obtain such resources as required;
     - 1.5.4 be able to comply with the required or proposed delivery schedule;
     - 1.5.5 have a satisfactory record of performance;
     - 1.5.6 have a satisfactory record of integrity and ethics;
     - 1.5.7 be otherwise qualified and eligible to receive an award.
   - 1.6 Contract: This proposal, when properly accepted by District, shall constitute a contract equally binding between the awarded Proposer and District. Different or additional contractual terms may become a part of this contract.
   - 1.7 Conflict of Interest: Any purchase order of contract resulting from this process shall be considered null and void if the awarded Proposer fails to comply with Section 1, Subtitle C, Title 5, Local Government Code Chapter 176: Disclosure of Certain Relationships with Local Government Officers; Providing Public Access to Certain Information, specifically Sec. 176.006: Disclosure Requirements for Contractors and Other Persons; Conflict of Interest Questionnaire Form CIQ.
   - 1.8 Criminal History Record Information Review: Proposer agrees to comply with Section 22.0834. Criminal History Record Information Review of Certain Contract Employees, Texas Education Code if awarded a contract through this solicitation. Proposer, if awarded a contract, shall obtain criminal history record information through the criminal history clearinghouse as provided by Section 411.0845, Government Code relating to an employee or applicant who has or will have continuing duties related to the contracted services; and the employee or applicant has or will have direct contact with students. Proposer agrees to certify of the receipt of criminal history record information before or immediately after employing or securing the services of the employee or applicant that has or will have continuing duties related to the contracted services if the employee or applicant has or will have direct contact with students. Proposer agrees that if awarded a contract, Proposer will provide to the District a list with names of all of their employees and any subcontractor's employees before commencing any services. Proposer further agrees to provide written notice of any new employees and any new subcontractor's employees to the District immediately after employment. Proposer further agrees that if awarded a contract, shall assume all expenses associated with the criminal background check and shall immediately remove any employee or agent who was convicted of a felony or misdemeanor involving moral turpitude, as defined by Texas law, from District property or the location where students are present.
   - 1.9 Entities Certification regarding Boycotting of Israel & Prohibition on Contracts with Certain Companies Engaged In Business With Iran, Sudan, Or Foreign Terrorist Organization and Listed Companies - Govt Code 808 (HB89) and Govt Code 2252 (SB252): Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies of services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any (the "Vendor Companies"), boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.
   - 1.10 Form 1295. Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 to District before Proposer may enter into a contract with that business entity. **Form must be completed online.** If this is your first time to access the Texas Ethics Commission (TEC), you will be required to create an account and establish a user name and password. This will require for you to have a valid email address and know your email user name and password as you will be required to access your email to validate your identity. After creating a user name and password at TEC, you will log in and begin completing Form 1295. Completing Form 1295 will require a contract number, which identifies and ties the form to the District's contract number; which is the assigned RFP No. for this solicitation.
     How to complete Form 1295:
     - Go to website: http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
     - Enter Required information
     - Print form
     - Submit with proposal
   - 1.11 Campus Visitation Procedures: If Proposer is awarded a contract which requires on-site visit, Proposer must first report to the front office and must be prepared to present a valid driver's license for clearance through the District's security system.
   - 1.12 Representations: Proposer represents that the products/services provided by Proposer hereunder shall conform to the representations of same as represented and described in the Attachments. Notwithstanding anything to the contrary herein, if for any reason District determines in its sole discretion, that part or all of such products/services fail to meet the expectation of District, District may on ten (10) days' notice terminate this Contract and receive the pro-rata portion of the contract sum paid to Proposer by District for the unexpired term of the Contract.
   - 1.13 Proposer, in submitting this proposal, agrees that District shall not be liable to prosecution for damages in the event that District declares Proposer in default.
   - 1.14 Purchases made for school use are exempt from the state sales tax and federal excise tax. Do not include these taxes in your proposal. Both unit prices and extension must be submitted. Unit prices shall govern.

1.15 Adherence to Specifications and Anti-Collusion: Proposer is responsible for reading the instructions and specifications to Proposer. Each Proposer by making his proposal represents that he has read and understands the proposal documents and his proposal is made in accordance therewith. Signing this proposal affirms that your company will enter into a binding contract with District for products/services awarded to your company. Proposer, by signing and executing this proposal, certifies and represents to the District that Proposer has not offered, conferred or agreed to confer any pecuniary benefit, as defined by §1.07(a)(6) of the Texas Penal Code, or any other thing of value, as consideration for the receipt of information or any special treatment or advantage relating to this proposal; Proposer also certifies and represents that Proposer has not offered, conferred or agreed to confer any pecuniary benefit or other things of value as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion concerning this proposal; Proposer certifies and represents that Proposer has neither coerced nor attempted to influence the exercise of discretion by any officer, trustee, agent or employee of the District concerning this proposal on the basis of any consideration not authorized by law; Proposer also certifies and represents that Proposer has not received any information not available to other Proposers so as to give the undersigned a preferential advantage with respect to this proposal; the Proposer further certifies and represents that Proposer has not violated any state, federal or local law, regulation or ordinance relating to bribery, improper influence, collusion or the like and that Proposer will not in the future offer, confer, or agree to confer any pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the District in return for the person having exercised the person's official discretion, power or duty with respect to this proposal; Proposer certifies and represents that it has not now and will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the District in connection with information regarding this proposal, the submission of this proposal, the award of this proposal or the performance, delivery or sale pursuant to this proposal.

1.16 Bid Guarantee: Bid bonds may be required for certain bids/proposals in excess of $25,000, if stated in the RFP. A bid guarantee will be submitted in the form of a bid bond, postal money order, certified check or cashier's check in an amount not less than 5% of the total maximum amount bid/proposed, payable without recourse to McAllen Independent School District. Failure to furnish a bid guarantee in the proper form and amount by the time set for opening may be cause for rejection of the proposal. If the awarded Proposer, upon acceptance of his proposal by the District within the period specified therein for acceptance, fails to execute such further contractual documents, if any, and give such bond(s) (i.e., performance bonds, payment bonds, delivery, etc.) as may be required within the time specified (ten days if no period is specified) after receipt of the forms by him, then he shall be liable for any cost of procuring the work which exceeds the amount of his proposal, and the bid guarantee shall be available toward offsetting such difference.

1.17 Performance and Payment Bonds: Payment bonds are required on construction projects costing $25,000 or more. Performance bonds are required on construction projects costing $100,000 or more. Payment and Performance bonds may be required for projects other than construction, if stated in the RFP. When a performance or payment bond is required, the amounts shall be for 100% of the contract amount.

1.17.1 Any required bond(s) must be filed with the District within 10 days from the date of the NOA.

1.17.2 Payment and performance bonds must be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

1.17.3 Bonds may be executed only by a surety company that is authorized and admitted to write surety bonds in the State of Texas.

1.17.4 A separate performance or payment bond MUST be provided for each contract awarded and must reference the contract number(s) for which the bond is provided.

1.17.5 All references to the bond by Proposer and/or surety companies must reference the contract number in lieu of or in addition to the bonding company's number, and the effective dates of the contract.

1.17.6 Bonds and other forms of surety must be made payable to McAllen Independent School District. Bonds in excess of $100,000 must be from a surety that holds a Certificate of Authority from the United States Department of Treasury or have reinsurance for liability in excess of $100,000 from a United States Treasury listed reinsurer.

2. General Provisions

2.1 Term of Contract and Purchase Order Dates:

2.1.1 The RFP shall state the term of the contract and applicable extensions.

2.1.2 Purchase Order: Purchase order(s) shall be generated by the District to the awarded Proposer(s). **The purchase order number must appear on all itemized invoices and packing slips. District will not be held responsible for any orders placed/delivered without a valid signed purchase order.**

2.1.3 Purchase orders dated during the term of the contract must be honored even if received after the contract expiration date. Proposers may not specify a "final order" receipt date. Pricing is established by the date the order is placed unless otherwise stated in the contract.

2.1.4 Confirmation orders will be the date the order is mailed but will show the date the order was originally placed.

2.1.5 Grace Period: District requests the right to continue to enforce this contract for a period not to exceed ninety (90) days after expiration date for unforeseeable reasons.

2.1.6 District reserves the right to reorder from this proposal for the term of the contract at the proposed award prices or lower provided the terms and conditions remain the same. Proper authorization for reorders and issuance of approved and manually signed purchase orders will be through Purchasing Services only.

2.2 Shipment Identification and Delivery: Special delivery requirements will be addressed in the Specifications and Scope of Work or in the specifications contained in each RFP. The following shall be applicable unless in conflict with specific contract instructions.

2.2.1 Identification of Shipments: In addition to the complete destination address, each package must be clearly marked with the District's purchase order number and the ATTN: addressee as shown on the order. Each shipment must be accompanied by an itemized packing slip.

2.2.2 Packaging and Labeling: All items shipped must be properly labeled showing the brand name, package quantity, lot number (if applicable) and any other necessary identifying information usually used by Proposer.

2.2.3 Hours for Delivery: Delivery shall be made between 8:00 a.m. and 3:00 p.m. unless prior approval for after-hours delivery has been obtained from the District.

2.3 Inspection and Tests: All goods are subject to inspection and testing by the District. Authorized District personnel shall have access to a Proposer's place of business for the purpose of inspecting contracted merchandise. Tests may be performed on samples obtained by District request or taken from regular shipments. When products tested fail to meet or exceed all applicable specifications, the cost of the sample used and the cost of any testing shall be borne by Proposer. Goods that have been delivered and rejected in whole or in part may be, at the District's option, returned to Proposer at Proposer's risk and expense or disposed of in accordance with District procedures. Proposer may request that goods be held at Proposer's risk for a reasonable period of time for later disposition at Proposer's expense. Latent defects

may result in revocation of acceptance of any product.

2.4 Late Delivery: If a delivery delay is foreseen, Proposer shall give notice to District with seventy-two (72) hour notice. The District has the right to extend the delivery date if reasons appear valid. Proposer must keep the District advised at all times of the status of the order. If Proposer has orders in their possession which have not been completed within the specified delivery time, the District reserves the right to withhold issuance of further orders until all orders have been filled and acceptable assurance has been given that the event will not be repeated.

2.5 Back Orders: The District may purchase on the open market any commodity reported by a Proposer to be on back order when the resultant delivery time is unsatisfactory. Damages may be applicable in cases of a pattern of back orders.

2.6 Damage Assessment: If a Proposer is in default on an order, the District reserves the right to purchase the item in default and charge the increase in price, if any, and cost of handling to Proposer. Failure to pay a damage assessment is cause for contract cancellation and/or suspension or removal of Proposer from the District's Centralized Master Contractors List (CMBL).

2.7 Emergency Deliveries: In case of an emergency experienced by a qualified ordering entity, the awarded Proposer is requested to supply the needed material immediately, if possible. If the awarded Proposer cannot respond, then the emergency requirement may be purchased on the open market. The District or Proposer shall not consider such purchases a breach of contract.

2.8 Substitutions: All substitutions require prior written approval by the District. The District reserves the right to require Proposer to offer possible substitutes if any material or equipment becomes unobtainable during the term of the contract. Outstanding orders are not automatically amended by an approved substitution. Proposer must contact the qualified ordering entity prior to shipment of the approved substitution.

2.9 Purchases Off Contract: Under certain circumstances, the District permits campuses and other District users to purchase commodities available through a contract on the open market. Such circumstances may be identified in the RFP. Proposers are to allow for such purchases provided purchase orders are issued for these purchases.

2.10 References: District may request Proposers to supply, with this proposal, a list of at least three (3) references where like goods/services have been supplied by their firm. Include name of firm, address, telephone number and name of representative.

2.11 Proposals from unresponsive Proposers will not be accepted. Proposers having a history of inconsistent service and unreliability will not be considered by the District to be a responsible Proposer.

2.12 Proposer will employ accounting policies and procedures hereunder to preserve all contract-related records for the term of this Contract and such further period of time thereafter as may be prescribed by Federal, State or Local regulations. All Proposers are subject to having any records or other documentation related to any transaction with District available for public access or for review and auditing purposes by any local, state or federal agency, as well as, the public in accordance with the provisions of Government Code, Title 5, Subtitle A, Chapter 552, Open Records.

2.13 Notice: Any notice provided by this proposal (or required by Law) to be given to the awarded Proposer by District shall be conclusively deemed to have been given and received on the next day after such written notice has been deposited in the mail in McAllen, Texas, by Registered or Certified mail, addressed to the awarded Proposer at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

2.14 Venue: This contract will be governed and construed according to the laws of the State of Texas. Both parties agree that venue for any litigation arising from this contract shall lie in Hidalgo County, Texas.

2.15 Silence of Specification: The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

2.16 Deviations from Specifications: All deviations from the specifications must be noted in writing, in detail by Proposer at the time of submittal of the proposal. The absence of a written list of specification deviations will hold Proposer strictly accountable to the District to the specifications as written. Any deviations from the specifications as written not previously submitted, as required, will be grounds for rejection of the materials/goods/services and/or equipment when delivered.

2.17 Proposers that fail to comply with the conditions of the RFP may be removed from the District's Centralized Master Contractors List for a period of two years.

2.18 Proposers wishing to reinstate their status must request it in writing at the end of the two-year period.

3. Preparation of Proposal:

3.1 Freight Charges & F.O.B. Point: Quote all proposals F.O.B. destination, transportation prepaid and allowed, i.e., included in the price proposed, unless special contract instructions direct or permit otherwise. Alternate F.O.B. point or freight terms may be offered but are subject to rejection by the DISTRICT.

3.2 Proposal prices must be firm for acceptance for 120 days from proposal opening date unless otherwise specified in the RFP. Proposal prices shall remain in effect for a period of one year from date of acceptance by the Board of Trustees unless otherwise specified in the proposal documents. Refer to Section 7 for additional information regarding proposal prices.

3.3 Usage Figures: Quantities shown on the RFP under the term "Quantity or Qty" are estimated requirements based upon purchase orders for a prior period indicated in the RFP. These figures are not to be construed as guaranteed purchases under the contract; however, the figures will be used as a factor for determining the award and bonding requirements. District users will purchase all commodity requirements from contract Proposers but only in such quantities as actual needs require. To keep consistency of the item description and item numbers, some item quantity(s) is/are marked with a zero (0) quantity on the proposal sheet. Proposals are requested on these items as well.

3.4 Referenced Example: Any catalog number, brand name or manufacturer's reference used in an RFP is descriptive only (not restrictive) and is used to indicate type and quality desired. Proposals for brands of like nature and quality will be considered. Proposer should not construe specifications for the referenced example to be the minimum requirements acceptable. The District is the sole determinate as to acceptability of specifications in its best interest. If proposing other than the referenced example, Proposer must show the manufacturer, brand or trade name, and model number and give a full description of the product offered. The submission of illustrations and specification brochures is encouraged to provide a complete description of the product being offered. If a Proposer takes no written exception to the referenced example in the proposal, the brand names, numbers, etc., exactly as specified in the RFP shall be furnished.

3.5 Condition of Products: All items proposed shall be new and unused and in first class condition, including containers suitable for shipment and storage, unless otherwise specified in the RFP.

3.6 Warranty: Manufacturer's standard warranty shall apply unless otherwise stated in the RFP.

3.7 Unit of Measure: If offering a proposal price for a different unit of measure, the exception and proposed packaging must be shown by the

line item proposal.

3.8 Alternate Proposals: Alternate or supplemental proposals shall be submitted as a separate item and be identified by Proposer's name and signature and be cross-referenced to the applicable item in the RFP.

3.9 Samples: DO NOT send samples unless requested. Any samples submitted must be furnished at no cost to the District. If not destroyed in examination, samples will be returned to Proposer on request at Proposer's expense. Samples submitted to verify compliance with specifications prior to making an award may be retained at Proposer's expense. Samples submitted to verify compliance with specifications prior to making an award may be retained for the duration of the contract for later comparison with items delivered. Each sample should be marked with Proposer's name, address, proposal opening date and proposal number. Do not attach samples to proposal pages. Failure to submit samples when requested shall cause items not to be considered for award. All samples are to be delivered to:

McAllen Independent School District
Attn: Purchasing Services
2000N. 23rd ST.
McAllen, TX 78501-7734

3.10 Signature on Proposal: Electronic signatures are acceptable. The person signing the proposal must have authority to bind the represented company to a contract. An unsigned proposal cannot be signed after the proposal opening time even though Proposer or a representative is present at the proposal opening.

3.11 Attachments: Proposers may include attachments to describe commodities being proposed and/or to exhibit that products offered meet all written specifications; however, do not submit samples unless requested to do so. No terms or conditions recorded on any attachment will be considered binding unless specifically made a part of the proposal in writing. WARNING: Any added terms or conditions may result in disqualification of a proposal, e.g., proposals subject to laws of a state other than Texas, requirements for prepayment, limitations on remedies, etc.

3.12 Addendums: Should an addition or correction become necessary after an RFP is issued, an addendum relating to the necessary information will be issued electronically. It is the Proposer's responsibility to view the District's Bidding Portal regularly, or prior to submitting a quote, to ensure that no addenda or additional information have been issued for the solicitation. The web address is https://mcallenisd.ionwave.net/Login.aspx .

3.13 Discounts for large one-time order deliveries, educational purposes, etc. The conditions for earning the discount may be indicated by the item being proposed or by submitting a separate page with the information. These discounts will not be considered in determining the low proposal but will be part of any contract issued.

3.14 Proposal Preparation Expense: Any expense related to the submission of a proposal is the sole responsibility of the Proposer. The District will not reimburse Proposers for any cost related to proposal preparation or submission.

3.15 All Proposers doing business with the District must have on file a Form W-9 Request for Taxpayer Identification Number and Certification.

3.16 All Proposers must provide a Felony Conviction Notification as required by Texas Education Code, Subchapter B, Section 44.034, Notification of Criminal History, Subsection (a). A copy of this form is included for your use as part of Contractor Certifications Form.

4. Submission of Proposal:

4.1 No Bids: To remain on Proposer's list, "NO BIDS" must be submitted by Proposers wishing to remain on the District's Centralized Master Contractors List (CMBL). Continued submittal of "NO BIDS" will result in Proposer being removed from the District's Centralized Master Contractors List (CMBL). Proposers not submitting proposals or submitting "no bids" may be removed without notice at any time and must reapply for inclusion in the District's Centralized Master Contractors List (CMBL). The District is not responsible for any errors occurring as a result of this procedure.

4.2 Public Proposal Opening: Proposals are opened in a manner to avoid disclosure of contents to competing Proposers and the contents are kept secret during the process of proposal negotiations. A copy of the proposal tabulation is usually available for public review after proposal awards. Tabulation information is available for download the day after award from the following purchasing webpage: https://mcallenisdtx.sites.thrillshare.com/page/awarded-vendors.

4.3 Late Proposals: Late proposals will NOT be considered. The District will not be responsible for missent or misplaced proposals.

4.4 Amending/Withdrawing Proposal: A proposal cannot be altered or amended after the proposal opening date and time. Any alterations made before the opening date and time shall be initialed by Proposer or Proposer's authorized agent identified in the proposal. No proposal can be withdrawn after the opening date and time without approval of District. All approvals shall be based upon an acceptable written reason for the action.

4.5 Proposal Package(s): The District encourages and prefers proposals submitted on District RFP form(s) electronically; however, DISTRICT will be accepting sealed packages on CD, USB, paper/hardcopy through mail or hand delivery. Each proposal must be placed in a separate submittal. Proposals must be submitted and time stamped at District no later than the date and time specified for the proposal opening. Only the completed W-9, Contractor Certifications Form, Form 1295, Conflict of Interest and those pages on which a Proposer is submitting a proposal need to be returned. Blank pages or pages with no proposal information should not be returned.

4.6 Price lists must be included in the RFP. Any terms and conditions in a price list will not be considered a part of a proposal unless specifically identified by Proposer and referenced in writing.

4.7 Proposals via the U. S. Postal Service are to be sent to the address shown below.

McAllen Independent School District
ATTN: Purchasing Services (RFP #/Name)
2000 N. 23rd Street
McAllen, TX 78501

4.8 Confidential: Subject to the requirements of the Texas Open Records Act, if a company believes that a proposal is, or parts of a proposal are confidential, then the company must so specify. The company must stamp in bold letters the term "CONFIDENTIAL" on that part of the proposal, which the company believes to be confidential. The awarded proposal may be considered public information even though parts are marked confidential.

4.9 Copyrighted proposals are unacceptable and will be disqualified as unresponsive.

5. Proposal Evaluation and Award:

5.1 Proposal Evaluation: The District reserves the right to award on the basis of a low line item, low total (group or groups) or in any other combination that will best serve the interests of the District. The lowest proposal will not necessarily be the awarded proposal. Proposals will be assessed not only in terms of the cost of the goods/equipment, but also in terms of responsiveness of the proposed goods/services to the District's needs and requirements. The District reserves the right to accept or reject all or any part of a proposal, waive minor technicalities

and make an award in the best interest of the District.

5.2 A response to an RFP is an offer to contract with the District based upon the terms, conditions and specifications contained in the RFP.

5.3 Proposals do not become contracts until a Notice of Award (NOA) is issued.

5.4 The contract shall be governed, construed and interpreted under the laws of the state of Texas.

5.5 The District will not be bound by any communication with Proposers other than the RFP, these General Terms and Conditions, Specifications and Scope of Work, Specifications, any written addendum's issued by District, District Policies and Procedures, and State Law.

5.6 The District shall be sole judge of what constitutes the best interest of the District.

5.7 The District reserves the right to reject proposals requiring minimum orders.

5.8 Fees charged for shipping and handling will be considered in awarding proposals.

5.9 Evaluation Criteria: In determining to whom to award a contract, the District shall consider in accordance with the Texas Education Code, Subchapter B, Section 44.031(b) Purchasing Contracts, Subsection (b): (1) the purchase price; (2) the reputation of the vendor and of the vendor's goods or services; (3) the quality of the vendor's goods or services; (4) the extent to which the goods or services meet the District's needs; (5) the vendor's past relationship with the District; (6) the impact on the ability of the District to comply with laws and rules relating to historically underutilized businesses; (7) the total long-term cost to the District to acquire the vendor's goods or services;(8) for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:(A) has its principal place of business in this state; or (B) employs at least 500 persons in this state; and (9) any other relevant factor specifically listed in the request for bids or proposal.

5.10 Notice of Award (NOA): NOA/Tabulation information is available for download from our website at https://mcallenisdtx.sites.thrillshare.com/page/awarded-vendors. Award information will be posted approximately ninety (90) days from proposal opening. Proposer must advise the District within 10 (ten) days from the date of award by the Board of Trustees of any errors requiring correction.

5.11 Qualified Ordering Entity: All campuses and departments are considered District users and qualified ordering entities. In some instances, other governmental entities may have Interlocal Contracts with the District. These entities may have access to the prices offered to District. Proposers are responsible for identifying and requesting information on these entities.

5.12 To expedite evaluation of the proposals, it is preferable that District forms be used.

5.13 Assignment: The awarded Proposer shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of District.

6. Insurance Requirements:

6.1 Statutory Workman's Compensation (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY) and Employer's Liability Limits - $500,000.

6.2 Commercial General Insurance (occurrence basis only) $1,000,000 each claim and in the aggregate. The District shall be named as an additional insured by endorsement on the Contractor's policy as to the subject job.

6.3 Business Commercial or Personal Automobile Liability Insurance in the amounts specified by the Texas Tort Claims Act, Chapter 101 of the Texas Practice and Remedies Code for all owned, non-owned and hired vehicles; each person $100,000; each accident $300,000; and for property damage, each occurrence of $100,000; No deletions/exclusions from standard coverage form allowed without written consent of District. The District shall be named as an additional insured by endorsement on the Contractor's policy as to the subject job. (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY).

6.4 Successful Contractor will provide a certificate of insurance, in Acord 25 Form, to the Administrator of the Department evidencing such coverage and will notify the Administrator in writing immediately if any change in coverage occurs for any reason.

6.5 Each insurance policy to be furnished by successful bidder shall include, by endorsement to the policy, a statement that a notice shall be given to District by certified mail thirty (30) days prior to cancellation or upon any materials change in coverage.

6.6 Successful Contractor shall provide Certificates of Insurance evidencing the above- required insurance, prior to commencement of this contract and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies. Said Notices and Certificates of Insurance shall be provided to Purchasing Services.

6.7 For non-subscribers that do not carry Workers' Compensation coverage, the District will, on a case-by-case basis, consider contractors who provide an Occupational Accident Policy, including Employers' Indemnity coverage with a $1,000,000 limit. However, the District reserves the right to require Workers' Compensation coverage if it feels it is in the best interest of the District to do so.

7. Price Changes: During the life of a contract only industry-wide published price changes as reflected in a manufacturer's printed price list, published documentation, or other approved method in an RFP may be submitted to the District for price adjustment consideration.

7.1 Procedures to Follow:

7.1.1 Firm Bids: No price increases allowed unless approved by DISTRICT in accordance with Section 7.2.

7.1.2 Catalog Bids: Submit a copy of the new manufacturer's price/cost list. Proposer shall compute new unit prices at the same percentage as reflected in the original proposal (See Sec. II. B. for formula). Prices will be verified for accuracy.

7.1.3 Requirement Contracts: No price increases allowed unless approved by DISTRICT in accordance with Section 7.2.

7.2 Acceptance of Price Increases: The District will accept or reject increases within seven (7) working days after receipt of a properly submitted request. If a properly submitted increase is rejected, Proposer may cancel such items from the contract by giving the District written notice. Cancellation will not go into effect for thirty (30) working days after receipt of the written request. Old prices must be honored on orders dated up to the official date of cancellation.

7.3 Price Decreases: Proposers are required to implement immediately any price decreases, roll backs, etc. that may become available. The District must be notified in writing of any decreases for file updating purposes and notice to contract users.

8. Administrative Procedure for Bid/Proposal Complaints: Members of the public having complaints regarding the District's purchasing procedures or operations may present their complaints or concerns to the District following this procedure. Please contact Purchasing Services for a copy of the procedures at (956) 657-4480.

9. Invoicing:

9.1 Original invoices must be submitted in duplicate to the Accounting Department in compliance with the following procedure: INVOICES shall show purchase order number, copy of signed delivery ticket and proposal name and shall be mailed directly to:

McAllen Independent School District
ATTN: Director of Accounting
2000 North 23 Street

McAllen, TX 78501

9.2 The invoice must show name of Proposer exactly as shown on the purchase order and the correct "Remit to:" address.
9.3 Invoice must show name of receiving entity.
9.4 Invoice should include a description of each item. Items should be shown in numerical order and must correspond with the item numbers shown on the purchase order.
9.5 Quantity, unit and price of each item must be shown. All prices should be extended on the invoice.
9.6 Total all extensions on invoice.
9.7 Discount, if applicable, must be stated, extended and deducted to arrive at a NET TOTAL for invoice.
9.8 Shipment date of merchandise must be shown.
9.9 Date of purchase order must be shown.

10. Payment:
10.1 Payment normally will be made to Proposer within 30 days after receipt of a properly prepared original invoice or the receipt of and the acceptance of goods ordered, whichever is later.
10.2 Payments for merchandise purchased with District appropriated funds will be made through District approved and manually signed purchase orders issued by District's Purchasing Services. Payments by qualified ordering entities will be made through the District's Accounting System.
10.3 Partial payments are an exception, but may be made with the prior written approval of the District.
10.4 A purchase for goods or services cannot be made using District funds without prior approval from Purchasing Services in the form of an approved Purchase Order. All invoices shall reflect Purchase Order dates that are on or after Purchasing Services' final approval print date.
10.5 The District reserves the right to adjust any invoice which is in error due to incorrect quantity(s), printing errors or pricing of services or goods on this contract. Upon either written or verbal notification the provider will promptly adjust the error within thirty (30) days from the date the provider is notified of the error.

11. Cancellation:
11.1 Cancellation of Contract Orders: Orders are canceled in writing by the District. Orders may be canceled without the consent of Proposer for failure to meet contractual obligations. If cancellation is requested by District for some other reason, through no fault of Proposer, Proposer's permission to cancel is required. All correspondence from Proposer pertaining to the cancellation of an order is to be addressed to the District. In the event the awarded Proposer shall fail to perform, keep or observe any of the terms and conditions to be performed, kept or observed, District shall give the awarded Proposer written notice of such default; and in the event said default is not remedied to the satisfaction and approval of District within five (5) working days of receipt of such notice by the awarded Proposer, default will be declared and all the awarded Proposer's rights shall terminate.
11.2 Authorized Relief from Performance (Force Majeure): The District will grant relief, as necessary, from performance of the contract if Proposer is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of Proposer. The burden of proof for the need of such relief rests with Proposer. To obtain release based on Force Majeure, Proposer must provide the District with sufficient documentation to show that suitable merchandise or service is unobtainable from any source.
11.3 Termination/Cancellation of Contract: The District reserves the right to cancel entire contract or any portion of a contract with any vendor that fails to perform in accordance with contract terms and conditions. The District and Proposer each shall have the right to terminate Contract without cause on thirty (30) days written notice to the other. The Contract will be monitored for acceptable services rendered throughout the contract period. The District will have the option to cancel the Contract within thirty (30) days from notification. In the event of any actual contract termination/cancellation, District will not be held responsible for loss of business or any termination expenses incurred by the vendor.
11.4 Non-Appropriation of Funds – The District intends to remit to the Contractor all payments for the full term if funds are legally available. In the event no funds or insufficient funds are appropriated and budgeted for the services and funds are otherwise unavailable, by any means whatsoever, in any fiscal period in which the Payments for the services are due under any Agreement as a result of this RFP, the District shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify the Contractor and any assignee of such occurrence. The Agreement(s) shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made, without penalty, liability or expense to the District of any kind, except as to (i) the portions of the Payments herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available and (ii) District's other obligations and liabilities under the Agreement(s) relating to, accruing or arising prior to such termination. In the event of such termination, Contractor, at their expense, shall retrieve the equipment, effective on the date of such termination.
11.5 Termination for Default: District reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of District in the event of breach or default of this contract. District reserves the right to terminate the contract immediately in the event the awarded Proposer fails to:
11.5.1 Meet schedules;
11.5.2 defaults in the payment of any fees;
11.5.3 otherwise perform in accordance with these specifications.
11.6 Breach of contract or default authorizes District to exercise any or all of the following rights:
11.6.1 District may take possession of the assigned premises and any fees accrued or becoming due to date;
11.6.2 District may take possession of all goods, fixtures and materials of awarded Proposer therein and may foreclose its lien against such personal property, applying the proceeds toward fees due or thereinafter becoming due.
11.6.3 District reserves the right to award canceled contract to next lowest and best Proposer as it deems to be in the best interest of District. In such event, the District shall charge the canceled Proposer the difference for any additional cost of such proposal item(s) from the next lowest and best Proposer.

12 Other Provisions:
12.1 Texas state law requires that a purchasing preference be given to any product made from recycled material if the product meets written specifications as to quality and quantity. If a product proposal on this solicitation contains recycled material, please identify the item number and report the percent of all recycled material in the product and the percent of post-consumer material used in the product. "Post-consumer" means material that has been recycled after sale to a consumer as opposed to reuse of manufacturing waste material prior to sale. In addition, identify any products that meet the criteria of "Environmentally Sensitive." Information Request: Please send information on any products not listed in this contract that are related and available through your company which contain recycled material

along with the percent of post- and pre- consumer content to:

McAllen Independent School District
ATTN: Purchasing Services
2000 N. 23rd Street
McAllen, TX 78501

12.1.1 When proposing, please consider the following:

12.1.2 Packing & Packaging: Use of the minimum amount of packing and packaging material consistent with assuring no damage to product in transit. The use of recyclable and recycled material content packing and packaging material is preferred.

12.1.3 New or Un-used: The terms shall not be interpreted to exclude the use of recycled content materials in products supplied. Nothing in a solicitation shall be construed to preclude the use of recycled content materials in a product regardless of any referenced specifications such as ANSI, ASTM, or Federal specifications so long as the material meets the performance requirements of such specifications and all required laws and regulations.

12.1.4 Material Safety Data Sheets: A Proposer must provide, at no cost, at least one copy of any applicable Manufacturer's Material Safety Data Sheet(s) (MSDS) with each shipment during the term of the contract. If OSHA or Federal or State laws provide for additional requirements, those requirements are in addition to the MSDS requirement. OSHA: All items must meet all applicable OSHA standards and regulations and all electrical items must bear the appropriate listing from UL, FMRC or NEMA.

12.1.5 Asbestos Management Plan: All proposers are required to review the Asbestos Management Plan for all District-owned facilities prior to performing any work or services at District-owned facilities. Asbestos Management Plans may be reviewed at each school site or at the Facilities Maintenance and Operations Department.

12.1.6 AHERA: All work must be in compliance with AHERA.

12.1.7 All contracts awarded in excess of $10,000 by school districts and their contractors or sub-grantees shall contain a provision requiring compliance with executive order 11246, entitled "Equal employment Opportunity", as amended by executive order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

12.1.8 All contracts and sub-grants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USD 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3). This Act provides that each contractor or sub-grantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work to give up any part of the compensation, to which he is otherwise entitled. School districts shall report all suspected or reported violations to TEA.

12.1.9 All contracts awarded by school districts and sub-grantees in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor Regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of eight hours and a standard workweek of 40 hours. Work in excess of the eight hours per day or 40 hours per week shall be compensated at a rate of not less than 1 1/2 times the basic rate of pay. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor.

12.1.10 Contracts, subcontracts, and sub-grants of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non- exempt federal contracts, grants, or loans of facilities included on the EPA list of violating facilities. The provision shall require reporting of violations to the Texas Education Agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

12.1.11 Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

12.1.12 Advertisement: Proposers are prohibited from using contract award information, sales values/ volumes and/or District customers in sales brochures or other promotions, including press releases.

12.2 Services/items supplied under this contract shall be subject to District's approval. Items found defective or not meeting specifications shall be picked up and replaced by the awarded Proposer at the next service date at no expense to District. If item is not picked up within one (1) week after notification, the item will become a donation to District for disposition.

13 Contract Provisions for contracts under Federal Awards – By submission of this proposal, Proposer agrees to comply with the following provisions.

13.1 Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where proposers violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

13.2 All contracts in excess of $10,000 must address termination for cause and for convenience including the manner by which it will be effected and the basis for settlement.

13.3 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

13.4 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 must include a provision for compliance with the Davis- Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The entity must report all suspected or reported violations to the

Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The entity must report all suspected or reported violations to the Federal awarding agency.

13.5 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

13.6 Rights to Inventions Made Under a Grants Contract or Cooperative Contract. If the Federal award meets the definition of "funding contract" under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding contract," the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts," and any implementing regulations issued by the awarding agency.

13.7 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub grants of amounts in excess of $150,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

13.8 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Proposers that apply or submit a proposal for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the award.

13.9 An entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Any questions regarding this RFP must be submitted through the "questions" tab located within the solicitation on the Ionwave website https://mcallenisd.ionwave.net/Login.aspx.

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

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

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

Print or type. See **Specific Instructions** on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN,* later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

			–			–				

or

Employer identification number

		–							

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here **Signature of U.S. person** ▶ **Date** ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9.*

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),

2. Certify that you are not subject to backup withholding, or

3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting,* later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.

2. The treaty article addressing the income.

3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

4. The type and amount of income that qualifies for the exemption from tax.

5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,

2. You do not certify your TIN when required (see the instructions for Part II for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code,* later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships,* earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code,* later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a $500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)

2—The United States or any of its agencies or instrumentalities

3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

4—A foreign government or any of its political subdivisions, agencies, or instrumentalities

5—A corporation

6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession

7—A futures commission merchant registered with the Commodity Futures Trading Commission

8—A real estate investment trust

9—An entity registered at all times during the tax year under the Investment Company Act of 1940

10—A common trust fund operated by a bank under section 584(a)

11—A financial institution

12—A middleman known in the investment community as a nominee or custodian

13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over $600 required to be reported and direct sales over $5,000[1]	Generally, exempt payees 1 through 5[2]
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

[1] See Form 1099-MISC, Miscellaneous Income, and its instructions.

[2] However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester,* later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at *www.SSA.gov*. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at *www.irs.gov/Businesses* and clicking on Employer Identification Number (EIN) under Starting a Business. Go to *www.irs.gov/Forms* to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to *www.irs.gov/OrderForms* to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code,* earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account[1]
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor[2]
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee[1]
b. So-called trust account that is not a legal or valid trust under state law	The actual owner[1]
6. Sole proprietorship or disregarded entity owned by an individual	The owner[3]
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	**Give name and EIN of:**
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity[4]
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

[1] List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

[2] Circle the minor's name and furnish the minor's SSN.

[3] You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

[4] List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships,* earlier.

***Note:** The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to *phishing@irs.gov.* You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at *spam@uce.gov* or report them at *www.ftc.gov/complaint.* You can contact the FTC at *www.ftc.gov/idtheft* or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see *www.IdentityTheft.gov* and Pub. 5027.

Visit *www.irs.gov/IdentityTheft* to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

_____

Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

_____ _____

Signature of vendor doing business with the governmental entity Date

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

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

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

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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

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

***

(2) the vendor:

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

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

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

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

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

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

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

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

(3) has a family relationship with a local government officer of that local governmental entity.

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

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

MCALLEN INDEPENDENT SCHOOL DISTRICT
CONTRACT NO. XXXX-XXX (Vendor Name) through Request for Qualifications No. XXXX-XXX

This contract ("Contract"), made and entered into effective by and between **McALLEN INDEPENDENT SCHOOL DISTRICT** (hereinafter referred to as "District") and (**name of company as listed on W-9)** a (state vendor is located) (type of business, corporation, llc, etc) (hereinafter referred to as "Contractor") as of the date of execution (the "Commencement Date") by the District as shown on the signatory page of this Contract.

WITNESSETH:

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

WHEREAS, District requested qualifications from vendors for Services, more particularly described on Exhibit A attached hereto;

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

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

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

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

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

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

1. OBLIGATIONS OF THE CONTRACTOR

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

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

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

The term Contract Documents as used herein shall include the following documents, and this Contract does hereby expressly incorporate same herein as fully as if set forth verbatim in this Contract..

A. This Contract

B. Exhibit "A" – District's Request for Qualifications No. xxxx-xxxx

C. Exhibit "B" – Vendor's Services, Products and Fees Pursuant to Request for Qualifications No. xxx-xxx/ **OR Vendor's Response to District's Request for Qualifications No. xxxx-xxxx (Depending on whether it is one awarded vendor or multiple.)**

D. Exhibit "C" – Certificate of Insurance

This Contract is entered into subject to the following conditions:

A. Contractor shall use its best efforts to keep to a minimum disruption or interruption of duties and/or work of employees of District and /or the learning environment of students of District while performing its work in accordance with the Contract Documents.

B. Contractor assumes full responsibility and liability for all labor and materials furnished and activities conducted by Contractor pursuant to this Contract and any action or omission incident thereto.

2. INSURANCE COVERAGE

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

A. Statutory Workers' Compensation (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY) and Employer's Liability Limits - $500,000

B. Commercial General Insurance (occurrence basis only) $1,000,000 each claim and in the aggregate.

C. Business Commercial or Personal Automobile Liability Insurance in the amounts specified by the Texas Tort Claims Act, Chapter 101 of the Texas Practice and Remedies Code for all owned, non-owned and hired vehicles; each person $100,000; each accident $300,000; and for property damage, each occurrence of $100,000. No deletions/exclusions from standard coverage form allowed without written consent of District. (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY).

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

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

3. TRANSFER, ASSIGNMENT, ETC.

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

4. ADJUDICATION

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

5. PROVISIONS, PARAGRAPHS

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

6. PAYMENT

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

7. TAXES AND BENEFITS

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

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

8. INCURRING FINANCIAL OBLIGATION

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

9. ACCESS TO BOOKS AND RECORDS

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

10. NON-DISCRIMINATION

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

11. HOLD HARMLESS

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

12. TERM AND TERMINATION OF CONTRACT

Term. The term of this Contract shall commence on the Commencement Date and remain effective through {insert end date} (Federal: a term of five (5) years). All services must be completed during the term of the Contract.

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

B. Termination with Cause.

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

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

ii. Failure to provide evidence of liability insurance, as required by numbered Paragraph 2 hereof.

iii. Failure of Contractor to immediately bar any individual from performing services under this Contract, if such individual does not meet the qualifications required by this Contract or if such individual commits a material breach of one of the terms of this Contract.

iv. In addition, if the Contractor commits a material breach of any of the terms of this Contract, other than those listed in subsections (i) through (iii) above, District may terminate this Contract upon no less than thirty (30) days written notice.

b. **Termination by Contractor.** In the event District breaches any material term of this Contract, Contractor may terminate this Contract upon no less than fifteen (15) days written notice.

c. **Non-Interference.** Following the expiration of this Contract or its termination for any reason, Contractor agrees to do nothing that may interfere with any contract of District with any other individual or entity for the provision of the services herein.

13. NOTICES

All notices provided to be given under this Contract shall be given in writing and will be deemed delivered when deposited in the United States Postal Service by certified or registered mail, addressed to the proper party, at the following addresses:

If to District:
McAllen Independent School District
Attn: Jose A. Gonzalez, Superintendent
2000 N. 23rd Street
McAllen, Texas 78501

If to Contractor:
COMPANY NAME
Attn:
Street:
City:

Either party may change the address to which notices are to be sent by giving the other party notice of the new address in the manner provided in this section.

14. LAW

THE INTERPRETATION AND ENFORCEMENT OF THIS CONTRACT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED BY THIS AGREEMENT ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS.

15. NO IMPLIED WAIVER

No waiver or modification of the Contract Documents shall be valid unless it is in writing and signed by the District and Contractor.

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16. SEVERABILITY

The invalidity or unenforceability of any provisions of this Contract will not affect the validity or enforceability of any other provision.

17. ASSIGNABILITY

The right and obligations of District hereunder shall inure to the benefit of and be binding upon the successors and assigns of District. The Contractor may not assign Contractor's rights or obligations under this Contract without District's written consent. Any assignment in violation of this provision shall give District the right to terminate this Contract immediately, upon written notice to the Contractor.

18. AMENDMENTS

All provisions of the Contract Documents shall be strictly complied with and performed by Contractor; and no amendment to this Contract shall be made except upon the written agreement by the parties. No amendment shall be construed to release either party from any obligation, representation, and/or warranty of the Contract Documents except as specifically provided for in such amendment.

19. ENTIRE CONTRACT

This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof. This Contract supersedes any and all other agreements, whether oral or in writing, between the parties with respect to the subject matter the Contract.

20. INTERPRETATION

The defined terms used herein are for convenience only and do not limit the contents of this Contract.

21. VARIATIONS OF PRONOUNS

All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons or entity may require.

22. AUTHORIZATION FOR CONTRACT

The execution and performance of this Contract by District and Contractor have been duly authorized by all necessary laws, resolutions or corporate action, and this Contract constitutes the valid and enforceable obligations of Contractor and District in accordance with its terms.

23. IMMUNITIES

Nothing in this Contract is intended to and District does not hereby waive, release or relinquish any right to assert any of the defenses District enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any

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sovereign, official or qualified immunity available to District as to any claim or action of any person, entity, or individual against District.

24. NON-APPROPRIATION OF FUNDS.

In the event no funds or insufficient funds are appropriated and budgeted for the services and funds are otherwise unavailable, by any means whatsoever, in any fiscal period in which the payments for the services are due under this Contract, then District shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify Contractor and any assignee of such occurrence. This Contract shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made, without penalty, liability or expense to the District of any kind, except as to (i) the portions of the payment herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available and (ii) District's other obligations and liabilities under this Contract relating to, accruing or arising prior to such termination. In the event of such termination, District agrees to peaceably request that the Contractor or its assignee stop the services on the date of such termination.

25. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA).

Parental consent must be obtained before personally identifiable information is used for any purpose other than meeting a requirement under the Individuals with Disabilities Education Act or disclosed to anyone other than officials of agencies collecting or using this information. The District may not release information from these records without parental consent except as provided in the Family Educational Rights and Privacy Act (FERPA).

26. CRIMINAL HISTORY INFORMATION.

Pursuant to Texas Education Code Section 22.0834, Contractor shall obtain criminal history record information that relates to an employee, applicant for employment, agent or subcontractor of the Contractor if the employee, applicant, agent, or subcontractor has or will have continuing duties related to the contracted services herein, and the duties are or will be performed on school property or at another location where students are regularly present. Contractor shall certify to District before beginning work and at no less than on an annual basis thereafter, that this process was followed.

Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony, or misdemeanor involving moral turpitude, as defined by Texas law, from District’s property or other location where students are regularly present, District shall be the final decider of what constitutes a “location where students are regularly present”. Contractor’s violation of this section shall constitute a material breach of contract. If the Contractor is the person, owner, or operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review, and must submit original evidence of compliance acceptable to District, with this Contract.

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27. ENTITIES THAT BOYCOTT ISRAEL

If Contractor is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that Contractor does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. If Contractor does not make that certification, Contractor must indicate that in its Response and state why the certification is not required.

28. Sec. 2252.152 CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED.

A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153.

Sec. 2252.153. **LISTED COMPANIES.** The comptroller shall prepare and maintain, and make available to each governmental entity, a list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.

Sec. 2252.154. **EXCEPTION.** Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter. SECTION 2. Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to a contract or purchase for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. SECTION 3. This Act takes effect September 1, 2017.

29. BREACH OF CONTRACT AND FEES

If either party hereto shall breach any of the terms hereof, such party shall pay to the non-defaulting party all of the non-defaulting party's costs and expenses, including attorney's fees, incurred by such party in enforcing the terms of this Contract.

30. FURTHER DOCUMENTS

The parties hereto covenant and agree that they will execute such other and future instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Contract.

31. BINDING NATURE

This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Contract.

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32. CONTRACT TERMS CONTROL

The terms and provisions of this Contract shall control with respect to any conflicting or inconsistent terms or provisions in any exhibit to this Contract.

IN WITNESS WHEREOF, the execution and performance of this Contract by each of the parties hereto have been duly authorized by all necessary laws, resolutions, ordinances, or governing body action, and this Contract constitutes the valid and enforceable obligations of the parties hereto in accordance with its terms.

EXECUTED on _____
Date

DISTRICT:

McAllen Independent School District
By:_____
Jose A. Gonzalez, Superintendent

Vendor
By:_____
Name:_____
Title:_____

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

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Exhibit "A" – District's Request for Qualifications No. XXXX-XXXX

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Exhibit "B" – Vendor's Services, Products and Fees Pursuant to

Request for Qualifications No. XXXX-XXXX

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Exhibit “C” – Certificate of Insurance

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Evaluation Matrix
2023-1029 - Districtwide Vending Machine Services

Criteria	Max. Pts. 100
Total Points	**100**
Ranking	
Price (Revenue to District)	**70**
Commission (LI#1.1-1.3)	50
Scholarships (LI#3.6-3.8)	20
Reputation of the vendor and of the vendor's goods or services;	**9**
References (LI #4.1-4.15)	9
The extent to which the goods or services meet District's needs	**15**
Additional Payment/Compensation Plan - Upfront Payment (LI #3.2-3.4)	5
Additional Payment/Compensation Plan - Product Donation (LI #3.10-3.12)	5
Additional Payment/Compensation Plan - Fundraising (LI #3.14-3.16)	5
The quality of the vendor's goods or services;	**3**
Current School District Services (LI #5.1-5.3)	3
Past Relationship with District	**1**
Past experience = 1 pt; No experience/Negative experience = 0 (LI #6.1)	1
HUB	**1**
Yes = 1; No = 0 (Attribute #33)	1
Total long-term cost to the district to acquire the vendor's goods or services	**0**
N/A	0
Vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state	**1**
Texas Vendor or Employs 500+ in Texas = 1; Out of State Vendor = 0 (Attribute #12)	1
Any other relevant factor specifically listed in the request for bids or proposals.	**0**
N/A	0

Attachment B

Location of Vending Machines

Elementary Schools:

Alvarez Elementary 2606 Gumwood McAllen, TX 78501 Ph: 956-971-4471 Fax:956-972-5668	Dr. Carlos Castaneda Elementary 4100 North 34th St. McAllen, TX 78504 Ph: 956-632-8882 Fax: 956-632-3627
Jose de Escandon Elementary 2901 Colbath McAllen, TX 78503 Ph: 956-971-4511 Fax: 956-971-4508	Victor Fields Elementary 500 Dallas McAllen, TX 78501 Ph: 956-971-4344 Fax: 956-971-4351
Reynaldo G. Garza Elementary 6300 North 29th St. McAllen, TX 78504 Ph: 956-971-4554 Fax: 956-971-4235	Leonel H. Gonzalez Elementary 201 East Martin McAllen, TX 78504 Ph: 956-971-4577 Fax: 956-971-4575
Lucile Mckee Hendricks Elementary 3900 Goldcrest McAllen, TX 78504 Ph: 956-971-1145	Sam Houston Elementary 3221 Olga Avenue McAllen, TX 78503 Ph: 956-971-4484 Fax: 956-971-4295
Andrew Jackson Elementary 501 West Harvey McAllen, TX 78501 Ph: 956-971-4277 Fax: 956-632-5179	Christa McAuliffe Elementary 3000 Daffodil McAllen, TX 78501 Ph: 956-971-4400 Fax: 956-971-4482
Ben Milam Elementary 3800 North Main St. McAllen, TX 78501 Ph: 956-971-4333 Fax: 956-972-5649	Dr. Pablo Perez Elementary 7801 North Main Street McAllen, TX 78504 Ph: 956-971-1125

Attachment B Continued

Sam Rayburn Elementary 7000 North Main St. McAllen, TX 78504 Ph: 956-971-4363 Fax: 956-632-8453	Theodore Roosevelt Elementary 4801 South 26th St. McAllen, TX 78503 Ph: 956-971-4424 Fax: 956-618-7362
Blanca E. Sanchez Elementary 2901 Incarnate Avenue McAllen, TX 78504 Ph: 956-971-1100	Juan Seguin Elementary 2200 North 29th St. McAllen, TX 78501 Ph: 956-971-4565 Fax: 956-971-4589
Thigpen-Zavala Elementary 2500 Galveston Avenue McAllen, TX 78501 Ph: 956-971-4377	Woodrow Wilson Elementary 1200 Hackberry McAllen, TX 78501 Ph: 956-971-4525 Fax: 956-971-4597

Attachment B Continued

Middle Schools:

Dorothea Brown Middle School 2700 South Ware Rd McAllen, TX 78503 Ph:956-632-8700 Fax: 956-632-8709	Dr. Rodney D. Cathey Middle School 1800 North Cynthia McAllen, TX 78501 Ph: 956-971-4300 Fax: 956-632-2811
Alonzo DeLeon Middle School 4201 North 29th St. McAllen, TX 78504 Ph: 956-632-8800 Fax: 956-632-8805	Michael E. Fossum Middle School 7800 N. Ware Rd McAllen, TX 78504 Ph: 956-971-1105 Fax: 956-618-9718
Homer J. Morris Middle School 1400 Trenton McAllen, TX 78504 Ph: 956-618-7300 Fax: 956-632-3666	Travis Middle School 600 Houston McAllen, TX 78501 Ph: 956-971-4242 Fax: 956-632-8454

Attachment B Continued

High Schools:

Achieve Early College High School 1601 North 27th Street Mcallen, TX 78501 Ph: 956-971-4200 Fax: 956-657-5357	Lamar Academy 1009 N. 10th Street McAllen, TX 78501 Ph: 956-632-63222 Fax: 956-632-3662
McAllen High School 2021 La Vista Avenue McAllen, TX 78501 Ph: 956-632-3100 Fax: 956-632-3114	McAllen Memorial High School 101 East Hackberry Street McAllen, TX 78501 Ph: 956-632-5201 Fax: 956-632-5226
James Nikki Rowe High School 2101 North Ware Rd McAllen, TX 78501 Ph: 956-632-5100 Fax: 956-632-8850	Instruction and Guidance Center 1619 Galveston Ave McAllen, TX 78501 Ph: 956-971-4393 Fax: 956-971-4294

Attachment B Continued

Other Areas:

Central Administration 2000 N. 23rd Street McAllen, TX 78501 Ph: 956-618-6000 Fax: 956-618-7387	Crockett Administration Complex 2112 N. Main Street McAllen, Texas 78501 Ph: 956-928-8990 Fax: 956-971-4423
Transportation Department 4309 Warrior Drive, Bldg. A McAllen, TX 78501 Ph: 956-632-3211 Fax:956-632-3637	Facilities Maintenance and Operations 4309 Warrior Drive, Bldg. B McAllen, TX 78501 Ph: 956-632-3200 Fax: 956-632-3645
Child Nutrition Building 4309 Warrior Drive, Bldg. D McAllen, TX 78501 Ph: 956-632-3226 Fax: 956-618-7347	Central Warehouse 4309 Warrior Drive McAllen, TX 78501 Ph: 956-632-3200
State & Federal Programs - Navarro 2100 Hackberry McAllen, TX 78501 Ph: 956-971-4455 Fax: 956-972-5692	Professional Development 1601 N. 27th Street McAllen, Texas 78501 Ph: 956-632-8414

Attachment C

Vending Machines Commissions Report

Supplier Name	2017	2018	2019	2020	Grand Total
MCALLEN ISD	$602.33	$560.52	$523.24	$252.15	$1,938.24
MCALLEN ISD	$327.44	$261.29	$384.03	$316.67	$1,289.43
MCALLEN ISD	$4,433.23	$3,622.21	$3,311.77	$2,715.02	$14,082.23
MCAISD	$53.28	$60.24	$258.98	$162.84	$535.34
MCALLEN ISD	$386.46	$290.88	$340.88	$185.48	$1,203.70
MCALLEN ISD	$1,620.76	$1,326.34	$862.73	$290.53	$4,100.36
MCALLEN ISD	$123.93	$118.53	$42.97	$7.93	$293.36
MCALLEN ISD	$111.31	$76.34	$50.26	$33.40	$271.31
MCALLEN ISD	$303.16	$274.09	$172.50	$23.14	$772.89
MCALLEN ISD	$367.85	$330.70	$192.40	$28.84	$919.79
MCALLEN ISD	$167.47	$71.36	$63.16	$82.92	$384.91
MCALLEN ISD	$476.53	$452.30	$357.47	$232.71	$1,519.01
MCAISD	$307.36	$336.28	$412.44	$146.17	$1,202.25
MCALLEN ISD	$288.95	$210.76	$197.34	$117.27	$814.32
MCALLEN ISD	$334.88	$249.58	$192.23	$79.81	$856.50
MCALLEN ISD	$180.60	$116.60	$365.32	$216.35	$878.87
MCALLEN ISD	$440.97	$457.31	$373.06	$168.67	$1,440.01
MCALLEN ISD	$413.09	$276.97	$261.26	$168.38	$1,119.70
MCALLEN ISD	$137.21	$22.23	$6.46	$22.62	$188.52
MCALLEN ISD	$332.40	$323.94	$303.99	$180.45	$1,140.78
MCALLEN ISD	$379.71	$339.54	$228.66	$74.08	$1,021.99
MCAISD	$1,031.60	$664.05	$947.14	$685.56	$3,328.35
MCAISD	$2,578.25	$2,910.66	$3,170.71	$1,828.45	$10,488.07
MCALLEN ISD	$638.76	$606.14	$669.99	$462.62	$2,377.51
MCALLEN ISD	$429.18	$383.67	$371.11	$304.84	$1,488.80
MCALLEN ISD	$989.16	$934.86	$1,172.54	$405.58	$3,502.14
MCALLEN ISD	$206.96	$208.51	$0.91	$3.99	$420.37
MCALLEN ISD	$3,736.18	$3,366.92	$3,249.17	$1,632.28	$11,984.55
MCALLEN ISD	$309.27	$280.49	$188.72	$53.64	$832.12
MCALLEN ISD	$422.28	$310.85	$309.12	$162.25	$1,204.50
MCALLEN ISD	$198.06	$141.72	$69.18	$7.89	$416.85
MCALLEN ISD	$262.63	$342.94	$329.23	$110.24	$1,045.04
MCALLEN ISD	$443.90	$564.68	$549.89	$332.29	$1,890.76
MCALLEN ISD	$200.93	$81.29	$128.84	$125.82	$536.88
MCALLEN ISD	$1,114.11	$1,052.33	$627.53	$349.59	$3,143.56
MCALLEN ISD	$282.27	$139.95	$130.93	$32.99	$586.14
	$24,632.46	**$21,767.07**	**$20,816.16**	**$12,003.46**	**$79,219.15**

Snacktime Vending Product list : Staff

System ID	Product	Brand	Family	Container	Access
384	Nestle 100 Grand 1.5 oz	100 Grand Bar	Candy	Bar	Staff
2	3 Musketeers 1.92 oz	3 Musketeers	Candy	Bar	Staff
10910	ACT II Popcorn Butter 3 oz	Act II	Salty Snacks	Bag	Staff
1597	Arizona Green Tea Ginseng Honey Bottle 16 oz	Arizona	Drinks	Bottle	Staff
62573	Arizona Green Tea with Ginseng and Honey 20 Oz	Arizona	Drinks	Bottle	Staff
886	Arizona Green Tea with Ginseng and Honey Can 23 oz	Arizona	Drinks	Can	Staff
11	Baby Ruth 2.1 oz	Baby Ruth	Candy	Bag	Staff
2904	Bai 5 Brasilia Blueberry Bottle 18 oz	Bai 5	Drinks	Bottle	Staff & Student
83095	Bai Boost Strawberry Watermelon	Bai 5	Drinks	Bottle	Staff
83096	Bai Boost Tangerine Citrus	Bai 5	Drinks	Bottle	Staff
2892	Basil's Chocolate Chip Mini Bites 1.5 oz	Basil's Bavarian Bakery	Cookies	Bag	Staff & Student
664	Belvita Breakfast Biscuit Cinnamon Brown Sugar 1.76 oz	Belvita	Granola	Bar	Staff
16	Big Red Can 12 oz	Big Red	Drinks	Can	Staff
1731	Big Red Bottle 16.9 oz	Big Red	Drinks	Bottle	Staff
79516	Black Rifle Espresso Mocha 11 oz	Black Rifle Coffee Company	Coffee	Can	Staff
17050	Blue Bunny Vanilla Ice Cream Sandwich 3.5 oz	Blue Bunny	Frozen Foods	Bag	Staff
25	Butterfinger 2.1 oz	Butterfinger	Candy	Bar	Staff
18340	Buzz Strong's Bakery Chocolate Chip Cookie 1.5 oz	Buzz Strong's Bakery	Cookies	Bag	Staff & Student
1793	Oven Baked Cheetos Crunchy Cheese 1 oz	Cheetos	Chips	Bag	Staff & Student
262	Oven Baked Cheetos Flamin' Hot 1.5 oz	Cheetos	Chips	Bag	Staff
31	Cheetos Crunchy LSS 2 oz	Cheetos	Chips	Bag	Staff
32	Cheetos Cheddar Jalapeno Crunchy LSS 2 oz	Cheetos	Chips	Bag	Staff
33	Cheetos Flamin Hot Limon LSS 2 oz	Cheetos	Chips	Bag	Staff
819	Cheetos Crunchy SS 1 oz	Cheetos	Chips	Bag	Staff
343	Cheetos Flaming Hot LSS 2 oz	Cheetos	Chips	Bag	Staff
863	Cheetos Flaming Hot SS 1 oz	Cheetos	Chips	Bag	Staff
1410	Lay's Oven Baked Sour Cream & Onion 1.5 oz	Cheetos	Chips	Bag	Staff
402	Cheetos Puffs LSS 1.38 oz	Cheetos	Chips	Bag	Staff
79308	Cheetos Mac 'N Cheese	Cheetos	Chips	Cup	Staff
1492	Cheetos Puffs Flamin Hot LSS 2 oz	Cheetos	Chips	Bag	Staff
44517	Cheetos Puffs Reduced Fat 0.7 oz	Cheetos	Chips	Bag	Staff & Student
237	Oven Baked Cheetos Crunchy Cheese 1.5 oz	Cheetos	Chips	Bag	Staff
38	Chester's Flamin Hot Fries 1.75 oz	Chester's	Chips	Bag	Staff
1849	Clif Bar White Chocolate Macadamia Nut 2.4 oz	Clif Bar	Granola	Bar	Staff
19	Big Texas Cinnamon Roll 4 oz	Cloverhill	Pastries	Bag	Staff
27	Cloverhill Cheese Danish 4.0 oz	Cloverhill	Pastries	Bag	Staff
1045	Coke Bottle 16.9 oz	Coca-Cola	Drinks	Bottle	Staff

Snacktime Vending Product list : Staff

System ID	Product	Brand	Family	Container	Access
1047	Diet Coke Bottle 16.9 oz	Coca-Cola	Drinks	Bottle	Staff & HS Student
36	Cherry Coke Bottle 20 oz	Coca-Cola	Drinks	Bottle	Staff
46	Coke Bottle 20 oz	Coca-Cola	Drinks	Bottle	Staff
47	Coke Can 12 oz	Coca-Cola	Drinks	Can	Staff
48	Coke Zero Bottle 20oz	Coca-Cola	Drinks	Bottle	Staff & HS Student
49	Coke Zero Can 12 oz	Coca-Cola	Drinks	Can	Staff & HS Student
63	Diet Coke Bottle 20 oz	Coca-Cola	Drinks	Bottle	Staff & HS Student
64	Diet Coke Can 12 oz	Coca-Cola	Drinks	Can	Staff & HS Student
10574	Mexican Coke Bottle 16.9 oz	Coca-Cola	Drinks	Bottle	Staff
223	Coke Vanilla Bottle 20 oz	Coca-Cola	Drinks	Bottle	Staff
1780	Coke Zero Bottle 16oz	Coca-Cola	Drinks	Bottle	Staff & HS Student
1340	Cocoa Puffs Cereal Bar 1.4 oz	Cocoa Puffs	Granola	Bar	staff & Student
18214	Core Power Elite Protein Chocolate Bottle 14 .oz	Core Power Portein Drink	Drinks	Bottle	Staff
1067	Corn Nuts Chile Picante 1.7 oz	Corn Nuts	Salty Snacks	Bag	staff
816	Crush Orange Can 12 oz	Crush	Drinks	Can	Staff
58	Dasani Water Bottle 20 oz	Dasani	Drinks	Bottle	Staff & Student
17671	David's Sunflower Seeds Original 1.625 oz	David's Sunflower Seeds	Salty Snacks	Bag	Staff
10007	Doritos Flamas Reduced Fat 1 oz	Doritos	Chips	Bag	Staff & Student
814	Doritos Nacho Cheese Chip SS 1 oz	Doritos	Chips	Bag	Staff
1326	Doritos Nacho Cheese Reduced Fat Chip SS 1oz	Doritos	Chips	Bag	Staff & Student
1327	Doritos Spicy Sweet Chili Reduced Fat Chip SS	Doritos	Chips	Bag	Staff & Student
1093	Doritos Tapatio Chips 2.13 oz	Doritos	Chips	Bag	Staff
5197	Doritos Dinamita Chile Limon 1.5 oz	Doritos	Chips	Bag	Staff
82061	Doritos Flamin' Hot Limon 1.75 oz	Doritos	Chips	Bag	Staff
88986	Doritos Flamin' Hot Cool Ranch 1.75 oz	Doritos	Chips	Bag	Staff
229	Doritos Cool Ranch LSS	Doritos	Chips	Bag	Staff
231	Doritos Nacho Cheese Chip LSS 1.75 oz	Doritos	Chips	Bag	Staff
50935	Doritos Flamin' Hot Nacho 1.75oz	Doritos	Chips	Bag	Staff
1048	Dr. Pepper Bottle 16.9 oz	Dr. Pepper	Drinks	Bottle	Staff
65	Diet Dr. Pepper Bottle 20 oz	Dr. Pepper	Drinks	Bottle	Staff & HS Student
66	Diet Dr. Pepper Can 12 oz	Dr. Pepper	Drinks	Can	Staff & HS Student
72	Dr. Pepper Bottle 20 oz	Dr. Pepper	Drinks	Bottle	Staff
73	Dr. Pepper Can 12 oz	Dr. Pepper	Drinks	Can	Staff
76	Dr. Pepper Cherry Bottle 20 oz	Dr. Pepper	Drinks	Bottle	Staff
80991	Dr. Pepper Zero Sugar Bottle 20 oz	Dr. Pepper	Drinks	Bottle	Staff
80992	Dr. Pepper Cherry Zero Sugar Bottle 20 oz	Dr. Pepper	Drinks	Bottle	Staff
2415	Drumstick Vanilla Cone 4.6 oz	Drumstick	Cold Foods	Bag	Staff

Snacktime Vending Product list : Staff

System ID	Product	Brand	Family	Container	Access
2416	Drumstick Vanilla Fudge Cone 4.6 oz	Drumstick	Cold Foods	Bag	Staff
2417	Drumstick Vanilla Caramel Cone 4.6 oz	Drumstick	Cold Foods	Bag	Staff
534	Duchess Honey Bun 3 oz	Duchess	Pastries	Bag	Staff
535	Duchess Sugar Donuts 3 oz	Duchess	Pastries	Bag	Staff
53449	Duchess Jumbo Iced Honey Bun 5 oz	Duchess	Pastries	Bag	Staff
6909	Duchess Pecan Pie 3 oz	Duchess	Pastries	Bag	Staff
3480	El Sabroso Guacachip 1.5 oz	El Sabroso	Chips	Bag	Staff
47172	Fairlife Dairy 'Licious Milk 14 oz	Fairlee	Drinks	Bottle	Staff
89641	Fairlife Cookies & Creamiest Milk	Fairlife	Dairy	Bottle	Staff
50	Famous Amos Cookie Chocolate Chip 2 oz	Famous Amos	Cookies	Bag	Staff
79	Fanta Orange Bottle 20 oz	Fanta	Drinks	Bottle	Staff
82	Fanta Strawberry Bottle 20 oz	Fanta	Drinks	Bottle	Staff
34109	Fat Boy Nut Sundae 4 oz	Fat Boy	Cold Foods	Pack	Staff
5443	FatBoy Ice Cream Sandwich	FatBoy	Cold Foods	Bar	Staff
38127	Fiji Water Bottle 500ml	Fiji Water	Drinks	Bottle	staff & Student
845	Fritos Original SS 1 oz	Fritos	Chips	Bag	Staff
86	Fritos Original LSS 2 oz	Fritos	Chips	Bag	Staff
2069	Kellogg's Frosted Flakes Cereal 2.1 oz	Frosted Flakes	Specialties	Cup	Staff
1092	Keebler Mini Fudge Stripes 2 oz	Fudge Shoppe	Cookies	Bag	Staff
1297	Funyuns Flamin' Hot LSS 1.25 oz	Funyuns	Chips	Bag	Staff
88	Funyuns Onion LSS 1.25 oz	Funyuns	Chips	Bag	Staff
89	Fuze Iced Tea Lemon Bottle 20 oz	Fuze	Drinks	Bottle	Staff
1085	Sensible Portions Veggie Straws Sea Salt 1 oz	Garden	Chips	Bag	Staff
91	Gardetto's Original 1.75 oz	Gardetto's	Chips	Bag	Staff
817	Canada Dry Ginger Ale Can 12 oz	Ginger Ale	Drinks	Can	Staff
10848	Smart Water Sport 23.67 oz	GlacÃ©au	Drinks	Bottle	Staff & Student
3182	Smart Water Bottle 20 oz	GlacÃ©au	Drinks	Bottle	Staff & Student
962	Gold Peak Sweet Tea 16.9 oz	Gold Peak Tea	Drinks	Bottle	Staff
10458	Gold Peak Sweet Tea 18.5 oz	Gold Peak Tea	Drinks	Bottle	Staff
10101	Haribo Gummy Bears Gold 5 oz	Haribo	Candy	Bag	Staff
32858	Hershey's Gold Bar King Size	Hershey's	Candy	Bar	Staff
102	Hershey's Almond Bar 1.45 oz	Hershey's	Candy	Bar	Staff
397	Hershey's Chocolate Bar 1.55 oz	Hershey's	Candy	Bar	Staff
653	Hershey's Cookies n Cream 1.55 oz	Hershey's	Candy	Bar	Staff
24182	Hippeas Vegan White Cheddar 1oz	Hippeas	Chips	Bag	Staff
24840	Jack Links Peppered Beef Jerky 1.25oz	Jack Link's	Specialties	Bag	Staff
52099	Jack Links Beef Jalapeno Jerky 1.25 oz	Jack Link's	Specialties	Bag	Staff

Snacktime Vending Product list : Staff

System ID	Product	Brand	Family	Container	Access
23244	Jack Links Sweet & Hot Beef Jerky 1.25oz	Jack Link's	Specialties	Bag	Staff
16815	Jack Links Jerky Original Beef Steak 1 oz	Jack Links	Salty Snacks	Bag	Staff
273	Kar's Nut Sweet N Salty Mix 2oz	Kar's	Salty Snacks	Bag	Staff
2961	Keebler Made With M&M's cookies 1.6 oz	Keebler	Cookies	Bag	Staff
8815	Kit Kat BigKat 1.5 oz	Kit Kat	Candy	Bar	Staff
684	Knott's Strawberry Cookie 2 oz	Knott's	Cookies	Bag	Staff
69156	La Colombe Coconut Mocha Draft Latte 9 oz 12pk	La Colombe	Coffee	Can	Staff
31835	La Colombe Vanilla Draft Latte	La Colombe	Coffee	Can	Staff
31844	La Colombe Mocha Draft Latte	La Colombe	Coffee	Can	Staff
31845	La Colombe Pumpkin Spice	La Colombe	Coffee	Can	Staff
78519	La Colombe Coffee Draft Latte Dble RTD	La Colombe	Coffee	Can	Staff
396	Lance Peanut Bar 2.2 oz	Lance	Candy	Bar	Staff
815	Lay's Classic SS 1 oz	Lay's	Chips	Bag	Staff
1083	Lay's Oven Baked Original 1.125 oz	Lay's	Chips	Bag	Staff & Student
846	Lay's Sour Cream & Onion LSS 1.5 oz	Lay's	Chips	Bag	Staff
120	Lay's Classic LSS 1.5 oz	Lay's	Chips	Bag	Staff
37283	Lay's Oven Baked Barbecue 1.5 oz	Lay's	Chips	Bag	Staff
3282	Lay's Limon Chips 1.5 oz	Lay's	Chips	Bag	Staff
17266	Mckee Little Debbie Nutty Bars 2.1 oz	Little Debbie	Candy	Bar	Staff
128	M&M's Peanut 1.74 oz	M&M's	Candy	Bag	Staff
11769	M&M's Chocolate 1.74 oz	M&M's	Candy	Bag	Staff
666	Mac's Red Hot Pork Skins 1 oz	Mac's	Chips	Bag	Staff
3339	Marinela Pinguinos 2.82oz.	Marinela	Pastries	Bag	Staff
3380	Bimbo Mini Mantecadas con Nuez 4 oz	Marinela	Pastries	Bag	Staff
2147	Bimbo Marinela Mini Mantecadas 2.2 oz	Marinela	Pastries	Bag	Staff
47281	Bimbo Doraditas 3.89oz	Marinela	Pastries	Bag	Staff
5067	Bimbo Marinela Gansito 2 Pack 3.67 oz	Marinela	Pastries	Bag	Staff
25825	Bimbo Mantecadas sabor Vainilla	Marinela	Pastries	Bag	Staff
10576	Mentos Gum Pure Fresh Spearmint 1.06 oz	Mentos	Gum and Mint	Bottle	Staff
131	Milky Way 1.84 oz	Milky Way	Candy	Bar	Staff
33538	Minute Maid JTG Cranberry Grape Juice 12 Oz bottle	Minute Maid	Drinks	Bottle	Staff
1610	Frito-Lay Miss Vickie's Jalapeno 1.3 oz	Miss Vickie's	Chips	Bag	Staff
17239	Frito-Lay Miss Vickie's Lime & Pepper 2oz	Miss Vickie's	Chips	Bag	Staff
770	Mrs. Freshley's Dreamies Raspberry 4 oz	Mrs. Freshley's	Pastries	Bag	Staff
57	Mrs. Freshley's Chocolate Cupcakes 2pk 4 oz	Mrs. Freshley's	Pastries	Bag	Staff
55878	Mrs Freshley's Crunch Donuts 6ct	Mrs. Freshley's	Pastries	Bag	Staff
2826	Mountain Dew Baja Blast Can 12 oz	Mt. Dew	Drinks	Can	Staff

Snacktime Vending Product list : Staff

System ID	Product	Brand	Family	Container	Access
9261	Munchies Snack Mix Flamin' Hot LSS 2 oz	Munchies	Chips	Bag	Staff
158	Munchies Snack Mix Cheese Fix LSS 1.75 oz	Munchies	Chips	Bag	Staff
44518	Munchies Munch Mix .875 oz	Munchies	Chips	Bag	Staff & Student
55151	Muscle Milk Chocolate, Zero Sugar 11oz	Muscle JLK	Pharmaceutical	Pack	Staff
10356	Naked Green Machine 15.2 oz	Naked Juice	Drinks	Bottle	Staff
1812	Nature Valley Trail Mix Fruit & Nut Bar 1.2 oz	Nature Valley	Granola	Bar	Staff & Student
5168	Nature Valley Crunchy Oats and Honey 1.5 oz	Nature Valley	Granola	Bar	Staff & Student
5315	Nature's Bakery Double Chocolate Brownie 2 oz	Nature's Bakery	Granola	Bar	Staff
100608	Pancho's Hot Orange Jellies 2oz	Not Specified	Candy	Bag	Staff
100609	Crazy Bears Hot Jellies 2oz	Not Specified	Candy	Bag	Staff
83714	Parga gushers enchilados 3.7 oz	Not Specified	Candy	None	Staff
83715	Parga Skittles enchilados 3.7 oz	Not Specified	Candy	None	Staff
83716	Parga hot Strawberry sour belts 3.7 oz	Not Specified	Candy	None	Staff
99595	Rap Snacks Variety Pack 2.5oz	Not Specified	Chips	Box	Staff
100365	PRONUT	Not Specified	Pastries	None	Staff
18964	Cap'n Crunch Crunch Berries Cereal Cup	Not Specified	Specialties	Cup	Staff
18729	Dunkin Donuts Iced Coffee French Vanilla 13.7 oz	Not Specified	Drinks	Bottle	Staff
18731	Dunkin Donuts Iced Coffee Mocha 13.7 oz	Not Specified	Drinks	Bottle	Staff
88107	Black Stagg Iced Latte Vanilla	Not Specified	Drinks	Bottle	Staff
35118	Fairlife Rich Chocolate 8 oz	Not Specified	Drinks	None	Staff
92238	Rap Snacks Rick Ross Sweet Chili Lemon Pepper 2.5oz	Not Specified	Chips	Bag	Staff
93379	Parga Chili Mango 3.7oz	Not Specified	Candy	Bag	Staff
18685	Oak Farms Whole Milk 16 oz	Oak Farms	Drinks	Bottle	Staff
755	Ocean Spray Cranberry Cocktail 15.2 oz	Ocean Spray	Drinks	Bottle	Staff
8007	Oh Yeah! One Birthday Cake One Bar 2.12 oz	Oh Yeah!	Specialties	Bar	Staff
70075	ONE Bar - Protein Bar - Cookies & Cream 60g	Oh Yeah!	Specialties	Bar	Staff
811	Oreos 1.8 oz	Oreo	Cookies	Bag	staff
2264	Ozarka bottle 20 oz	Ozarka	Drinks	Bottle	Staff & Student
162	Payday 1.85 oz	Payday	Candy	Bar	Staff
70	Diet Pepsi Can 12 oz	Pepsi	Drinks	Can	Staff & HS Student
633	Brisk Iced Tea Lemon Can 12 oz	Pepsi	Drinks	Can	staff
155	Mountain Dew Can 12 oz	Pepsi	Drinks	Can	staff
165	Pepsi Can 12 oz	Pepsi	Drinks	Can	staff
4577	Perrier Water 16.9oz	Perrier	Drinks	Bottle	Staff & Student
171	Planters Salted Peanuts 2 oz	Planters	Salty Snacks	Bag	Staff
7096	Planters Nutrition Heart Healthy Mix 1.5 oz	Planters	Salty Snacks	Bag	Staff
278	Pop Tart Strawberry 3.67 oz	Pop Tarts	Pastries	Bag	staff

Snacktime Vending Product list : Staff

System ID	Product	Brand	Family	Container	Access
6839	Popchips Crazy Hot .7 oz	Popchips	Chips	Bag	Staff & Student
7123	Pop Chips Sea Salt & Vinegar 0.8 oz	Popchips	Chips	Bag	Staff & Student
1628	Powerade Orange Bottle 20 oz	Powerade	Drinks	Bottle	Staff
175	Powerade Mountain Berry Blast 20 oz	Powerade	Drinks	Bottle	Staff
177	Powerade Grape 20 oz	Powerade	Drinks	Bottle	Staff
178	Powerade Fruit Punch 20 oz	Powerade	Drinks	Bottle	Staff
179	Powerade Lemon Lime 20 oz	Powerade	Drinks	Bottle	Staff
87511	Quaker Chewy Cookies & Cream Granola Bars .84 oz 8ct box	Quaker	Granola	Bar	Staff & Student
3162	Quest Cookies & Cream Bar 2.12 oz	Quest Nutrition	Granola	Bar	Staff
50526	Quest Protein Tortilla Chips Ranch 1.125 oz	Quest Nutrition	Chips	Bag	Staff
9078	Quest Bar Chocolate Chip Cookie Dough 2.12 oz	Quest Nutrition	Pastries	Pack	Staff
35830	Quest Protein Tortilla Chips Nacho Cheese 1.125 oz	Quest Nutrition	Chips	Bag	Staff
7726	Crazy Mango 1.4 oz	Ravi	Candy	Bag	Staff
7727	Crazy Fresa 1.4 oz	Ravi	Candy	Bag	Staff
7728	Crazy Sandia 1.4 oz	Ravi	Candy	Bag	Staff
40146	Crazy Pina 1.4 oz	Ravi	Candy	Bag	Staff
182	Reese's Peanut Butter Cups 1.5 oz	Reese's	Candy	Bag	staff
1573	Rice Krispies Whole Grain 1.41 oz	Rice Krispies	Pastries	Bag	Staff & Student
44141	Rico's Nacho Cheese Sauce	Rico's	Specialties	Cup	Staff
3407	Ruffles Queso 1.5 oz	Ruffles	Chips	Bag	Staff
92397	Ruffles flamin hot 1 1/2oz	Ruffles	Chips	Bag	Staff
263	Oven Baked Ruffles Cheddar & Sour Cream 1.125 oz	Ruffles Cheddar & Sour Cream	Chips	Bag	Staff
22228	RXBAR Protein Bar Blueberry 1.83 oz	RXBAR	Specialties	Bar	Staff
2702	Skinny Pop Popcorn .65 oz	Skinny Pop	Salty Snacks	Bag	Staff
259	Skittles Wild Berry 2.17 oz	Skittles	Candy	Bag	Staff
189	Skittles Fruit 2.17 oz	Skittles	Candy	Bag	Staff
10367	Slim Jim Giant Original 0.97 oz	Slim Jim	Salty Snacks	Pack	Staff
1846	Smartfood White Cheddar 1 oz	Smartfood	Chips	Bag	Staff
196	Snickers 1.86 oz	Snickers	Candy	Bar	Staff
3360	Sour Patch Kids Watermelon 1.8 oz	Sour Patch	Candy	Bag	Staff
1038	Sprite Bottle 16.9 oz	Sprite	Drinks	Bottle	Staff
200	Sprite Bottle 20 oz	Sprite	Drinks	Bottle	Staff
201	Sprite Can 12 oz	Sprite	Drinks	Can	Staff
202	Sprite Zero Bottle 20 oz	Sprite	Drinks	Bottle	Staff & HS Student
1042	Starbucks Vanilla Frappuccino Bottle 9.5 oz	Starbucks	Drinks	Bottle	Staff
5920	Starbucks Doubleshot Espresso and Cream 6.5 oz	Starbucks	Drinks	Can	Staff
924	Starbucks Mocha Frappuccino Bottle 9.5 oz	Starbucks	Drinks	Bottle	Staff

Snacktime Vending Product list : Staff

System ID	Product	Brand	Family	Container	Access
206	Starburst Original Fruit Chews 2.07 oz	Starburst	Candy	Bar	Staff
2016	Starkist Tuna Lunch to Go Tuna with Crackers 4.1 oz	Starkist	Specialties	Bag	Staff
11405	Fritolay Sunchips - Harvest Cheddar	Sun Chips	Chips	Bag	Staff
90500	Takis Waves Fuego 2.5 oz	Takis	Chips	Bag	Staff
64423	Takis Fuego Hot Nuts 3.2oz	Takis	Salty Snacks	Bag	Staff
1782	Takis Fuego 2 oz	Takis	Chips	Bag	Staff
2270	Terra Vegetable Chips Original Sea Salt 1 oz	Terra	Chips	Bag	Staff
1072	Topo Chico Mineral Water Bottle 20 oz	Topo Chico	Drinks	Bottle	Staff & HS Student
1475	Trident Original 1 oz	Trident	Gum and Mint	Pack	Staff
1814	Tropicana Apple Juice Bottle 15.2 oz	Tropicana	Drinks	Bottle	Staff
1058	Tropicana Ruby Red Grapefruit 15.2 oz	Tropicana	Drinks	Bottle	Staff
2362	Tropicana Orange Juice Bottle 10 oz	Tropicana	Drinks	Bottle	Staff
221	Twix Caramel Cookie Bar 1.79 oz	Twix	Candy	Bar	Staff
922	V8 Splash Berry Blend Bottle 11.5 oz	V8	Drinks	Bottle	Staff
481	Van Holten's Hearty Dill, Dill Pickle 4 oz	Van Holton's	Cold Foods	Bag	Staff
1831	Vita Coco Coconut Water	Vita Coco	Drinks	Bottle	Staff
1041	Vitamin Water Power C Dragonfruit Bottle 20 oz	Vitamin Water	Drinks	Bottle	Staff
292	Vitamin Water XXX Bottle 20 oz	Vitamin Water	Drinks	Bottle	Staff
1049	Wonderful Pistachios Roasted and Salted 1.5 oz	Wonderful	Salty Snacks	Bag	Staff
23258	Albanese 12 Flavor Gummi Bears 7.5oz	World's Best	Candy	Bag	Staff
10517	Zapp's Voodoo LSS 1.5 oz	Zapp's	Chips	Bag	Staff
342	Zapp's Spicy Cajun Crawtators 1.5 oz	Zapp's	Chips	Bag	Staff
1906	Zapp's Spicy Cajun Crawtators 1 oz	Zapp's	Chips	Bag	Staff

Snacktime Vending Product list : All Students

System ID	Product	Brand	Family	Container	Access
2904	Bai 5 Brasilia Blueberry Bottle 18 oz	Bai 5	Drinks	Bottle	Staff & Student
2892	Basil's Chocolate Chip Mini Bites 1.5 oz	Basil's Bavarian Bakery	Cookies	Bag	Staff & Student
18340	Buzz Strong's Bakery Chocolate Chip Cookie 1.5 oz	Buzz Strong's Bakery	Cookies	Bag	Staff & Student
1793	Oven Baked Cheetos Crunchy Cheese 1 oz	Cheetos	Chips	Bag	Staff & Student
44517	Cheetos Puffs Reduced Fat 0.7 oz	Cheetos	Chips	Bag	Staff & Student
1340	Cocoa Puffs Cereal Bar 1.4 oz	Cocoa Puffs	Granola	Bar	staff & Student
58	Dasani Water Bottle 20 oz	Dasani	Drinks	Bottle	Staff & Student
10007	Doritos Flamas Reduced Fat 1 oz	Doritos	Chips	Bag	Staff & Student
1326	Doritos Nacho Cheese Reduced Fat Chip SS 1oz	Doritos	Chips	Bag	Staff & Student
1327	Doritos Spicy Sweet Chili Reduced Fat Chip SS	Doritos	Chips	Bag	Staff & Student
38127	Fiji Water Bottle 500ml	Fiji Water	Drinks	Bottle	staff & Student
10848	Smart Water Sport 23.67 oz	GlacÃ©au	Drinks	Bottle	Staff & Student
3182	Smart Water Bottle 20 oz	GlacÃ©au	Drinks	Bottle	Staff & Student
1083	Lay's Oven Baked Original 1.125 oz	Lay's	Chips	Bag	Staff & Student
44518	Munchies Munch Mix .875 oz	Munchies	Chips	Bag	Staff & Student
1812	Nature Valley Trail Mix Fruit & Nut Bar 1.2 oz	Nature Valley	Granola	Bar	Staff & Student
5168	Nature Valley Crunchy Oats and Honey 1.5 oz	Nature Valley	Granola	Bar	Staff & Student
2264	Ozarka bottle 20 oz	Ozarka	Drinks	Bottle	Staff & Student
4577	Perrier Water 16.9oz	Perrier	Drinks	Bottle	Staff & Student
6839	Popchips Crazy Hot .7 oz	Popchips	Chips	Bag	Staff & Student
7123	Pop Chips Sea Salt & Vinegar 0.8 oz	Popchips	Chips	Bag	Staff & Student
87511	Quaker Chewy Cookies & Cream Granola Bars .84 oz 8ct box	Quaker	Granola	Bar	Staff & Student
1573	Rice Krispies Whole Grain 1.41 oz	Rice Krispies	Pastries	Bag	Staff & Student

Snacktime Vending Product list : High School Students

Product	Brand	Family	Container	Access
Bai 5 Brasilia Blueberry Bottle 18 oz	Bai 5	Drinks	Bottle	Staff & Student
Basil's Chocolate Chip Mini Bites 1.5 oz	Basil's Bavarian Bakery	Cookies	Bag	Staff & Student
Buzz Strong's Bakery Chocolate Chip Cookie 1.5 oz	Buzz Strong's Bakery	Cookies	Bag	Staff & Student
Oven Baked Cheetos Crunchy Cheese 1 oz	Cheetos	Chips	Bag	Staff & Student
Cheetos Puffs Reduced Fat 0.7 oz	Cheetos	Chips	Bag	Staff & Student
Diet Coke Bottle 16.9 oz	Coca-Cola	Drinks	Bottle	Staff & HS Student
Coke Zero Bottle 20oz	Coca-Cola	Drinks	Bottle	Staff & HS Student
Coke Zero Can 12 oz	Coca-Cola	Drinks	Can	Staff & HS Student
Diet Coke Bottle 20 oz	Coca-Cola	Drinks	Bottle	Staff & HS Student
Diet Coke Can 12 oz	Coca-Cola	Drinks	Can	Staff & HS Student
Coke Zero Bottle 16oz	Coca-Cola	Drinks	Bottle	Staff & HS Student
Cocoa Puffs Cereal Bar 1.4 oz	Cocoa Puffs	Granola	Bar	staff & Student
Dasani Water Bottle 20 oz	Dasani	Drinks	Bottle	Staff & Student
Doritos Flamas Reduced Fat 1 oz	Doritos	Chips	Bag	Staff & Student
Doritos Nacho Cheese Reduced Fat Chip SS 1oz	Doritos	Chips	Bag	Staff & Student
Doritos Spicy Sweet Chili Reduced Fat Chip SS	Doritos	Chips	Bag	Staff & Student
Diet Dr. Pepper Bottle 20 oz	Dr. Pepper	Drinks	Bottle	Staff & HS Student
Diet Dr. Pepper Can 12 oz	Dr. Pepper	Drinks	Can	Staff & HS Student
Fiji Water Bottle 500ml	Fiji Water	Drinks	Bottle	staff & Student
Smart Water Sport 23.67 oz	GlacÃ©au	Drinks	Bottle	Staff & Student
Smart Water Bottle 20 oz	GlacÃ©au	Drinks	Bottle	Staff & Student
Lay's Oven Baked Original 1.125 oz	Lay's	Chips	Bag	Staff & Student
Munchies Munch Mix .875 oz	Munchies	Chips	Bag	Staff & Student
Nature Valley Trail Mix Fruit & Nut Bar 1.2 oz	Nature Valley	Granola	Bar	Staff & Student
Nature Valley Crunchy Oats and Honey 1.5 oz	Nature Valley	Granola	Bar	Staff & Student
Ozarka bottle 20 oz	Ozarka	Drinks	Bottle	Staff & Student
Diet Pepsi Can 12 oz	Pepsi	Drinks	Can	Staff & HS Student
Perrier Water 16.9oz	Perrier	Drinks	Bottle	Staff & Student
Popchips Crazy Hot .7 oz	Popchips	Chips	Bag	Staff & Student
Pop Chips Sea Salt & Vinegar 0.8 oz	Popchips	Chips	Bag	Staff & Student
Quaker Chewy Cookies & Cream Granola Bars .84 oz 8ct box	Quaker	Granola	Bar	Staff & Student
Rice Krispies Whole Grain 1.41 oz	Rice Krispies	Pastries	Bag	Staff & Student
Sprite Zero Bottle 20 oz	Sprite	Drinks	Bottle	Staff & HS Student
Topo Chico Mineral Water Bottle 20 oz	Topo Chico	Drinks	Bottle	Staff & HS Student

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Possible Action on Request for Proposal No. 2021-1020 Food, Restaurants, Catering, Fundraising, Field Trips, and Rentals (Round 24)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited proposals for food, restaurants, catering, fundraising, field trips, and rentals. This Request for Proposal ("RFP") is an extended response period, multiple award contract, solicited in accordance with FASRG, section 5.16 titled "Multiple/Catalog/Discount-from-List Contract Awards". This allows vendors to submit responses throughout the year through the contract term. Vendors are awarded on an incremental basis, upon Board approval. The Board, with some exceptions, historically awarded this RFP on a monthly basis. Seventy-nine (79) vendors were previously awarded through this RFP.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Six hundred and eighty (680) vendors were invited to submit proposals. Five (5) vendors responded, including two (2) no-bid and one (1) non-responsive vendor. The evaluation committee comprised of Alexandra Molina, Executive Director of Child Nutrition & Purchasing; Elizabeth Cabrera Coordinator for Purchasing Services; and Krystal Mercado, Senior Buyer, evaluated the proposals. Administration is recommending the two (2) vendors listed on the attached list be awarded, for a total of eighty-one (81) vendors, on this RFP.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

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

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2021-1020 Food, Restaurants, Catering, Fundraising, Field Trips, and Rentals and award vendors on the attached list, for a coterminous term through June 30, 2024.

SUBMITTED BY: Alexandra Molina (Apr 18, 2023 13:15 CDT)

SUPERVISOR:

For further information contact:
Name: Alexandra Molina
Office: 956-657-4480
email: alexandra.molina@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

RFP 2021-1020 Food, Restaurants, Catering, Fundraising, Field Trips, and Rentals (Round 24)

No.	Responding Supplier	City	State	Recommendation
1	Annette Marie LC	McAllen	TX	Qualified
2	EF Institute for Cultural Exchange, Inc	Cambridge	MA	Qualified

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Possible action on Request for Proposal No. 2022-1031 Athletic Equipment, Supplies, Reconditioning Services, and Related Products (Round 9)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited proposals for athletic equipment, supplies, reconditioning services, and related products. This Request for Proposal ("RFP") is an extended response period, multiple award contract, solicited in accordance with FASRG, section 5.16 titled "Multiple/Catalog/Discount-from-List Contract Awards". This allows vendors to submit responses throughout the year through the contract term. Vendors are awarded on an incremental basis, upon Board approval. The Board, with some exceptions, historically awarded this RFP on a monthly basis. Fifty-six (56) vendors were previously awarded through this RFP.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Three hundred eighty-one (381) vendors were invited to submit proposals, and five (5) vendors responded, including three (3) no bid responses, and one (1) previously awarded (with no changes). The evaluation committee, comprised of Brian McClenny, Director of Athletics; Raul Vega, Assistant Athletics Director; Lorena Lopez, Assistant Athletics Director; Alexandra Molina, Executive Director of Child Nutrition and Purchasing; Elizabeth Cabrera, Coordinator for Purchasing Services; and Sandra Pulido, Buyer, evaluated the proposals. Administration is recommending the one (1) vendor listed on the attached list, be awarded on this RFP, for a total of fifty-seven (57) vendors.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

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

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2022-1031 Athletic Equipment, Supplies, Reconditioning Services, and Related Products (Round 9), and award vendors on the attached list, for a coterminous term through June 30, 2025.

Brian McClenny

SUBMITTED BY: Brian McClenny (Apr 20, 2023 09:37 CDT) **SUPERVISOR:**

For further information contact:
Name: Brian McClenny
Office: 956-618-6089
email: bmcclenn@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

RFP 2022-1031 Athletic Equipment, Supplies, Reconditioning Services, and Related Products (Round 9)

No.	Responding Supplier	City	State	Recommendation
1	Healy Awards, Inc	Menomonee Falls	WI	Qualified

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Possible Action of Request for Proposal No. 2022-1025 Fine Arts Equipment, Supplies, Related Products, and Services (Round 11)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited proposals for fine arts equipment, supplies, related products, and services. This Request for Proposal ("RFP") is an extended response period, multiple award contract, solicited in accordance with FASRG, section 5.16 titled "Multiple/Catalog/Discount-from-List Contract Awards". This allows vendors to submit responses throughout the year through the contract term. Vendors are awarded on an incremental basis, upon Board approval. The Board, with some exceptions, historically awarded this RFP on a monthly basis. Fifty-three (53) vendors were previously awarded through this RFP.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Four hundred and thirty-four (434) vendors were invited to submit proposals, and twelve (12) vendors responded, including eight (8) no bid responses, and three (3) previously awarded vendors (with no changes). The evaluation committee, comprised of Debra Loya, Director of Fine Arts; Jessica Riojas, Fine Arts Bookkeeper; Alexandra Molina, Executive Director of Child Nutrition & Purchasing; Elizabeth Cabrera, Coordinator for Purchasing Services; and Krystal Mercado, Senior Buyer, evaluated the proposals. Administration is recommending the one (1) vendor listed on the attached list, to be awarded, for a total of fifty-four (54) vendors, on this RFP.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

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

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2022-1025 Fine Arts Equipment, Supplies, Related Products, and Services, and award the vendor on the attached list, for a coterminous term through June 30, 2025.

SUBMITTED BY: Debra Loya (Apr 20, 2023 16:04 CDT)

SUPERVISOR:

For further information contact:
Name: Debra Loya
Office: 956-618-6085
email: Debra.Thomas@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

2022-1025 Fine Arts Equipment, Supplies, Related Products, and Services (Round 11)

No.	Responding Supplier	City	State	Recommendation
1	Tote, Inc dba Tote Unlimited, Happy Feet Boots	Fort Worth	TX	Qualified

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Discussion and Possible Action on Statement of Acceptance No. 2023-196 Alonzo De Leon Middle School International Baccalaureate Program

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
Every five (5) years, each International Baccalaureate ("IB") School undergoes a self-reflection and evaluation of school practices. This helps the school and IB know that the Program is being implemented according to the Program Standards and Practices. At the end of the cycle, the school is provided the opportunity to respond and grow in any areas that need improvement. IB Organization requests the Superintendent and Board of Trustees, commit to the Rules for IB World Schools, General Regulations, Assessment Procedures, Program Standards and Practices, the IB rules of use of IB Intellectual Property, and the Principles into Practice. The Statement of Commitment confirms that the district will pay all fees associated with running IB Schools, and that no additional contracts be required for vendor and that all invoices will be timely paid.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The purpose of the Statement of Acceptance is to confirm that the rules have been read, and the District will comply with the rules. The Statement of Acceptance requires Board approval.

LEGAL REVIEW:

The Statement of Acceptance has been reviewed by legal counsel.

BUDGETARY CONSIDERATIONS:

Not Applicable.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the Statement of Acceptance No. 2023-196 Alonzo De Leon Middle School International Baccalaureate Program.

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

For further information contact:
Name: Rosalba De Hoyos
Office: (956) 618-6048
eMail: Rosaba.DeHoyos@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools

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Statement of acceptance

Name of school				IB school code
Alonzo De Leon Middle Years Programme				070240
Legal registered name of school (if different from above)				Date
IB programme(s)	☐ PYP	☑ MYP	☐ DP	☐ CP

We confirm having read the Rules (as defined below) that are in force at the time of signing this statement of acceptance and understand that our authorization to offer this IB programme is dependent upon our compliance with them. We also acknowledge and agree that should our school or governing body not comply with the Rules, the International Baccalaureate (IB) hereby reserves the right to take such action as it deems appropriate, including, but not limited to, suspension or withdrawal of our authorized status or other remedial measures.

"Rules" refers to the most recent versions of the following documents and regulations that govern the implementation of the programmes.

- *Rules for IB World Schools*
- *General regulations or Assessment procedures*
- *Programme standards and practices*
- the IB's "Rules for use of IB Intellectual Property" (available on the website at ibo.org/copyright)
- the IB's online terms and conditions (available at ibo.org/terms-and-conditions)
- *[PYP/MYP/CP/DP]: From principles into practice*

Such Rules may be amended from time to time and are accessible on the programme resource centre and also onibo.org/become-an-ib-school/useful-resources.

We also confirm the following.

- We shall abide by the terms and conditions of the Rules and agree that the Rules shall operate as the agreement between our school (and, if required, our governing body or controlling entity) and the IB as to their respective rights and obligations.

- We will, or will ensure that our governing body or controlling entity will, pay all applicable IB fees in the assigned currency for our school (published in the *Fees and billing information for IB World Schools* on the programme resource centre) and within the published timelines.

- We have all necessary authorization and approvals from our governing body, controlling entity and/or from our school leadership (including any procurement office or department) or as is otherwise required by law, regulations or policies applicable to our school for us to agree to this statement of acceptance and for it to be a legally binding and enforceable obligation on our school, governing body and/or controlling entity.

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- The school operates in compliance with all applicable laws, regulations and policies. Further, the school confirms that it operates in accordance with best practices, as well as all applicable laws, regulations and policies, in the area of child protection and that it has appropriate procedures in place (which may include components such as criminal background screening) for recruiting, hiring and retaining staff).

- No additional approvals (of our, or our governing body's or controlling entity's, board or otherwise); contracts, documentation; vendor, supplier or other types of registrations; reports; certifications; certificates or other submissions are required by our school or our governing body and/or controlling entity in order for us, or our governing body and/or controlling entity (including any procurement office or similar office or department), to timely pay invoices received from the IB for any services (including, without limitation, professional development fees). Should any such requirements arise after the date of this statement of acceptance, we shall notify the IB promptly in writing and in any event sufficiently in advance to permit the IB to consider whether to respond to such requests and still ensure timely payment of the IB's invoice. We hereby acknowledge and agree that the IB is under no obligation to comply with such additional requests.

- The school information found on MyIB will be updated before the statement of acceptance has been signed and submitted.

We represent and warrant that this statement of acceptance has been, and acknowledge and agree that it will be understood by the IB to have been, read and endorsed by the head of school, the superintendent of school (if applicable/necessary) and authorized representative(s) of the governing body and/or controlling entity (if applicable/necessary).

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Name and title of head of school[i] Samuel Cazares, Principal

Signature **Date**

Name and title of superintendent of school[ii] **(if applicable)** Dr. Jose A. Gonzalez, Supe

Signature **Date**

Name and title of the duly authorized representative of the school's (or its controlling entity's) governing body[iii] Tony Forina, Board Preside

Signature **Date**

Please confirm your agreement regarding the above by signing this statement of acceptance, scanning it, and uploading it to IB Concierge as part of the preliminary review documentation.

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[i] **Head of school** (director/principal in some systems) is the person who leads and supervises the daily operations of the school, ensuring that the policies of the governing body are put into practice.

[ii] **Superintendent of school**(executive head in some systems) is the person who has oversight of the group of schools of which the school is a part; such groups might include community or regional school districts, or a number of private schools overseen by a central management group.

[iii] **Governing body** and/or controlling entity (board of education or school district in some systems) is the individual or duly constituted entity, body politic or group that has the ultimate legal authority to make decisions on behalf of the school, bind the school and the school's controlling entity (as the case may be) to the obligations of this letter and the Rules, and/or make payments for the IB's services.

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Bachillerato Internacional

Statement of acceptance

Name of school				IB school code
Alonzo De Leon Middle Years Programme				070240
Legal registered name of school (if different from above)				Date
IB programme(s)	☐ PYP	☑ MYP	☐ DP	☐ CP

We confirm having read the Rules (as defined below) that are in force at the time of signing this statement of acceptance and understand that our authorization to offer this IB programme is dependent upon our compliance with them. We also acknowledge and agree that should our school or governing body not comply with the Rules, the International Baccalaureate (IB) hereby reserves the right to take such action as it deems appropriate, including, but not limited to, suspension or withdrawal of our authorized status or other remedial measures.

"Rules" refers to the most recent versions of the following documents and regulations that govern the implementation of the programmes.

- *Rules for IB World Schools*
- *General regulations or Assessment procedures*
- *Programme standards and practices*
- the IB's "Rules for use of IB Intellectual Property" (available on the website at ibo.org/copyright)
- the IB's online terms and conditions (available at ibo.org/terms-and-conditions)
- *[PYP/MYP/CP/DP]: From principles into practice*

Such Rules may be amended from time to time and are accessible on the programme resource centre and also onibo.org/become-an-ib-school/useful-resources.

We also confirm the following.

- We shall abide by the terms and conditions of the Rules and agree that the Rules shall operate as the agreement between our school (and, if required, our governing body or controlling entity) and the IB as to their respective rights and obligations.

- We will, or will ensure that our governing body or controlling entity will, pay all applicable IB fees in the assigned currency for our school (published in the *Fees and billing information for IB World Schools* on the programme resource centre) and within the published timelines.

- We have all necessary authorization and approvals from our governing body, controlling entity and/or from our school leadership (including any procurement office or department) or as is otherwise required by law, regulations or policies applicable to our school for us to agree to this statement of acceptance and for it to be a legally binding and enforceable obligation on our school, governing body and/or controlling entity.

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- The school operates in compliance with all applicable laws, regulations and policies. Further, the school confirms that it operates in accordance with best practices, as well as all applicable laws, regulations and policies, in the area of child protection and that it has appropriate procedures in place (which may include components such as criminal background screening) for recruiting, hiring and retaining staff).

- No additional approvals (of our, or our governing body's or controlling entity's, board or otherwise); contracts, documentation; vendor, supplier or other types of registrations; reports; certifications; certificates or other submissions are required by our school or our governing body and/or controlling entity in order for us, or our governing body and/or controlling entity (including any procurement office or similar office or department), to timely pay invoices received from the IB for any services (including, without limitation, professional development fees). Should any such requirements arise after the date of this statement of acceptance, we shall notify the IB promptly in writing and in any event sufficiently in advance to permit the IB to consider whether to respond to such requests and still ensure timely payment of the IB's invoice. We hereby acknowledge and agree that the IB is under no obligation to comply with such additional requests.

- The school information found on MyIB will be updated before the statement of acceptance has been signed and submitted.

We represent and warrant that this statement of acceptance has been, and acknowledge and agree that it will be understood by the IB to have been, read and endorsed by the head of school, the superintendent of school (if applicable/necessary) and authorized representative(s) of the governing body and/or controlling entity (if applicable/necessary).

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Name and title of head of school[i] Samuel Cazares, Principal

Signature **Date**

Name and title of superintendent of school[ii] **(if applicable)** Dr. Jose A. Gonzalez, Supe

Signature **Date**

Name and title of the duly authorized representative of the school's (or its controlling entity's) governing body[iii] Tony Forina, Board Preside

Signature **Date**

Please confirm your agreement regarding the above by signing this statement of acceptance, scanning it, and uploading it to IB Concierge as part of the preliminary review documentation.

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[i] **Head of school** (director/principal in some systems) is the person who leads and supervises the daily operations of the school, ensuring that the policies of the governing body are put into practice.

[ii] **Superintendent of school**(executive head in some systems) is the person who has oversight of the group of schools of which the school is a part; such groups might include community or regional school districts, or a number of private schools overseen by a central management group.

[iii] **Governing body** and/or controlling entity (board of education or school district in some systems) is the individual or duly constituted entity, body politic or group that has the ultimate legal authority to make decisions on behalf of the school, bind the school and the school's controlling entity (as the case may be) to the obligations of this letter and the Rules, and/or make payments for the IB's services.

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Discussion and Possible Action of the Resolution to Oppose School Vouchers

REFERENCE: Goal 1: Student Achievement/Student Focus

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS: N/A

LEGAL REVIEW: None required

BUDGETARY CONSIDERATIONS: None required

RECOMMENDED BOARD ACTION:
That the Board of Trustees approve the Resolution to Oppose School Vouchers.

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 Apr 19, 2023

BOARD OF TRUSTEES
McALLEN INDEPENDENT SCHOOL DISTRICT

RESOLUTION
VOUCHERS, EDUCATION SAVINGS ACCOUNTS, TAXPAYER SAVINGS GRANTS, AND OTHER MECHANISMS THAT REDUCE PUBLIC EDUCATION FUNDING

STATE OF TEXAS §
§
COUNTY OF HIDALGO §

WHEREAS, Article 7, Section 1 of the Texas Constitution requires that the Texas Legislature "establish and make suitable provision for the support and maintenance of an efficient system of public free schools;"

WHEREAS, Texas public school districts accept every student;

WHEREAS, education savings accounts and other voucher schemes give private schools, not parents, the right to choose;

WHEREAS, Texas public schools adhere to state-mandated academic and financial accountability standards;

WHEREAS, private schools are not required to meet the same academic standards as public schools, and they do not report test results, graduation rates, and other performance measures to the public;

WHEREAS, school choice already exists in Texas via public school districts, charter schools, inter- and intra-district transfers, home schools, virtual schools, and private schools;

WHEREAS, education savings accounts and similar voucher schemes eliminate public accountability of schools and tax dollars;

WHEREAS, using tax dollars to pay for tuition at private and religious schools would grow into a costly entitlement program.

WHEREAS, a taxpayer-funded voucher program would reduce the amount of state funds available for all schools, harming many rural Texas communities where families have few, if any, private school options; and

WHEREAS, Texas parents who accept a voucher would lose out on a long list of important parental rights outlined in Texas state education code and in federal law, especially protections for students receiving special education services;

NOW, THEREFORE, BE IT RESOLVED that the MCALLEN ISD Board of Trustees calls on the Texas Legislature to reject any diversion of public dollars to private entities in the form of education savings accounts and similar voucher schemes.

PASSED AND APPROVED on this 24th day of April, 2023.

_____

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

_____

Debbie Crane Aliseda, Vice-President, Board of Trustees
McAllen Independent School District

_____

Marco Suarez, Secretary, Board of Trustees
McAllen Independent School District

_____

Conrado Alvarado, Member, Board of Trustees
McAllen Independent School District

_____

Sofia M. Peña, Member, Board of Trustees
McAllen Independent School District

_____

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

_____

Daniel D. Vela, Member, Board of Trustees
McAllen Independent School District

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Discussion and Possible Action on Competitive Sealed Proposal No. 2023-1040 James Nikki Rowe High School Natatorium Improvements

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited competitive sealed proposals for natatorium improvements at James Nikki Rowe High School.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

One Hundred seventy-five (175) contractors were invited to submit proposals, and two (2) contractors responded, including one (1) no-bid. On April 5, 2023, the evaluation committee, comprised of Ruben Treviño, Executive Director for Facilities Maintenance & Operations; Brian McClenny, Athletic Director; Alexandra Molina, Executive Director for Child Nutrition and Purchasing; and Carolina Quintanilla, Senior Buyer, evaluated the proposals and recommend that the Board award this contract to Carlyon & Norman Ent. Inc. dba South Texas Pools from La Feria, TX.

LEGAL REVIEW:

A draft copy of the AIA contract is attached.

BUDGETARY CONSIDERATIONS:

Funds for this project are available through the General Fund. The contract price for this project, after negotiating a best and final offer, is $785,000.00, which includes a $50,000.00 contingency.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Competitive Sealed Proposal No. 2023-1040 James Nikki Rowe High School Natatorium Improvements to Carlyon & Norman Ent. Inc. dba South Texas Pools.

SUBMITTED BY: _____ **SUPERVISOR:** Alejandra Gonzalez (Apr 20, 2023 15:24 CDT)

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		Carlyon & Norman Ent. Inc. dba South Texas Pools
Maximum points	100.00	71.50
Price	**60**	**60**
Price		$1,274,800.00
Alternate No. 1 (Deduct)		-$220,000.00
Alternate No. 2 (Deduct)		-$150,000.00
Contingency		$50,000.00
Total		$954,800.00
Offeror's experience and reputation	**18**	**4**
Three (3) K-12 reference forms (LI8)	1.5	0
Rating of 2 or better; plus similar scope and size (0.25 pts for scope; 0.25 pts for size)		*No reference forms submitted*
Three (3) Supplier Reference Letters (LI19)	1.5	1
		Suppliers list submitted without reference letters.
Claims, judgments, arbitration proceedings or suits (L14)	1	1
		Response = "N/A"
Three (3) current or past K-12 projects (LI8)	12	0
		No ISD's listed
Two (2) Non K-12 projects (LI9)	2	2
		3 projects listed
Quality of the offeror's goods or services	**3**	**2**
Repeat business for similar scope/size (LI2)	2	2
Current or past MISD projects (L11)	1	0
		None
The impact on the ability of the district to comply with rules relating to historically underutilized businesses - HUB (A32)	**1**	**0**
		Not HUB
Offeror's safety record	**6**	**4**
"OSHA Form 300 Log (LI21)	1.5	0
		Submitted memo (not Form 300)
Safety program manual and/or procedures. (LI22)	1	0.5
		Submitted memo (no logs/nomanual submitted/3rd party coordinator)
Drug/alcohol prevention policy and/or procedures. (LI23)	1	1
		Submitted memo (no policy submitted)
"Workers Compensation Experience Rating" (LI20)	1.5	1.5
		Submitted
Frequency of safety inspections (LI13)	1	1
		Day-to-day mgrs/weekly safety inspection
Offeror's Proposed Personnel	**8**	**0**
Staff experience (industry) (LI16)	4	0
		Did not list years of experience
Staff experience (firm) (LI16)	4	0
		Did not list years of experience
Whether the offeror's financial capability is appropriate to the size and scope of the project	**2**	**0.5**
Financial Statement (LI25)	1	0.5
		Bank info provided; Financial statement available upon request
Surety Letter (LI24)	1	0
		Submitted Bid Bond (not letter)
Any other relevant factors specifically listed in the CSP	**2**	**1**
On-time project completion (LI 8-11)	1	1
Projects currently in progress. (LI17)	1	0
		Response is incomplete (15 residential; 3 commercial ongoing)

Alexandra Molina
Executive Director for Child Nutrition and Purchasing

April 5, 2023

Royce Norman
Carlyon & Norman Enterprises Inc. dba South Texas Pools
28897 Orange Grove Road
La Feria, TX 78559

E-mail: royce@southtexaspools.com

RE: Request for Best and Final Offer ("BAFO") - Competitive Sealed Proposal No. 2023-1040 James Nikki Rowe High School Natatorium Improvements

Mr. Norman,

Thank you for participating in the above referenced project. McAllen ISD invites you to provide a best and final offer. The District is opting to utilize the Base Bid, Alternate No. 1, and Alternate No. 2.

Please complete the Best and Final Offer form below and return this completed document, via email to contracts@mcallenisd.net and alexandra.molina@mcallenisd.net, no later than 5:00 p.m., CST, Monday, April 10, 2023. Should you have any questions, please email contracts@mcallenisd.net.

☐ The original proposal 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

Base Bid	**$1,274,800.00**
School Fixed Contingency	**$50,000.00**
Total	**$1,324,800.00**
Alt 1	-$220,000.00
Alt 2	-$150,000.00
Reduction / Scope of Work & Cost	-$169,800.00
Total cost also includes the Contingency	**$785,000.00**

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

ACKNOWLEDGEMENT BEST AND FINAL OFFER:

SIGNATURE: Royce Norman **DATE:** 4/112/2023

PRINTED NAME: Royce Norman

TITLE: Owner

COMPANY NAME: South Texas Pools

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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:
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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.**
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§ 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.]

...

§ 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.

...

§ 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~~

~~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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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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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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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: _____

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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
EXHIBIT C	PAYMENT AND PERFORMANCE BONDS
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.

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§ 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.

§ 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.

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~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~
~~*(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.
PAGE 9

§ 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.

PAGE 10

.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 F	**SPECIFICATIONS**

MCALLEN INDEPENDENT SCHOOL DISTRICT		_____

...

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

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Discussion and Possible Action of Travel for Superintendent

REFERENCE: Goal 1: Student Achievement / Student Focus
Goal 2: People Development

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Board of Trustees is requiring the Superintendent's Travel for consideration and approval to travel in advance when practical.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Consideration to approve the Superintendent's travel as invited by H-E-B's 2023 Excellence in Education Awards by recognizing the outstanding public school districts, early childhood facilities, teachers, principals and school boards throughout Texas. As a statewide judge, in the teacher category, the Superintendent will assist in selecting the six overall winners in the program from a total of 30 finalists. The Superintendent will be judging the Leadership category for Elementary and Secondary teachers with 10-20 years of service. The judging schedule requires the Superintendent to arrive on Friday, April 28th and will use authorized school business leave.

The 2023 H-E-B Excellence in Education Awards will take in San Antonio, Texas on Friday, April 28, 2023 through Monday, May 1, 2023.

LEGAL REVIEW: None Required

BUDGETARY CONSIDERATIONS: Appropriations through H-E-B Excellence in Education Awards and the Superintendent's budget.

RECOMMENDED BOARD ACTION: That the Board of Trustees approve the travel.

SUBMITTED BY: _____ **SUPERVISOR:** _____

For further information contact:
Name: Marta I. Garza
Office: 956.657.6027
eMail: migarza@mcallenisd.net

Approved for presentation to the Board of Education:

386

Superintendent of Schools Apr 17, 2023

Travel BAI - Office of Supt. Board Item APRIL 24, 2023

Final Audit Report 2023-04-17

Created:	2023-04-17
By:	Natalia Goza (natalie.goza@mcallenisd.net)
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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Annual Announcement of Continuing Education of Board Members

REFERENCE: Board Policy BBD (LEGAL)

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
A provision to the Texas Education Code (TEC) requires that the President make an Announcement on continuing education of Board Members the last meeting before an election of trustees. The Announcement should reflect whether each trustee has met or is delinquent in meeting the training required to be completed as of the date of the meeting." [TEC, 11.159(b)].

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
The board president is required to read aloud the name of each member who has completed the required continuing education, who has exceeded the required hours and the names of members who are deficient in the required hours.

LEGAL REVIEW: None

BUDGETARY CONSIDERATIONS: None

RECOMMENDED BOARD ACTION: This item is for information only, no action necessary.

SUBMITTED BY: Natalia Goza **SUPERVISOR:** Tony Forina (Apr 19, 2023 11:56 CDT)

For further information contact:
Name: Natalia Goza
Office: 956 618-6094
eMail: natalie.goza@mcallenisd.net

Approved for presentation to the Board of Education:

388

Superintendent of Schools Apr 19, 2023

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 2023

SUBJECT: Discussion and Possible Action of Travel for Board of Trustees

REFERENCE: Goal 2 - People Development

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
Policy requires Board Members to submit travel requests to the Board in advance when practical. The Board plans to attend the Region One School Board Association (ROSBA) Conference May 19-20, 2023 South Padre Island, TX and the Texas Association of School Boards (TASB) Summer Leadership Institute (SLI), June 14-17, 2023.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
The Board of Trustees will report on the following trip(s):

- ROSBA Conference May 19-20, 2023, South Padre Island, TX

- TASB SLI Conference June 14-17, 2023, San Antonio

LEGAL REVIEW:
None

BUDGETARY CONSIDERATIONS:
Funds for this trip have been allocated through the Board of Trustees' Budget

RECOMMENDED BOARD ACTION:
That the Board of Trustees approve the travel request to attend the ROSBA Conference and the TASB Summer Leadership Institute Conference.

SUBMITTED BY: Natalia Goza

SUPERVISOR: Tony Forina (Apr 19, 2023 11:04 CDT)

For further information contact:
Name: Natalia Goza
Office: (956) 618-6094
eMail: natalie.goza@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools Apr 19, 2023

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: April 24, 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):

Board Workshop April 3, 2023
Special Board Meeting April 3, 2023
Regular Board Meeting April 10, 2023
School Safety and Security Committee Meeting April 18, 2023

SUBMITTED BY: Natalia Goza

SUPERVISOR: Tony Forina (Apr 19, 2023 11:55 CDT)

For further information contact:
Name: Natalia Goza
Office: 956-618-6094
eMail: natalie.goza@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools Apr 19, 2023