



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, October 16, 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. **MOMENT OF SILENCE**
3. **PLEDGE OF ALLEGIANCE**
4. **PUBLIC COMMENT(S)**
5. **SUPERINTENDENT'S REPORT(S)**
 - A) Principals Appreciation Month
Presenter: Dr. Rosalba De Hoyos, Interim Superintendent
6. **RECOGNITION(S)**
7. **PROCLAMATION(S)**
8. **DONATION(S)**
9. **CONSENT AGENDA ITEMS**
 - A) Discussion and Possible Action on Memorandum of Understanding No. 2024-022 Mental Health Services with Buckner Children and Family Services, Inc. 6
Item Submitted: Maribelle Elizondo, Interim Assistant Superintendent for Instruction
Presenter: Dr. Rosalba De Hoyos, Interim Superintendent
 - B) Discussion and Possible Action on Memorandum of Understanding No. 2024-023 Mental Health Services with Doctors Hospital at Renaissance 8
Item Submitted: Maribelle Elizondo, Interim Assistant Superintendent for Instruction

	Presenter: Dr. Rosalba De Hoyos, Interim Superintendent	
C)	Discussion and Possible Action on Ratification Statement of Acceptance No. 2024-190 Dr. Pablo Perez Elementary International Baccalaureate Program Item Submitted: Maribelle Elizondo, Interim Assistant Superintendent for Instruction	19
	Presenter: Dr. Rosalba De Hoyos, Interim Superintendent	
D)	Discussion and Possible Action on Agreement No. 2024-182 Child Care Local Match Contribution with Texas Workforce Commission Item Submitted: Maribelle Elizondo, Interim Assistant Superintendent for Instruction	23
	Presenter: Dr. Rosalba De Hoyos, Interim Superintendent	
E)	Discussion and Possible Action on Final Payment to Noble Texas Builders on Contract No. 2023-056 Kitchen Renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School Item Submitted: Elizabeth Gonzalez, Interim Assistant Superintendent for District Operations	38
	Presenter: Dr. Rosalba De Hoyos, Interim Superintendent	
F)	Discussion and Possible Action on Renewal of Insurance Policy and Request for Proposals No. 2023-1014 Cybersecurity Liability Insurance with Frost Insurance Agency, Inc. Item Submitted: Iris Luna, Interim Assistant Superintendent for Business Operations	103
	Presenter: Dr. Rosalba De Hoyos, Interim Superintendent	
10.	INSTRUCTION, HUMAN RESOURCES, DISTRICT OPERATIONS, BUSINESS OPERATIONS, AND BOARD OF TRUSTEES ITEMS	
A)	Instruction Item(s) (Maribelle Elizondo)	
B)	Human Resources Item(s) (Todd Miller)	
1.	Discussion of McAllen Independent School District's Acceptable Use Policy Item Submitted: Todd Miller, Assistant Superintendent for Human Resources	121
	Presenter: Dr. Rosalba De Hoyos, Interim Superintendent	
2.	Discussion and Possible Action on the Texas Association of School Board (TASB) Localized Policy Manual Update 121 for Policies CVA (Local) and CVB (Local) - Second Reading Item Submitted: Todd Miller, Assistant Superintendent for Human Resources	150
	Presenter: Dr. Rosalba De Hoyos, Interim Superintendent	
3.	Discussion and Possible Action to Adopt the Resolution Regarding Teacher Retirement System of Texas Item Submitted: Todd Miller, Assistant Superintendent for Human Resources	151
	Presenter: Dr. Rosalba De Hoyos, Interim Superintendent	
C)	District Operations Item(s) (Elizabeth Gonzalez)	

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|---|---|-----|
| 1. | Report Regarding Fine Arts Center Update
Item Submitted: Elizabeth Gonzalez, Interim Assistant Superintendent District Operations

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent | 153 |
| 2. | Discussion and Possible Action on Competitive Sealed Proposal No. 2024-1015 Safety/Security Film Application Re-Bid
Item Submitted: Elizabeth Gonzalez, Interim Assistant Superintendent for District Operations

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent | 157 |
| D) Business Operations Item(s) (Iris Luna) | | |
| 1. | Report Regarding Results of Efficiency Audit
Item Submitted: Iris Luna, Interim Assistant Superintendent for Business Operations

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent | 305 |
| 2. | Report Regarding the Monthly Financials and Investment Report for July 2023
Item Submitted: Iris Luna, Interim Assistant Superintendent for Business Operations

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent | 349 |
| 3. | Report Regarding Request for Proposal No. 2023-1055 One-to-One Initiative -Technology Equipment with Service (RE-BID)
Item Submitted: Iris Luna, Interim Assistant Superintendent for Business Operations

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent | 376 |
| 4. | Discussion and Possible Action on the McAllen Independent School District September Budget Amendment for Fiscal Year Beginning July 1, 2023 and Ending June 30, 2024
Item Submitted: Iris Luna, Interim Assistant Superintendent for Business Operations

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent | 377 |
| E) Board of Trustees Item(s) | | |
| 1. | Approval of Board of Education Meeting Minutes
a) Special Board Meeting September 25, 2023 4:15 PM
b) Regular Board Meeting September 25, 2023 5:00 PM
c) Special Board Meeting September 25, 2023 7:00 PM
d) Board Workshop September 27, 2023 12:00 PM
e) Special Board Meeting October 3, 2023 8:00 AM | 383 |
| 2. | Report Regarding Responses to Superintendent Search Survey | |
| 11. 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 2023-2024 | |

- B) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2023-2024
- C) Discussion Recommendation for the Principal at Dorothea Brown Middle School
- D) Discussion of Recommendation for Assistant Superintendent for Business Operations
- E) Discussion Regarding School Safety and Security
- F) Discussion of Internal Audit items
- G) Pending and/or Potential Litigation
- H) Possible Real Estate Acquisition

12. RECONVENE IN OPEN SESSION

13. ACTION ON ITEM(S) IN CLOSED SESSION

- A) Discussion and Possible Action of Human Resources Recommendation(s) for School Year 2023-2024 384
 Item Submitted: Todd Miller, Assistant Superintendent Human Resources
Presenter: Dr. Rosalba De Hoyos, Interim Superintendent
- B) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2023-2024 385
 Item Submitted: Todd Miller, Assistant Superintendent Human Resources
Presenter: Dr. Rosalba De Hoyos, Interim Superintendent
- C) Discussion and Possible Action on Recommendation for Position of Principal at Dorothea Brown Middle School 386
 Item Submitted: Todd Miller, Assistant Superintendent for Human Resources
Presenter: Dr. Rosalba De Hoyos, Interim Superintendent
- D) Discussion and Possible Action on Recommendation for Assistant Superintendent for Business Operations 387
 Item Submitted: Todd Miller, Assistant Superintendent Human Resources
Presenter: Dr. Rosalba De Hoyos, Interim Superintendent
- E) Discussion Regarding School Safety and Security
- F) Discussion of Internal Audit items
- G) Pending and/or Potential Litigation
- H) Possible Real Estate Acquisition

14. SCHEDULE OF FUTURE MEETINGS

- A) Board Workshop October 30, 2023 12:00 PM Dr. Ricardo Chapa Board Room/Administration Building
- B) Regular Board Meeting October 30, 2023 5:00 PM Dr. Ricardo Chapa Board Room/Administration Building
- C) Special Board Meeting - November 1, 2023 - 5:00 PM Dr. Ricardo Chapa Board Room/Administration Building

15. 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 October 13, 2023 at 3:00 P.M.

Natalia Goza


on behalf of the Board of Trustees

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: Adrian Garza (Fam Treat)

SUPERVISOR: 
Maribelle Elizondo (Oct 10, 2023 14:57 CDT)

Approved for presentation to the Board of Education:



6 _____
Interim Superintendent of Schools



BUCKNER®

Hope shines here.®

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by **Buckner Children and Family Services, Inc. (Buckner)** through its Family and Youth Services program (FAYS) and **McAllen ISD**, for the sole purpose of providing **FAYS Program services**. All services will be provided free of charge to youth and families.

Buckner provides services to youth, 0 to 17 years of age, and their families in at-risk situations. Buckner is designed to reduce family conflict, help with family support and skills, and prevent the problems of runaway, school attendance issues and delinquent behaviors. Buckner FAYS Program help youth and families resolve crisis and establish and achieve goals that strengthen and promote healthy families. The services provided to the youth and families include screening/intake, crisis intervention, skills-based training, case management services, case follow-up and outreach. All services are free of charge to **McAllen ISD** and the surrounding areas, and provided through home visits, office visits, school and community visits.

Buckner will provide skills-based training weekly, or as scheduled, to qualifying youth and their families. These curriculums may be conducted in a group setting and/or after school and will be delivered and tailored to the needs of the school. Youth and their families will learn skills to help them resolve crises among peers and family develop their skills to cope with everyday problems and stresses in their lives and learn self-esteem concepts while developing communications skills and peer pressure refusal skills.

General Responsibility of **Buckner**:

- Upon the receipt of referral, provide Intake process (which includes meeting with the youth's parents to obtain consent forms),
- Provide staff for skills-based counseling services and group skills training as needed.
- Provide program curriculum and supplies.
- Provide service during non-core class.

General responsibilities of **McAllen ISD**:

- Provide student referrals and class schedules,
- Provide class/school time for FAYS services,
- Provide class/facility space for skills-based counseling services and group skills training.
- Provide the use of equipment (TV and DVD Player) for group skills training.

This MOU will be in effect from September 01, 2023 through August 31, 2025

This MOU may be amended or modified in writing by either party, or terminated by either party, in writing, with at least 30 days notice before the termination.

Buckner Children and
Family Services

3780 N. Bentsen Palm Dr.
Mission, Texas 78574

Phone (956) 668-0145

buckner.org

Buckner Children and Family Services, Inc.
Director of Administration and Operations
Criselda Cuevas

9-19-23 7

Date:

McAllen ISD
Board President
Debbie Crane Aliseda

Date: Approved as to form:
O'Hanlon, Demerath & Castillo
By:

Kevin O'Hanlon

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: *Adrian Garza (Fam Treat)*

SUPERVISOR: *M. Elizondo*
Maribelle Elizondo (Oct 10, 2023 14:56 CDT)

Approved for presentation to the Board of Education:

Rosalba De Hoyos

8 _____
Interim Superintendent of Schools

**MEMORANDUM OF AGREEMENT
BETWEEN
DOCTORS HOSPITAL AT RENAISSANCE
AND
McALLEN INDEPENDENT SCHOOL DISTRICT**

THIS MEMORANDUM OF AGREEMENT (this Memorandum) is entered into by **Doctors Hospital at Renaissance (DHR)**, a Texas medical nonprofit organization, and **McAllen Independent School District (District)** whose address is 2000 North 23rd Street, McAllen, TX 78501, for the purpose of establishing a continuity of care system for persons in need of mental health services.

In consideration of the mutual agreements contained within this Memorandum of Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by both parties, DHR and District agree as follows:

**I.
District Obligations**

Confidentiality. Subject to the Public Information Act, District and DHR must maintain the confidentiality of information received from the other during the performance of this Memorandum, including information which discloses confidential personal information or identifies any person served by DHR or any student or employee of District, in accordance with applicable federal and state laws.

DHR and District agree to follow, undertake, or institute appropriate procedures of safeguarding District employees or students information with particular reference to District employees or students identifying information. The term "District employees or students identifying information" includes, but is not limited to, a District employee's or student's medical record, graphs or charts; statements made by the District employees or students, either orally or in writing, while receiving services; photographs, videotapes, etc.; any acknowledgment that a person is or has been a District employee or student of DHR; and protective health information (PHI) as such term is defined by the federal Health Insurance Portability and Accountability Act (HIPAA), as amended. District agrees to comply with HIPAA and all regulations promulgated thereunder, including, but not limited to, all provisions governing the use and disclosure of PHI.

Non-Discrimination. District will ensure that no person, on the basis of race, color, national origin, religion, sex, age, handicap, or political affiliation, will be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any of the policies of DHR subject to written consent of District's students' parental consent. However, a child may consent to counseling for those provisions pursuant in Texas Family Code, Sec. 32.004.

**II.
DHR Obligations**

- a. DHR agrees shall provide the Services described on **EXHIBIT A** (The "Services").
- b. DHR will ensure that appropriate representatives of DHR will attend meetings and staffing's relevant to this Agreement when requested by MISD. DHR will be notified by MISD seven (7) days prior to the date of the meeting or staffing at which attendance is requested. The cost of DHR's representatives attending meetings or staffing's will be DHR's sole responsibility.

- c. DHR agrees to provide to the District the names, social security numbers and dates of birth of any employee of DHR that will be provided access to District campuses and contact with students. This information shall be used for the sole purpose of conducting a criminal record check of the DHR employee as provided by District policy CH (Legal) and Sec. 22.083(b) of the Texas Education Code. Alternatively, DHR may provide proof or certification, satisfactory to the District, of a criminal record check of the DHR employee that was conducted within the preceding twelve (12) month period. The District at its sole discretion shall determine if the DHR employee clears the criminal record check.
- d. Any access to student(s) of District shall only be after DHR and District has obtained written parental consent ("consent") of the student if the student is a minor. Students of District that are identified as emancipated minors, or are 18 years and above, are eligible to receive Services from DHR without parental consent. Access to students of District shall be at times scheduled by DHR and the District's Family Treatment Program (FTP) at each school campus of District. Access to a student must be accompanied by consent delivered to the FTP Prevention Intervention Specialist at each campus of District. However, a child may consent to counseling for those certain instances specified in Texas Family Code, Sec. 32.004.
- e. Pursuant to Texas Education Code Section 22.0834 (Senate Bill 9) Texas Education Code, DHR shall obtain criminal history record information that relates to an employee, applicant for employment, agent or subcontractor of DHR if the employee, applicant, agent, or subcontractor has or will have continuing duties related to the Services, and the duties are or will be performed on school property or at another location where students are regularly present. DHR shall certify to District before beginning work and at no less than on an annual basis thereafter, that this process is followed. DHR 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." DHR's violation of this section shall constitute a material breach of the Agreement. If DHR is the person or 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 Agreement.
- f. In the course of providing Services during the term of this Agreement, if in an exceptional circumstance, DHR should obtain access to student education records that are subject to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 123g, et seq. and the regulations promulgated there under such information is considered confidential and is therefore protected. To the extent that DHR has access to "education records" under this Agreement, it is deemed a "school official," as each of these terms are defined under FERPA. DHR agrees that it shall not use education records for any purpose other than in the performance of this Agreement. Except as required by law, DHR shall not disclose or share education records with any third party unless permitted by the terms of the Agreement to subcontractors who have agreed to maintain the confidentiality of the education records to the same extent required of DHR under this Agreement.
- g. In the event any person (s) seek to access protected education records, whether in accordance with FERPA or other Federal or relevant State law or regulations, DHR will immediately inform District of such request in writing if allowed by law or judicial and/or administrative order. DHR shall not provide direct access to such data or information or respond to individual requests. DHR shall only retrieve such data or information upon receipt of, and in accordance with, written directions by District and shall only provide such data or information to District. It shall be District's sole responsibility to respond to requests for data or information received by DHR regarding District data or information. Should DHR receive a court order or lawfully issued subpoena seeking the release of such data or information, DHR shall provide immediate notification to District of its receipt of such court order or lawfully issued subpoena and shall immediately provide District with information, if allowed by law or judicial and/or administrative order.
- h. If DHR experiences a security breach concerning any education record covered by this Agreement, then DHR will immediately notify District and take immediate steps to limit and mitigate such

security breach to the extent possible. The parties agree that any breach of the confidentiality obligation set forth in this Agreement may, at the District's discretion, result in cancellation of this Agreement and DHR agrees to indemnify and hold District harmless for any loss, cost, damage or expense suffered by District, including but not limited to the cost of notification of affected persons, as a direct result of the unauthorized disclosure of education records.

- I. Upon termination of this Agreement, DHR shall return and/or destroy all data or Information received from District upon, and in accordance with, direction from District. DHR shall not retain copies of any data or information received from District once District has directed DHR as to how such information shall be returned to District and/or destroyed. Furthermore, DHR shall ensure that they dispose of any and all data or information received from District in a District-approved manner that maintains the confidentiality of the contents of such records (e.g. shredding paper records, erasing and reformatting hard drives, erasing and/or physically destroying any portable electronic devices).

III. Payment and Term

- a. Payment terms will be subject to the agreed upon details contained in **EXHIBIT A** (the "Services").
- b. The term of this Agreement shall be two years and shall commence on August 1st, 2023 and shall terminate on August 1st, 2025. Notwithstanding anything to the contrary herein, District may terminate this Agreement without cause on thirty (30) days written notice.

IV. Insurance

- a. District agrees to maintain at its sole cost and expense a comprehensive general liability insurance policy and an error and omissions policy of insurance that covers District against any claim for damages, acts or omissions, which may arise in connection with this Memorandum, sufficient to meet the requirements of state law. In lieu of a commercial Workers' Compensation policy, the District provides workers' compensation coverage through a self-insurance program meeting Statutory limit requirements. Upon request, the District will furnish copies of said insurance policies and a certificate for general liability and error and omissions, as well as, a verification of coverage letter for workers' compensation (self-insured) insurance to DHR.
- b. Services rendered under this Agreement will be provided by Doctors Hospital at Renaissance licensed employees to perform the Services through agreements in place between DHR and the Renaissance Medical Foundation 501(c)3. In lieu of Worker's Compensation coverage, Doctors Hospital at Renaissance carries an Occupational Accident Policy including Accident Death and Dismemberment, Weekly Accident Indemnity, Primary Accident Medical Expenses, Employers Indemnity, and Occupational Disease and Cumulative Trauma Coverages. Insurance coverage will include: Professional Liability (\$1,000,000 each claim and aggregate), Commercial General Insurance (Occurrence basis only) Bodily Injury and Property Damage Each Occurrence (\$300,000); General Aggregate (\$600,000); Products/Completed; Operations Aggregate (\$600,000); Personal and Advertising; Injury Occurrence (\$300,000); Damage Each Occurrence (\$100,000); no deletions/exclusions from standard coverage form allowed without written consent of District. DHR will provide a certificate of insurance to the Administrator of the Departments evidencing such coverage and will notify the Administrator in writing immediately if any change in coverage occurs for any reason.

- c. Nothing in this Agreement shall be construed or interpreted to mean that the parties are engaged in a partnership, joint enterprise, or other cooperative arrangement other than what is stated in this Agreement. The parties agree that they are independent contractors and are not borrowing servants under this Agreement. Nothing in this Agreement shall be construed or interpreted to mean that this provision requiring insurance by the parties obligates the parties to list the other as a loss beneficiary on any of the above described policies.

V. Indemnity

- a. DHR shall indemnify and hold District, its officers, agents and employees harmless from any liability or loss resulting from the negligent acts or omissions of DHR, its agents or employees pertaining to the activities to be carried out pursuant to the obligation of the Memorandum, including indemnifying District in relation to any incident that would, could, or might require use of the Occupational Accident Policy and all provisions provided in section III of the Memorandum or for any injury to an employee of DHR in the course and scope of his/her employment with DHR on the premises of District that would have been covered by workers' compensation insurance if DHR were a Subscriber pursuant to the Texas Labor Code. provided, however, that DHR shall not hold District harmless from claims arising out of the negligence or willful malfeasance of District, its officers, agents, or employees, or any person or entity not subject to DHR's supervision or control.
- b. District, to the extent allowable by law, shall indemnify and hold DHR, its offers agents and employees harmless from any liability or loss resulting from the negligent acts or omissions of District, its agents or employees pertaining to the activities to be carried out pursuant to the obligations of this Memorandum; provided, however, that District shall not hold DHR harmless from claims arising out of the negligence or willful malfeasance of DHR, its officers, agents, employees, or any person or entity not subject to District's supervision or control.

VI. Miscellaneous

Amendments. This Memorandum of Agreement may only be amended by written agreement between District and DHR.

Termination. This Memorandum of Agreement may be terminated without cause by either party upon ten (10) days written notice to the other party of its intent to terminate the Memorandum.

Assignment. No assignment of this Memorandum or the rights and obligations hereunder will be valid without the written consent of the non-assigning party.

Entire Agreement. This Memorandum of Agreement constitutes the entire agreement of the parties and supersedes any prior understandings or oral or written agreements between DHR and District on the matters contained herein. No modification, alteration, or waiver of any term, covenant, or condition of this Memorandum shall be valid unless in writing and executed by the parties hereto.

Notice. Except as expressly provided within this Memorandum, any notice required or permitted to be given under this Memorandum must be in writing and delivered in person or by registered

or certified mail, return receipt requested, postage prepaid, to the individual and address shown below:

DISTRICT
Dr. Rosalba De Hoyos,
Interim Superintendent
2000 North 23rd Street
McAllen, TX 78501

DHR
Susan Turley, President Doctor's
Hospital at Renaissance
5501 S. McColl Rd.
Edinburg, TX 78539

or to such other individual and address as provided in writing to the other party by the means specified above. The notice shall be effective on the date of delivery.

Other Agreements. DHR and District agree that this Memorandum of Agreement shall not constitute a modification, amendment, waiver or change of any of the terms of any prior agreements between these parties.

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

The parties have executed this Memorandum of Agreement on the dates set forth signatures below.

McALLEN INDEPENDENT SCHOOL
DISTRICT

DOCTORS HOSPITAL AT
RENAISSANCE

Debbie Crane Aliseda, Board President

Dr. Manish Singh, CEO


Date: _____

Susan Turley, President

Date: _____

Approved as to form:
O'Hanlon, Demerath & Castillo

Co-Signatures _____

By:  _____

Reviewed by Legal Dept:

Kevin O'Hanlon

Exhibit A

DHR Services

- A. Provide mental health services, assessment and screening to the student/family population at the student's home campus or any other location mutually agreed upon.
- B. Collaborate with the District regarding provision of follow-up mental health services and assessments to student(s)
- C. Provide services to District students who have been identified as being in need of these services.
- D. DHR will provide counseling services (face to face/tele-health) for MISD students at no charge to the District. The parent or the legal guardian of the student(s) will be responsible for the fees, if any, charged for services under this Agreement and DHR shall obtain written consent from the student's parent or legal guardian to impose fees for services to any such student prior to any imposition of any fees or charges for services provided.

DATA SHARING AGREEMENT
Between The McAllen Independent School District
and Doctors Hospital at Renaissance

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

PREAMBLE

The mission of Contractor is to provide mental health services to MISD Students and teachers at no charge to the District. To that end, data is being requested as part of the DSA to fulfill the organization's mission. Contractor agrees that the data transferred from MISD to Contractor is and shall remain the sole and exclusive property of MISD. The DSA establishes that individually identifiable health information that falls under the protection of the Health Insurance Portability and Accountability Act ("HIPPA"), data that deals with confidentiality provisions of the Patient Safety Rule, and social security numbers will not be released. Data that is released must be used consistent with the Family Education Rights and Privacy Act (FERPA), HIPPA and MISD's policies for managing student education records and other confidential information. MISD grants Contractor license to use such data only for the following purpose and for no other purpose.

The scope of the project addressed in this DSA is limited to the use of teacher and student data solely for the purpose of provide mental health services to students and teachers.

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

1. Data Sharing

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

2. Confidentiality

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

- a. Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all data, including electronically maintained or transmitted data received from or on behalf of MISD. These measures will be extended by contract to all subcontractors used by Contractor.

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

3. Indemnification

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

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

4. Right to Audit

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

5. Entire Agreement

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

6. Execution

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

7. Assignment

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

8. Severability

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

9. Waiver

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

10. Modification and Amendments

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

11. Terms of this DSA


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

12. Governing Law

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

EXECUTED effective the _____ day of _____, 2023.

Approved as to form:
O'Hanlon, Demerath & Castillo

By:  _____

Kevin O'Hanlon

DISTRICT:
McALLEN INDEPENDENT SCHOOL
DISTRICT

By: _____
Debbie Crane Aliseda, Board President

CONTRACTOR:
DOCTORS HOSPITAL AT RENAISSANCE

By: _____
Print Name: Dr. Manish Singh, CEO

By: _____
Print Name: Susan Turley, President

Co-signatures: _____

Reviewed by _____
Legal Dept: _____

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: *Karen Nitsch (Adv. Academics)*

SUPERVISOR: *M. Elizondo*
Maribelle Elizondo (Oct 10, 2023 17:06 CDT)

Approved for presentation to the Board of Education:

Rosalba DeHoya

19 _____
Interim Superintendent of Schools

Statement of acceptance

Name of school		IB school code	
Dr. Pablo Perez Elementary		004039	
Legal registered name of school (if different from above)		Date	
		09/14/2023	
IB programme(s)	<input checked="" type="checkbox"/> PYP	<input type="checkbox"/> MYP	<input type="checkbox"/> DP <input type="checkbox"/> 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 on ibo.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.

- 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).

Name and title of head of schoolⁱ Veronica Delgado

Signature

Date

09/14/2023

Name and title of superintendent of schoolⁱⁱ (if applicable) Dr. Rosalba De Hoyos

Signature

Date

09/14/2023

Name and title of the duly authorized representative of the school's (or its controlling entity's) governing bodyⁱⁱⁱ Debbie Aliseda

Signature

Date

09/14/2023

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.

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.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: *Dr. Cynthia Olivarez*
Dr. Cynthia Olivarez (Oct 10, 2023 14:53 CDT)

SUPERVISOR: *M. Elizondo*
Maribelle Elizondo (Oct 10, 2023 14:56 CDT)

Approved for presentation to the Board of Education:

Rosalba De Hoyos

Texas Workforce Commission

Child Care Local Match Contribution Agreement

General Agreement Terms

Please enter Contributor and Local Workforce Development Board (Board) information, including the local workforce development area(s) (workforce area) and the amount of pledged local funds.

Name of Contributor: McAllen ISD

Board Legal Entity Name: Lower Rio Grande Valley Workforce Development Board

Workforce Area: Lower Rio Grande Valley Workforce Development Board

Donation Amount: \$ N/A **Transfer Amount:** \$ N/A

Certification of Expenditures Amount: \$ 550,000.00

The contributor identified above pledges the local funds as indicated in order for the Texas Workforce Commission (TWC) to draw down additional federal funds. Both the local and matched federal funds will be used for the provision of allowable child care services or activities in the workforce area(s) listed above or within the state if indicated through this agreement. All parties understand and agree that:

- the appropriate Federal Medical Assistance Percentage for Texas will be used to determine the amount of federal funds matched as a result of this local contribution, and
- this agreement is contingent upon acceptance of this agreement in an open meeting by a majority of TWC's three-member Commission.

Signatures

The individual signing this agreement on behalf of the contributor or the Board hereby warrants that he or she has been fully authorized to execute this agreement on behalf of his or her organization; and validly and legally bind his or her organization to all the terms, performances, and provisions of this agreement.

For the faithful performance of this agreement as delineated, the parties below affix their signatures and bind their

agencies effective October 1, 2023 **, and continuing through** September 30, 2024

Contributor Signature: _____ **Date:** _____

Printed Name: Debbie Crane Aliseda

Title: Board President **E-mail (optional):** _____

Board Signature: _____ **Date:** _____

Printed Name: Mr. Francisco Almaraz

Title: Chief Executive Officer **E-mail (optional):** francisco@wfsolutions.org

Legal Authority

In the State of Texas, TWC is designated as the lead agency for the administration of Child Care and Development Fund (CCDF) funds available under Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (42 United States Code § 9801 *et seq.*).

Pursuant to federal regulations (45 Code of Federal Regulations (C.F.R.) Parts 98 and 99), TWC is the CCDF lead agency for Texas and the entity designated to accept donated funds from any private entity, or transferred funds from any public entity, or certifications of expenditures from public entities that may be used as match for available federal funds. As such, the terms of this agreement are contingent upon the certification of private donations (if applicable) by TWC, and the final acceptance of this agreement in an open meeting by a majority of TWC's three-member Commission.

Contributions from a Private Entity to TWC

For contributions from a private entity to TWC, the contributor, by executing this agreement, certifies that pursuant to Labor Code § 301.021(b)–(d) and Texas Government Code § 575.005:

- the contributor is not party to an administrative proceeding before the Commission.
 - Under Texas Government Code §575.005, “administrative proceeding” means a “contested case” as defined by Texas Government Code § 2001.003(1), that is, “a proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.”
 - Before accepting this agreement, TWC will verify whether the private entity contributor is party to an administrative proceeding before the Commission. If the private entity contributor is, or becomes a party to, an administrative proceeding before the Commission before the Commission’s acceptance of this agreement, Texas Labor Code § 301.021(b) and Texas Government Code § 575.005 prohibit the Commission from accepting this agreement until the 30th calendar day after the date that the decision in the proceeding becomes final under Texas Government Code § 2001.144.
- If the contributor is a for-profit entity, the contributor does not currently:
 - have a contract with TWC for services or products of a value of fifty thousand dollars (\$50,000) or greater; or
 - have a bid in response to a request for proposal for such contract before TWC.

This condition does not apply to a contract or bid that relates only to providing child care services.

- Upon execution of this agreement, if it is for the contribution of privately donated funds from a for-profit entity, the contributor understands that pursuant to Texas Labor Code § 301.021(d), the contributor shall not enter into a contract with TWC or submit a bid in response to a request for proposal issued by TWC before the first anniversary of the date on which TWC accepted a donation from the contributor, unless the contract or bid relates only to providing child care services.

Contributions from a Private Entity to a Board

For contributions from a private entity to a Board, consistent with Labor Code § 301.021(b)–(d) and Texas Government Code § 575.005:

- the contributor is not party to a Board-level complaint or appeal pursuant to 40 Texas Administrative Code, Chapter 823, Subchapter B.
 - Before accepting this agreement, the Board will verify whether the private entity contributor is party to a Board-level complaint or appeal. If the private entity contributor is, or becomes a party to, a Board-level complaint or appeal before the Commission’s acceptance of this agreement, the Commission will not accept this agreement until the 30th calendar day after the date that the decision in the proceeding becomes final under Chapter 823.
- If the contributor is a for-profit entity, the contributor does not currently:
 - have a contract with the Board for services or products of a value of fifty thousand dollars (\$50,000) or greater; or

- have a bid in response to a request for proposal for such contract before the Board.

This condition does not apply to a contract or bid that relates only to providing child care services.

- Upon execution of this agreement, if it is for the contribution of privately donated funds from a for-profit entity, the contributor understands that consistent with Texas Labor Code § 301.021(d), the contributor shall not enter into a contract with the Board or submit a bid in response to a request for proposal issued by the Board before the first anniversary of the date on which the Board accepted a donation from the contributor unless the contract or bid relates only to providing child care services.

Contributor Agreement

The contributor agrees as follows:

- To remit to TWC the pledged local share in accordance with the contributions schedules and payment plans specified in the local agreement.
- For public transfers of funds and private donations made to TWC, checks remitted by the contributor must be made payable to the "Texas Workforce Commission" and submitted to TWC.
- For private donations made to the Board, the contributor must remit the donation to the Board.
- To keep and make available to TWC or the Board upon request, records adequate to show that the contributed funds put forth in this agreement are eligible for matching purposes. The records shall be retained and made accessible for the longer of:
 - the period specified by the Board's record retention policies for such records,
 - seven (7) years after the end date of this agreement, or
 - until the completion and resolution of all issues that arise from any litigation, claim, negotiation, audit, or other action that began during and was ongoing as of the end of the normal retention period.
- When certifying expenditures of public funds as the local match, to provide the Board and TWC with a statement that certifies the expenditures and includes information detailing services delivered and expenditures in the format and within the time frames prescribed by the Board.
- When certifying expenditures of public funds as the local match, to report to TWC no later than the 14th month of the grant certifications consistent with the contributions schedules and payment plans specified in the local agreement.
- To certify that the expenditures used as child care match are eligible for federal match and were not used to match other federal funds.
- Donations from private entities:
 - are donated without any restriction that would require their use for a specific individual, organization, facility, or institution;
 - do not revert to the donor's facility or use;
 - are not used to match other federal funds;
 - shall be certified both by the donor and by TWC;
 - shall be subject to the audit requirements in 45 C.F.R. § 98.65; and
 - shall be subject to federal reporting; entities shall provide the Board and TWC, on request, data needed for federal reporting purposes.

Board Agreement

The Board agrees as follows:

- To use the funds donated or transferred by the contributor, and the resulting federal funds for child care services consistent with the intent of this agreement and in accordance with applicable local, state, and federal laws and regulations.
- To ensure that certified public expenditures (if applicable):
 - represent expenditures eligible for federal match;
 - were not used to match other federal funds;
 - were not federal funds unless authorized by federal law to be used to match other federal funds; and
 - do not represent expenditures for public prekindergarten programs as referenced in 45 C.F.R. § 98.55(h).
- To ensure that donations from private entities:
 - are donated without any restriction that would require their use for a specific individual, organization, facility, or institution;
 - do not revert to the donor's facility or use;
 - are not used to match other federal funds;
 - shall be certified both by the donor and by TWC;
 - shall be subject to the audit requirements in 45 C.F.R. § 98.65; and
 - shall be subject to federal reporting (Entities shall provide the Board and TWC, upon request, data needed for federal reporting purposes.).
- To inform the contributor of the time frames and procedures for remitting payment of pledged funds or submitting reports delineating certification of expenditures during the contribution period.

Board and Contributor Agreement

The Board and the Contributor agree as follows:

- That performance under this agreement is contingent upon the certification of private donations (if applicable) and the final acceptance of this agreement in an open meeting by a majority of TWC's three-member Commission.
- "Child Care Local Match Contribution Information" is incorporated by reference.
- To comply with federal regulations in 45 C.F.R. § 98.55, relating to matching fund requirements, and 45 C.F.R. § 98.56, relating to restrictions on the use of funds.
- To submit a certification of expenditures report, certifying that the child care-related expenditures were incurred according to regulations and policies to draw down such federal matching funds, and have not already been used as match for any other federal matching program.
- Other agreed-upon local operating plans and procedures used to implement and carry out the terms and intent of this agreement must comply with Board policies and procedures.
- This agreement for the contributor to provide matching funds is contingent upon the availability and amount of unmatched federal CCDF appropriations. If such funds are otherwise unavailable or reduced, written notice of termination, payment suspension, or funding reduction will be given by any party.
- These terms and conditions may be amended by written agreement of all parties at any time before the current agreement end date, as indicated on page one of this agreement, contingent upon acceptance of the amended terms and conditions by all parties.

- If federal, state, or local laws, or other requirements are amended or judicially interpreted so as to render continued fulfillment of this agreement, on the part of any of the parties, substantially unreasonable or impossible, and if the parties should be unable to agree upon any amendment that would therefore be needed to enable the substantial continuation of the services contemplated herein, the parties shall be discharged from any further obligations created under the terms of this agreement, except for the equitable settlement of the respective accrued interests or obligations incurred up to the date of termination.
- This agreement may be terminated by any party, for any reason, upon written notification to the other parties of at least thirty (30) days in advance of such termination. Such written notification will be sent to the contributor's address as specified in the Child Care Local Match Contributor Information section in this agreement.

Board Information

Complete the section below regarding the Board.

Board Legal Entity Name Lower Rio Grande Valley Workforce Development Board

Street Address: 3101 W Business 83

City: McAllen **State:** TX **Zip Code:** 78501

Board Staff Contact Name: Andrea Trevino **Phone:** 956-661-2933 **Fax:** 956-664-8987

Board Staff Contact E-mail Address: andrea@wfsolutions.org

Contributor Information

Complete the section below regarding the Child Care Local Match Contributor.

Contributor Name: McAllen ISD

Street Address: 2000 N 23rd Street

City: McAllen **State:** TX **Zip Code:** 78501

Type of Entity: Government

Name of Fiscal Agent (if applicable): N/A

Vendor ID Number or Federal Employer ID Number of Contributor or Contributor's Fiscal Agent: 74-600-1658

Contributor Contact Name: Dr. Maribelle Elizondo **Phone:** 956-618-6048 **Fax:** _____

Contributor Contact E-mail Address: Maribelle.elizondo@mcallenisd.net

Originating Agreement Information

Please fill out the information below regarding the type of contribution and pledged local match amount.

Type of Contribution:

- Donation (Private Entity)
- Transfer (Public Entity)
- Certification (Public Entity)

Pledged Local Match Amount: \$ 550,000.00

Amounts secured in excess of the pledged local match amount, if any, are herein included in this agreement and approved for use in accordance with this agreement, including use for statewide match purposes, if agreed in this agreement

The contributor voluntarily agrees and allows that any local contributions secured in excess of the amount needed to draw down the federal match amount allocated to the workforce area may be used for statewide match purposes. Yes No

Program Number: 11180C17

The contributor voluntarily agrees and allows that any certifications of expenditures and donations over the pledged amount will be aggregated and obligated at the state level. The excess amounts will be applied to the local leverage amounts that all workforce areas are required to secure to access federal matching funds allocated among all workforce areas. Yes No

Did a Board Member assist in securing this local match agreement? Yes No

If yes, Name of Board Member: N/A

How did the Board Member assist? N/A

Cash Contributions

Use of funds description for cash contributions: The description below addresses the Board's planned use of local and federal funds resulting from donation and transfer of funds agreements. Use of funds must be in compliance with the state's CCDF State Plan in effect for the contract period.

No restrictions can be placed on use of funds by contributor.

Direct Child Care

The funds will be used for:

- direct child care services;
- for eligible children and families meeting TWC and Board eligibility criteria; and
- at child care providers eligible under TWC rules.

Source of Local Funds: N/A

Planned Local and Federal Funding Amount for Direct Child Care: \$ N/A

Child Care Quality Improvement

The funds will be used for quality improvement activities allowable under TWC rule § 809.16.

Source of Local Funds: N/A

Planned Local and Federal Funding Amount for Child Care Quality Improvement: \$ N/A

Administration and Operations

The funds will be used for administration and operations in accordance with applicable federal regulations and TWC policies.

Planned Local and Federal Funding Amount for Administration and Operations: \$ N/A

Total planned local and federal funds resulting from donations and transfers: \$ N/A

Certification of Expenditures

Use of funds description for Certification of Expenditures: The descriptions below describe:

- the allowable child care services or activities that resulted in local certified expenditures,
- the source of the local funds, and
- the Board's planned use of the matched federal funds resulting from the certification of expenditures.

Use of funds must be in compliance with the state's CCDF State Plan in effect for the contract period.

No restrictions can be placed on use of funds by contributor.

Planned Local Fund Use

Direct Child Care

Expenditures certified by the contributor resulted from:

- **direct child care services provided by the following child care provider, organization, or entity:**

McAllen ISD

- direct child care services provided to children under 13 years of age; and
- the amount of local match expenditures being proportional to the low-income population in the area served using the expenditures.

Source of Local Funds: State Compensatory Ed. Program Funds and Local Funds

Planned Local Funding Amount for Direct Child Care: \$ 550,000.00

Child Care Quality Improvement

Expenditures certified by the contributor resulted from quality improvement activities allowable under TWC rule § 809.16.

Source of Local Funds: N/A

Planned Local Funding Amount for Child Care Quality Improvement: \$ N/A

Certification of Expenditures (cont.)

Planned Federal Fund Use

Direct Child Care

The federal funds will be used in the following order of priority:

1. for direct child care services provided (include a brief description of use of the funds):

To eligible participants residing in the Workforce Development Board area

2. for eligible children and families meeting TWC and Board eligibility criteria; and
3. at child care providers eligible under TWC rules.

Planned Federal Funding Amount for Direct Child Care: \$1,100,000

Child Care Quality Improvement

The funds will be used for quality improvement activities allowable under TWC rule § 809.16.

Planned Federal Funding Amount for Child Care Quality Improvement: \$ N/A

Administration and Operations

The funds will be used for administration and operations in accordance with applicable federal regulations and TWC policies

Planned Federal Funding Amount for Administration and Operations: \$ N/A

Total planned local and federal funds resulting from certifications of expenditures: \$ 1,650,000.00

Donation/Transfer Payment(s) (Local Funds) Schedule

In compliance with the Contributor Agreement section of this agreement, the contributor will remit payment or reports of actual expenditures in accordance with the completed schedule below. Pursuant to TWC rule § 800.73(a)(2), the donation(s)/transfer(s) must occur within the effective program year in which the funds are allocated.

Private donor cash donations—submit one original signed form to: TWC’s Workforce Board Grants department, 101 East 15th Street, Room 104T, Austin, Texas 78778-0001.

1.	Donation/Transfer Date:		Actual Amount:	\$
2.	Donation/Transfer Date:		Actual Amount:	\$
3.	Donation/Transfer Date:		Actual Amount:	\$
4.	Donation/Transfer Date:		Actual Amount:	\$
5.	Donation/Transfer Date:		Actual Amount:	\$
6.	Donation/Transfer Date:		Actual Amount:	\$
7.	Donation/Transfer Date:		Actual Amount:	\$
8.	Donation/Transfer Date:		Actual Amount:	\$
9.	Donation/Transfer Date:		Actual Amount:	\$
10.	Donation/Transfer Date:		Actual Amount:	\$
11.	Donation/Transfer Date:		Actual Amount:	\$
12.	Donation/Transfer Date:		Actual Amount:	\$
	TOTAL			\$

Public Entity Certification of Expenditures (Local Funds) Schedule

In compliance with the Contributor Agreement section of this agreement, the contributor will remit payment or reports of actual expenditures in accordance with the completed schedule below. Pursuant to TWC rule §800.73(a)(2), the certification(s) must occur within the effective program year in which the funds are allocated.

Public Entity Transfers and Certifications—submit one copy of the signed form to the e-mail address ccm.agreements@twc.texas.gov.

	Certification Period				Reporting Date	Planned Amount of Expenditures
	From		to			
1.	From	10/01/23	to	12/31/23	01/30/24	\$ 137,500.00
2.	From	01/01/24	to	03/31/24	04/15/24	\$ 137,500.00
3.	From	04/01/24	to	06/30/24	07/15/24	\$ 137,500.00
4.	From	07/01/24	to	09/30/24	10/15/24	\$ 137,500.00
5.	From		to			\$
6.	From		to			\$
7.	From		to			\$
8.	From		to			\$
9.	From		to			\$
10.	From		to			\$
11.	From		to			\$
12.	From		to			\$

TOTAL	\$ 550,000.00
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Explanation is required below if reporting dates are outside the contract end date:

N/A

Please call the Board’s assigned contract manager if you have questions. An individual may receive and review information that TWC collects by sending an e-mail to open.records@twc.texas.gov or writing to TWC Open Records Unit, 101 East 15th Street, Room 266, Austin, Texas 78778-0001.

Certification of Expenditures by a Public Entity

Name of Contributing Public Entity: McAllen ISD

The public entity named above certifies expenditures in the amount of \$ 550,000.00

to be used as state matching funds to draw down available federal matching funds as authorized in the CCDF regulations at 45 C.F.R. § 98.55.

By signing below, the public entity named above certifies that the funds specified above:


- are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds;
- are not used to match other federal funds;
- represent expenditures eligible for federal match; and
- do not represent expenditures for public prekindergarten programs as referenced in 45 C.F.R. § 98.55(h).

Signature of authorized agent: _____ Date: _____

Printed name of authorized agent: Debbie Crane Aliseda

Title of authorized agent: Board President

Approved as to form:
O'Hanlon, Demerath & Castillo

By:  _____
Kevin O'Hanlon

Joint Certification of Funds Donated to TWC from Private Sources

Name of Donor: N/A

The Donor named above contributes funds in the amount of \$ N/A

to TWC to be used as state matching funds to draw down available federal matching funds as authorized in CCDF regulations at 45 C.F.R. § 98.55(e)(2).

By signing below, the Donor and TWC certify that the donated funds specified above:

- are available and represent expenditures eligible for federal match;
- are donated without any restriction that would require their use for a specific individual, organization, facility, or institution;
- do not revert to the Donor's facility or use; and
- are not used to match other federal funds.

Donor's Certification

Signature of authorized agent: _____ Date: _____

Printed name of authorized agent: _____

Title of authorized agent: _____

TWC's Certification

Signature of authorized agent: _____ Date: _____

Printed name of authorized agent: Reagan Miller

Title of authorized agent: Director, Child Care & Early Learning Division

Joint Certification of Funds Donated to the Board from Private Sources

Name of Donor: N/A

The Donor named above contributes funds in the amount of \$ N/A to the N/A **Workforce Development Board** to be used as state matching funds to draw down available federal matching funds as authorized in the CCDF regulations at 45 C.F.R. § 98.55(e)(2).

By signing below, the Donor, Board, and TWC certify that the donated funds specified above:

- are available and represent expenditures eligible for federal match;
- are donated without any restriction that would require their use for a specific individual, organization, facility, or institution;
- do not revert to the Donor's facility or use; and
- are not used to match other federal funds.

Donor's Certification

Signature of authorized agent: _____ Date: _____

Printed name of authorized agent: _____

Title of authorized agent: _____

Board's Certification

Signature of authorized agent: _____ Date: _____

Printed name of authorized agent: _____

Title of authorized agent: _____

TWC's Certification

Signature of authorized agent: _____ Date: _____

Printed name of authorized agent: Reagan Miller

Title of authorized agent: Director, Child Care & Early Learning Division

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: 

SUPERVISOR: 

Approved for presentation to the Board of Education:



38 _____
Interim Superintendent of Schools



FINAL PAYMENT CHECKLIST
Facilities Projects

Project Name: Contract 2023-056 thru RFCQ 2023-1009 – Kitchen Renovations for Dorothea Brown Middle School and Alonzo De Leon Middle School

1. Vendor Obligations to McAllen ISD:

YES	NA	
<input checked="" type="radio"/>	<input type="radio"/>	Original Certificate of Substantial Completion (internal/external) transmitted to McAllen ISD
<input checked="" type="radio"/>	<input type="radio"/>	Letter of Guarantee, Warranty transmitted to McAllen ISD
<input checked="" type="radio"/>	<input type="radio"/>	List of names and addresses of obligatory vendors (subcontractors/suppliers) transmitted to McAllen ISD
<input checked="" type="radio"/>	<input type="radio"/>	All non-compliant items corrected (incl. punch list) and evidence of corrections transmitted to McAllen ISD
<input checked="" type="radio"/>	<input type="radio"/>	Final copy of Close-Out and As-Built Documents transmitted to McAllen ISD (hard copy and electronic files) and/or final inspections performed and project specifications met

Notes:

McAllen ISD Facilities, Maintenance and Operations staff certifies that the items indicated above have been completed by the vendor.


2. McAllen ISD Facilities, Maintenance, and Operations Obligations to McAllen ISD Business Operations

Select one:	
<input type="radio"/>	Item has been recorded as an asset and assigned an asset number.
<input checked="" type="radio"/>	Item has not been recorded as an asset. Appropriate steps are being taken to record. Approved to proceed with final payment.
<input type="radio"/>	Not applicable.

McAllen ISD Business Operations staff certifies that the project indicated above has been reviewed.

APPROVED BY:  Oct 2, 2023

For further information, contact:
Name: Ruben Trevino
Phone: (956) 632-3200
Email: ruben.trevino@mcallenisd.net

ACKNOWLEDGED BY:  Oct 2, 2023

For further information, contact:
Name: Dyanira Diaz
Phone: (956) 632-8403
Email: Dyanira.Farias@mcallenisd.net

APPLICATION AND CERTIFICATE FOR PAYMENT

TO: McAllen ISD
2000 N. 23rd St.
McAllen, Texas 78501
ATTN: Melissa Rodriguez

PROJECT: 22-0442-00
CONTRACT FOR: McAllen ISD Brown & De Leon Kitchen
Renovations

AIA DOCUMENT G702

PAGE 1 OF 2

APPLICATION NO: Retainage
APPLICATION DATE: 8/25/23

PERIOD FROM: 8/01/23
TO: 8/31/23

FROM: Noble Texas Builders
108 S. Main Street
La Feria, Texas 78559

Engineer: HALFF Associates
Gabriel Benavides P.E

CONTRACT DATE: June 13, 2022

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for Payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Change Orders Approved in previous months by Owner	TOTAL		
Approved this Month			0
Number	Date Approved		
1			78,842.44
TOTALS		\$0.00	\$78,842.44
Net change by Change Orders			-\$78,842.44

The undersigned Contractor certifies that to the best of his knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the contract Documents, that all amounts have been paid by him for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: NOBLE GENERAL CONTRACTORS

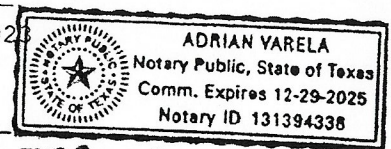
BY: *[Signature]* DATE: August 25, 2023
Jose L. Castro
Project Executive

The present status of the account for this Contract is as follows:

- ORIGINAL CONTRACT SUM..... \$ 2,213,891.00
- Net change by Change Orders..... \$ -78,842.44
- CONTRACT SUM TO DATE(Line 1+-2)..... \$ 2,135,048.56
- TOTAL COMPLETED & STORED TO DATE..... \$ 2,135,048.56 = 100.0%
(Column G on G703)
- RETAINAGE :
5% of Completed Work 0.00
- TOTAL EARNED LESS RETAINAGE..... \$ 2,135,048.56
(Line 4 Less Line 5 Total)
- LESS PREVIOUS CERTIFICATES for..... \$ 2,028,296.13
PAYMENT (Line 6 from prior Certificate)
- CURRENT PAYMENT DUE..... \$ 106,752.43
- Plus Applicable Taxes 0%
- CURRENT PAYMENT DUE..... 106,752.43
- BALANCE TO FINISH, PLUS RETAINAGE..... \$ 0.00
(Line 3 less (Line 6 x Tax)

State Of: Texas County of: Hidalgo County
Subscribed and sworn to before me this 25th day of August, 2023

My Commission expires: December 29, 2025



OWNER'S / ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that the Work has progressed to the point indicated; that to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents; and that the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED..... \$ 106,752.43
(Attach explanation if amount certified differs from the amount applied for.)

BY: *[Signature]* DATE: 9/14/2023

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

APPROVED FOR PAYMENT

[Signature] Oct 2, 2023
Melissa Ortiz (Oct 2, 2023 13:50 CDT)
Signature Date
[Signature] Oct 2, 2023
Signature Date
Signature Date

McAllen ISD Brown & De Leon Kitchen
McAllen ISD

APPLICATION NO: Retainage
APPLICATION DATE: 8/25/23
PERIOD FROM: 8/01/23
TO: 8/31/23

ITEM No.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED			TOTAL COMPLETED		BALANCE TO FINISH (C-G)	RETAINAGE 5%
			Previous Applications	This Application		AND STORED TO DATE (D+E+F)	% (G/C)		
				Work in Place	Stored Mat'l (not in D or E)				
Brown Middle School									
	Owner Contingency	0.00	0.00	0.00	0.00	0.00	#DIV/0!	0.00	0.00
	AEA No.01 Pass Thru Modifications	5,000.00	5,000.00	0.00	0.00	5,000.00	100.0%	0.00	0.00
	AEA No.02 CPR No.01 Brown Serving Lines	6,052.00	6,052.00	0.00	0.00	6,052.00	100.0%	0.00	0.00
	AEA No.03 Cooler Mud Bed	1,311.00	1,311.00	0.00	0.00	1,311.00	100.0%	0.00	0.00
	AEA No.04 Floor Through	1,682.07	1,682.07	0.00	0.00	1,682.07	100.0%	0.00	0.00
	AEA No.05 Replace Valve & Pipes	4,114.88	4,114.88	0.00	0.00	4,114.88	100.0%	0.00	0.00
	AEA No.06 100 Gal. Water Heater	7,590.65	7,590.65	0.00	0.00	7,590.65	100.0%	0.00	0.00
	AEA No.07 Two Oven Connections	1,222.22	1,222.22	0.00	0.00	1,222.22	100.0%	0.00	0.00
	AEA No.08 Two Pantry Faucets	425.00	425.00	0.00	0.00	425.00	100.0%	0.00	0.00
	AEA No.09 Two Pot Filler	1,015.00	1,015.00	0.00	0.00	1,015.00	100.0%	0.00	0.00
	AEA No.10 Replace MAU Motor	786.20	786.20	0.00	0.00	786.20	100.0%	0.00	0.00
	AEA No.11 Serving Line Modifications	2,500.00	2,500.00	0.00	0.00	2,500.00	100.0%	0.00	0.00
	AEA No.12 Stucco Hallway	1,800.00	1,800.00	0.00	0.00	1,800.00	100.0%	0.00	0.00
	AEA No.13 Relocate POS RI & Provide Floor Boxes	1,283.00	1,283.00	0.00	0.00	1,283.00	100.0%	0.00	0.00
	AEA No.14 Heat Trace Circuit	768.68	768.68	0.00	0.00	768.68	100.0%	0.00	0.00
	AEA No.15 Data Drops	1,890.00	1,890.00	0.00	0.00	1,890.00	100.0%	0.00	0.00
	AEA No.16 Tilt Kettle	600.27	600.27	0.00	0.00	600.27	100.0%	0.00	0.00
	Supervision	70,525.00	70,525.00	0.00	0.00	70,525.00	100.0%	0.00	0.00
	P&P Bonds & Insurances	25,637.00	25,637.00	0.00	0.00	25,637.00	100.0%	0.00	0.00
	Building Permit	7,371.00	7,371.00	0.00	0.00	7,371.00	100.0%	0.00	0.00
	Mobilization	5,726.00	5,726.00	0.00	0.00	5,726.00	100.0%	0.00	0.00
	Existing Conditions (Selective Interior Demolition)	62,598.00	62,598.00	0.00	0.00	62,598.00	100.0%	0.00	0.00
	Concrete	67,813.00	67,813.00	0.00	0.00	67,813.00	100.0%	0.00	0.00
	Masonry	77,298.00	77,298.00	0.00	0.00	77,298.00	100.0%	0.00	0.00
	Metals-Structural Steel	19,157.00	19,157.00	0.00	0.00	19,157.00	100.0%	0.00	0.00
	Wood, Plastics, & Composites	1,550.00	1,550.00	0.00	0.00	1,550.00	100.0%	0.00	0.00
	Thermal & Moisture Protection	1,789.00	1,789.00	0.00	0.00	1,789.00	100.0%	0.00	0.00
	Openings	19,325.00	19,325.00	0.00	0.00	19,325.00	100.0%	0.00	0.00
	Finishes								
	Slip Resistant Floor/Wall Tile for Sanitation in Kitchen	46,154.00	46,154.00	0.00	0.00	46,154.00	100.0%	0.00	0.00
	Interior & Exterior Painting EPOXY for Sanitation in Kitchen	19,989.00	19,989.00	0.00	0.00	19,989.00	100.0%	0.00	0.00
	Cafeteria VCT Flooring	9,892.00	9,892.00	0.00	0.00	9,892.00	100.0%	0.00	0.00
	Specialties								
	Signage & Install	2,312.00	2,312.00	0.00	0.00	2,312.00	100.0%	0.00	0.00
	Restroom Accessories & Install	3,080.00	3,080.00	0.00	0.00	3,080.00	100.0%	0.00	0.00
	Plumbing (Grease Trap)								
	Labor	2,895.00	2,895.00	0.00	0.00	2,895.00	100.0%	0.00	0.00
	Material	8,655.00	8,655.00	0.00	0.00	8,655.00	100.0%	0.00	0.00

Finishes									
<i>Moisture Resistant Ceiling for Kitchen</i>	69,420.00	69,420.00	0.00	0.00	69,420.00	100.0%	0.00	0.00	
Equipment (Kitchen Walk In Cooler & Refrigeration)									
<i>Koldpack Walk In Cooler</i>									
<i>Equipment</i>	72,181.00	72,181.00	0.00	0.00	72,181.00	100.0%	0.00	0.00	
<i>Labor</i>	40,563.00	40,563.00	0.00	0.00	40,563.00	100.0%	0.00	0.00	
<i>Cold Zone Refrigeration System</i>									
<i>Equipment</i>	33,109.00	33,109.00	0.00	0.00	33,109.00	100.0%	0.00	0.00	
<i>Labor</i>	20,444.00	20,444.00	0.00	0.00	20,444.00	100.0%	0.00	0.00	
<i>Refrigeration Rack</i>	3,218.00	3,218.00	0.00	0.00	3,218.00	100.0%	0.00	0.00	
Plumbing Upgrades for New Kitchen									
<i>Labor</i>	61,250.00	61,250.00	0.00	0.00	61,250.00	100.0%	0.00	0.00	
<i>Material</i>	72,383.00	72,383.00	0.00	0.00	72,383.00	100.0%	0.00	0.00	
<i>Fixtures</i>	15,700.00	15,700.00	0.00	0.00	15,700.00	100.0%	0.00	0.00	
HVAC									
<i>Labor</i>	20,233.00	20,233.00	0.00	0.00	20,233.00	100.0%	0.00	0.00	
<i>Material</i>	24,355.00	24,355.00	0.00	0.00	24,355.00	100.0%	0.00	0.00	
Electrical									
<i>Labor</i>	53,077.00	53,077.00	0.00	0.00	53,077.00	100.0%	0.00	0.00	
<i>Material</i>	68,564.00	68,564.00	0.00	0.00	68,564.00	100.0%	0.00	0.00	
<i>Gear</i>	19,575.00	19,575.00	0.00	0.00	19,575.00	100.0%	0.00	0.00	
Communications (Data Rough In for New Point of Sales Equipment)	3,246.00	3,246.00	0.00	0.00	3,246.00	100.0%	0.00	0.00	
De Leon Middle School									
Owner Contingency	0.00	0.00	0.00	0.00	0.00	#DIV/0!	0.00	0.00	
AEA No.01-De Leon POS & Serving Lines Re-Route Electrical	6,705.98	6,705.98	0.00	0.00	6,705.98	100.0%	0.00	0.00	
AEA No.02-Additional Plumbing for Serving Lines	10,430.00	10,430.00	0.00	0.00	10,430.00	100.0%	0.00	0.00	
AEA No.03-Additional Tile to Replace Existing.	13,000.00	13,000.00	0.00	0.00	13,000.00	100.0%	0.00	0.00	
AEA No.04- Replace 2 1/2 Gate Valve & Lines	2,435.50	2,435.50	0.00	0.00	2,435.50	100.0%	0.00	0.00	
AEA No.05 Interconnect Convection Ovens	611.11	611.11	0.00	0.00	611.11	100.0%	0.00	0.00	
AEA No.06 Provide (2) New Floor Sinks	3,688.50	3,688.50	0.00	0.00	3,688.50	100.0%	0.00	0.00	
AEA No.07 New 3" Drain for Two Compartment Sink	175.00	175.00	0.00	0.00	175.00	100.0%	0.00	0.00	
AEA No.08 Pipe Bollard Rail 9' Long	1,651.00	1,651.00	0.00	0.00	1,651.00	100.0%	0.00	0.00	
AEA No.09 Modify Gutter & Provide New Spout	1,500.00	1,500.00	0.00	0.00	1,500.00	100.0%	0.00	0.00	
AEA No.10 3" Drain for 3 Compartment Sink	175.00	175.00	0.00	0.00	175.00	100.0%	0.00	0.00	
AEA No.11 Serving Line Modifications	2,500.00	2,500.00	0.00	0.00	2,500.00	100.0%	0.00	0.00	
AEA No.12 Heat Trace Circuit	649.50	649.50	0.00	0.00	649.50	100.0%	0.00	0.00	
AEA No.13 Data Drops	1,890.00	1,890.00	0.00	0.00	1,890.00	100.0%	0.00	0.00	
AEA No.14 Exhaust Hood Mech & Electrical	39,845.00	39,845.00	0.00	0.00	39,845.00	100.0%	0.00	0.00	
AEA No.15 Traffic Rails	9,860.00	9,860.00	0.00	0.00	9,860.00	100.0%	0.00	0.00	
Supervision	68,500.00	68,500.00	0.00	0.00	68,500.00	100.0%	0.00	0.00	
P&P Bonds & Insurances	24,312.00	24,312.00	0.00	0.00	24,312.00	100.0%	0.00	0.00	
Building Permit	5,837.00	5,837.00	0.00	0.00	5,837.00	100.0%	0.00	0.00	
Mobilization	5,422.00	5,422.00	0.00	0.00	5,422.00	100.0%	0.00	0.00	
Existing Conditions (Selective Interior Demolition)	57,500.00	57,500.00	0.00	0.00	57,500.00	100.0%	0.00	0.00	
Concrete	11,800.00	11,800.00	0.00	0.00	11,800.00	100.0%	0.00	0.00	
Masonry	62,600.00	62,600.00	0.00	0.00	62,600.00	100.0%	0.00	0.00	
Metals-Structural Steel	5,981.00	5,981.00	0.00	0.00	5,981.00	100.0%	0.00	0.00	
Wood, Plastics, & Composites	2,585.00	2,585.00	0.00	0.00	2,585.00	100.0%	0.00	0.00	
Openings	18,350.00	18,350.00	0.00	0.00	18,350.00	100.0%	0.00	0.00	
Finishes									
<i>Slip Resistant Floor/Wall Tile for Sanitation in Kitchen</i>	74,460.00	74,460.00	0.00	0.00	74,460.00	100.0%	0.00	0.00	
<i>Interior & Exterior Painting EPOXY for Sanitation in Kitchen</i>	21,415.00	21,415.00	0.00	0.00	21,415.00	100.0%	0.00	0.00	

Moisture Resistant Ceiling for Kitchen	42,788.00	42,788.00	0.00	0.00	42,788.00	100.0%	0.00	0.00
Specialties								
Signage & Install	2,118.00	2,118.00	0.00	0.00	2,118.00	100.0%	0.00	0.00
Restroom Accessories & Install	3,080.00	3,080.00	0.00	0.00	3,080.00	100.0%	0.00	0.00
Plumbing (Grease Trap)								
Labor	2,995.00	2,995.00	0.00	0.00	2,995.00	100.0%	0.00	0.00
Material	8,655.00	8,655.00	0.00	0.00	8,655.00	100.0%	0.00	0.00
HVAC								
Labor	9,984.00	9,984.00	0.00	0.00	9,984.00	100.0%	0.00	0.00
Material	12,001.00	12,001.00	0.00	0.00	12,001.00	100.0%	0.00	0.00
Equipment (Kitchen Walk In Cooler & Refrigeration)								
<u>Koldpack Walk In Cooler</u>								
Equipment	86,121.00	86,121.00	0.00	0.00	86,121.00	100.0%	0.00	0.00
Labor	42,532.00	42,532.00	0.00	0.00	42,532.00	100.0%	0.00	0.00
<u>Cold Zone Refrigeration System</u>								
Equipment	33,109.00	33,109.00	0.00	0.00	33,109.00	100.0%	0.00	0.00
Labor	20,402.00	20,402.00	0.00	0.00	20,402.00	100.0%	0.00	0.00
Refrigeration Rack	3,269.00	3,269.00	0.00	0.00	3,269.00	100.0%	0.00	0.00
Plumbing Upgrades for New Kitchen								
Labor	95,149.00	95,149.00	0.00	0.00	95,149.00	100.0%	0.00	0.00
Material	105,980.00	105,980.00	0.00	0.00	105,980.00	100.0%	0.00	0.00
Fixtures	15,700.00	15,700.00	0.00	0.00	15,700.00	100.0%	0.00	0.00
Electrical								
Labor	48,526.00	48,526.00	0.00	0.00	48,526.00	100.0%	0.00	0.00
Material	59,252.00	59,252.00	0.00	0.00	59,252.00	100.0%	0.00	0.00
Gear	19,166.00	19,166.00	0.00	0.00	19,166.00	100.0%	0.00	0.00
Communications (Data Rough In for New Point of Sales Equipment)	3,218.00	3,218.00	0.00	0.00	3,218.00	100.0%	0.00	0.00
GRAND TOTAL	2,135,048.56	2,135,048.56	0.00	0.00	2,135,048.56	100.0%	0.00	0.00

AIA DOCUMENT G703

CONTINUATION SHEET

APRIL 1978 EDITION

THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVE., N.W., WASHINGTON, D.C. 20006

\$ 1,025,306.56	McAllen ISD Total Amount
\$ -	Work Completed
\$ -	Retainage
\$ -	Current Payment

\$ 1,016,295.00	TDA Funds Total Amount
\$ -	Work Completed
\$ -	Retainage
\$ -	Current Payment

12 April 2023

**MCALLEN I.S.D.
BROWN MIDDLE SCHOOL KITCHEN RENOVATIONS**

PUNCH LIST

- I. GENERAL
 - a. Clean site and building
 - b. Provide closing documents (i.e. warranties, release of liens, operating manuals, etc.)
 - 1. Affidavit of Payment of Debts and Claims
 - 2. Contractor's Affidavit of Release of Liens
 - 3. Consent of Surety Company to Final Payment.
 - c. Provide Certificate of Occupancy
 - d. Submit a certified copy of the Architect's final punch list to be completed or corrected, stating that each item had been completed or otherwise resolved for acceptance and has been endorsed and dated by the Architect.
 - e. Submit final meter readings for utilities, a record of stored fuel, and similar data as of Substantial completion.
 - f. Submit evidence of continuing insurance coverage complying with insurance requirements
 - g. Provide "RECORD DRAWINGS". Mark up these drawings to show the actual installation.
 - h. Provide Record Specifications. Mark to show variations in actual work performed in comparison with the specifications and modifications
 - i. Pest Control: Engage and experienced exterminator to make a final inspection, and rid the project of rodents, insects and other pests.
 - j. Verify that all items installed follow A.D.A. requirements.
 - k. Instruct Owner's representative as to location of valves, operation of security system, a/c operation, filter changes, and other general operation information.
 - l. Provide inspection reports by fire marshal, sprinkler system installer, security system and intercom system.
 - m. Training: Provide training for each trade, i.e. Kitchen Equipment, Mechanical, Electrical, Plumbing and emergency systems to Owners representatives.
- II. SITE
 - a. Verify that site grading slopes away from building
 - b. Sidewalks and Porches: Verify that site grading slopes away from buildings on sidewalks.
 - (1) Cross slope max. 2%
 - (2) In the direction of travel 8.33% 1:12
- III. CONCRETE
 - a. Completed
- IV. MASONRY
 - a. Cover all holes on CMU and touch up paint
- V. STEEL
 - a. N/A
- VI. CARPENTRY
 - a. N/A
- VII. ROOFING & CAULKING

- VIII. DOORS AND WINDOWS (Punch list is pending)
- a. Check all hardware for A.D.A. compliance (i.e. weight on closures, sweep time, height requirements).
 - b. Deliver all keys to Owner's representative (master and the like).
 - c. Instruct owner as to proper operation of doors etc.
 - d. Provide silencers at all doors
 - e. Provide weather stripping on all exterior doors.
 - f. Closers: Check pull weight and closing speed to ensure compliance.
 - g. Provide permanent key cylinders at all doors
 - h. Ensure that door lites are a max. of 43" AFF to bottom edge of glass. Refer to detail 33/G2.1.

IX. FINISHES

Please provide owner with extra supplies such as paint, ceiling tiles, VCT, ceramic & quarry tiles, etc.

GENERAL NOTES

- Clean all kitchen equipment and quarry tile, wall tile and all grout.
- Touch up paint at door and window frames where needed.
- All door signs are pending.
- Install all pending ceiling tiles.
- Caulk around outlets and switches.
- Install all missing door silencers at door frames.
- Check door closers and adjust weights.
- Re-do messy caulking above all hand sinks.
- Floor tile & wall base need cleaning throughout



EXTERIOR

- Wheel stops not installed
- Caulk the collar of the rainwater leader on the outside.
- Provide supports for water/plumbing lines at new water heater



2 and 3 compartment sinks

- Drains from 2 and 3 compartment sinks shall be perpendicular to floor sink and shall be cut at a 45 deg. Angle and keep at least 1" away from the top surface of the floor sinks.
- Anchor both 2 and 3 compartment sinks as per details 2-7/FSB.6
- Caulk over shelves to wall, typical.
- Caulk top of splash to wall, typical.

Freezer / Cooler

- Level rooftop refrigeration rack. Check why unit is malfunctioning.
- Freezer door handle needs pieces.
- Refrigerant and condensation lines inside the freezer/cooler need to be insulated properly, insulate 90 deg, ends and other joints. Supports shall be on the insulation and not on the actual lines.
- Hinge, escutcheon plates missing
- Finish out S. S. trim at top corner
- Adjust and seal threshold
- Run current on threshold and seal from condensing around door

Fire Sprinkler System

- Provide escutcheon plates at all sprinkler heads.

- Column is missing grout at circled area, grout is darker in some areas and ceiling needs to be repainted. (See picture below)



- Replace air filters and install grilles.



- Drinking fountains:
 - Unit on the left needs to be lowered to conceal aluminum trim that's sticking out and needs an apron underneath
 - Unit on the right side needs to be lower to 27" knee height



- Fix ceiling grid



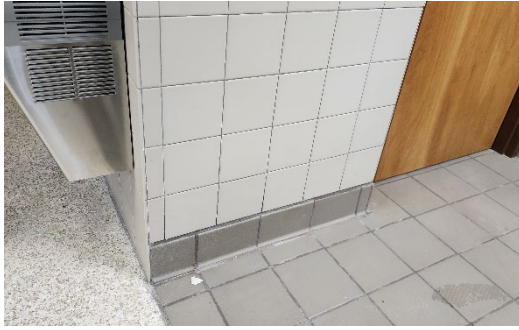
- Repair ceiling after removing power cord



- Electrical power missing at milk coolers



- Quarry base besides drinking fountains looks uneven and really bad.



- Tile at bottom of column (quarry & ceramic) looks really bad, see picture below.



- Missing grout at bottom quarry base



- Install trim or fix around electrical panel – grout is too uneven and thick



- Install missing fire extinguisher



- Install missing ceiling tiles



- Install missing piece of stainless steel at corner of cooler unit



- 3 compartment sink: Escutcheon plate missing at wall penetration.



- 2 compartment sink: Escutcheon plate missing at wall penetration.



- Redo tile at corners



- Install corner metal trims at all ceramic tile corners around columns, furrdowns and around pass thru's. Tile is too uneven and noticeable.



- Grout is missing at angled furrdown. Provide grout or caulk that matches tile color all along the top where tile meets ceiling throughout kitchen like second picture below.



- Fly fan is not connected to power
- Doors don't close properly



- Fix bent piece on grill at floor trough under braising pan



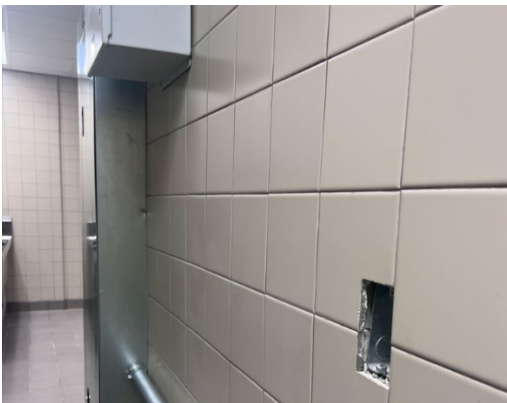
- Fire extinguisher cabinet by exterior door is dented at top

DRY STORAGE

- Escutcheon plates are missing
- Fill voids or holes on CMU wall
- Door silencers are missing

HALL

- Install missing cover at outlet in Hallway
- Seal ceiling penetrations



JANITOR

- Janitor floor sink is broken at bottom.
- Install stainless steel backsplash properly behind floor sink and caulk all around.

RESTROOM

- Remove protective plastic from back of mirror and grab bars completely
- Center of toilet from adjacent wall needs to be between 16-18



Office

- Fill voids or holes on walls and touch up paint
- Install missing j-box cover plate

Electrical room

- Cover holes around interior of door frames
- Install missing ceiling tiles & fill gaps between wall & ceiling



- Repair broken stucco piece.
- Repair wall around penetrations



- Seal penetrations on ceiling



- Existing Corridor: retouch paint on stucco



X. SPECIALTIES

- a. Check all applications for T.A.S. approval and requirements.
- b. Grab bars: Ensure that top of grab bars are between 33"-36" AFF. Ensure that back grab bar and side grab bars are mounted as per details 38, 39 and 40 G2.1 (height, distance from back of wall for side grab bar and distance from centerline for the one behind the toilet).
- c. Toilet paper dispensers: Ensure that H/C dispenser does not restrict paper flow and that dispenser is not less than 19" to centerline AFF. Refer to Detail 39 on Sheet G2.1 for distance from toilet.
- d. Towel Dispensers: Ensure that dispenser is no more than 48" AFF for forward approach and 54" AFF for side approach.
- e. Install any missing fire extinguishers and add labels at all fire extinguisher cabinets.
- f. EDF is missing apron

XI Not applicable

XII EXISTING ROOF

- Provide watertight metal housing at roof penetrations similar to detail below.



- Sleepers under roof top refrigeration rack should be not level and might be causing unit to malfunction



XIII Not applicable

XIV Not applicable

XV. MECHANICAL AND PLUMBING (Refer to Halff Associates punch list for additional items.)
Refer to attached Plumbing and Mechanical punch list for additional items

- All janitor sinks should have stainless steel splashes.
- Ensure that sinks are as per section 4.24.4 of A.D.A review and that height to lav. is no more than 34" max. height to top of lavatory with 27" knee clearance.
- Ensure that all toilets are 16"-18" away from wall and have the flush valve on the wide side of the room. Seat height should be 17"-19" to top of rim and urinals should be 17" max. to rim of basin.
- Insulate all water (hot and cold) lines and drain lines at sinks.
- Ensure that drinking fountain spout height is no more than 36" AFF at H/C unit.
- All water fountains shall be the same model like the H/C water fountains.
- Check water pressure on all sinks, water fountains, etc.
- Replace all air filters before turning in the building to the Owner.
- Mechanical Rooms: seal all pipes leading into school, and make sure all pipes at ceiling have insulation.
- Make sure water heaters are operating properly
- All units must be operable at time of substantial completion
- Make sure proper training is given to MISD staff on how to program the units, controls, software, graphics, etc.
- T&B Test and Balance

XVI. ELECTRICAL (Refer to Halff Associates punch list for additional items.)

Refer to attached electrical punch list for additional items

- Provide certificates on the following
 - Security system
 - Sound system
 - Fire alarm system
- Label all circuits at panel boxes
- Label all panels

**McAllen Independent School District
Brown Middle School
Foodservice Equipment - Section 11400
Observation Report No. 01
FCA Job No. 1665**

April 17, 2023

Item No. 01 – Walk-In Cooler/Freezer

- 01. Seal trim at floor and sides.
- 02. Install missing plugs in cooler.

Item No. 05 – Three Compartment Sink

- 01. Leave air gap at drain above floor sink.
- 02. Cut pipe at 45 degree angle.

Item No. 19 – Preparation Sink

- 01. Leave air gap at drain above floor sink.
- 02. Cut pipe at 45 degree angle.

Item No. 22 – Serving Counter

- 01. Seal side splash at adjacent wall.

Item No. 29 – Serving Counter

- 01. Seal side splash at adjacent wall.

Item No. 30 – Fly Fan

- 01. Complete Installation.

Miscellaneous:

Fix Grout around floor drains and trench liner.
Drain Lines/Floor Sinks at serving lines create tripping hazard.
Seal mop sink to wall. Seal flashing and holes in flashing.
Floor drains need to be recessed below floor level.
Seal holes for conduit at ceiling panels.
Seal holes in wall at sinks.

GENERAL

- 01. Cut pipes at floor sinks at 45 degree angle.
- 02. Furnish required number of Equipment Schedules indicating the name, address and telephone number of the representative local service agencies (factory-authorized when possible).
- 03. Provide required number of service manuals containing all information stipulated in specification, including wiring schematics for all equipment/fixtures containing pre-wired load centers and piping/wiring for all exhaust hood fire protection systems.

12 April 2023

**MCALLEN I.S.D.
BROWN MIDDLE SCHOOL KITCHEN RENOVATIONS**

PUNCH LIST

- I. GENERAL
 - a. Clean site and building
 - b. Provide closing documents (i.e. warranties, release of liens, operating manuals, etc.)
 - 1. Affidavit of Payment of Debts and Claims
 - 2. Contractor's Affidavit of Release of Liens
 - 3. Consent of Surety Company to Final Payment.
 - c. Provide Certificate of Occupancy
 - d. Submit a certified copy of the Architect's final punch list to be completed or corrected, stating that each item had been completed or otherwise resolved for acceptance and has been endorsed and dated by the Architect.
 - e. Submit final meter readings for utilities, a record of stored fuel, and similar data as of Substantial completion.
 - f. Submit evidence of continuing insurance coverage complying with insurance requirements
 - g. Provide "RECORD DRAWINGS". Mark up these drawings to show the actual installation.
 - h. Provide Record Specifications. Mark to show variations in actual work performed in comparison with the specifications and modifications
 - i. Pest Control: Engage and experienced exterminator to make a final inspection, and rid the project of rodents, insects and other pests.
 - j. Verify that all items installed follow A.D.A. requirements.
 - k. Instruct Owner's representative as to location of valves, operation of security system, a/c operation, filter changes, and other general operation information.
 - l. Provide inspection reports by fire marshal, sprinkler system installer, security system and intercom system.
 - m. Training: Provide training for each trade, i.e. Kitchen Equipment, Mechanical, Electrical, Plumbing and emergency systems to Owners representatives.
- II. SITE
 - a. Verify that site grading slopes away from building
 - b. Sidewalks and Porches: Verify that site grading slopes away from buildings on sidewalks.
 - (1) Cross slope max. 2%
 - (2) In the direction of travel 8.33% 1:12
- III. CONCRETE
 - a. Completed
- IV. MASONRY
 - a. Cover all holes on CMU and touch up paint
- V. STEEL
 - a. N/A
- VI. CARPENTRY
 - a. N/A
- VII. ROOFING & CAULKING

- VIII. DOORS AND WINDOWS (Refer to attached hardware punch list)
- a. Check all hardware for A.D.A. compliance (i.e. weight on closures, sweep time, height requirements).
 - b. Deliver all keys to Owner's representative (master and the like).
 - c. Instruct owner as to proper operation of doors etc.
 - d. Provide silencers at all doors
 - e. Provide weather stripping on all exterior doors.
 - f. Closers: Check pull weight and closing speed to ensure compliance.
 - g. Provide permanent key cylinders at all doors
 - h. Ensure that door lites are a max. of 43" AFF to bottom edge of glass. Refer to detail 33/G2.1.

IX. FINISHES

Please provide owner with extra supplies such as paint, ceiling tiles, VCT, ceramic & quarry tiles, etc.

GENERAL NOTES

- Clean all kitchen equipment and quarry tile, wall tile and all grout.
- Touch up paint at door and window frames where needed.
- All door signs are pending.
- Install all pending ceiling tiles.
- Caulk around outlets and switches.
- Install all missing door silencers at door frames.
- Check door closers and adjust weights.
- Re-do messy caulking above all hand sinks.
- Floor tile & wall base need cleaning throughout



EXTERIOR

- Wheel stops not installed
- Caulk the collar of the rainwater leader on the outside.
- Provide supports for water/plumbing lines at new water heater



2 and 3 compartment sinks

- Drains from 2 and 3 compartment sinks shall be perpendicular to floor sink and shall be cut at a 45 deg. Angle and keep at least 1" away from the top surface of the floor sinks.
- Anchor both 2 and 3 compartment sinks as per details 2-7/FSB.6
- Caulk over shelves to wall, typical.
- Caulk top of splash to wall, typical.

Freezer / Cooler

- Level rooftop refrigeration rack. Check why unit is malfunctioning.
- Freezer door handle needs pieces.
- Refrigerant and condensation lines inside the freezer/cooler need to be insulated properly, insulate 90 deg, ends and other joints. Supports shall be on the insulation and not on the actual lines.
- Hinge, escutcheon plates missing
- Finish out S. S. trim at top corner
- Adjust and seal threshold
- Run current on threshold and seal from condensing around door

Fire Sprinkler System

- Provide escutcheon plates at all sprinkler heads.

- Column is missing grout at circled area, grout is darker in some areas and ceiling needs to be repainted. (See picture below)



- Replace air filters and install grilles.



- Drinking fountains:
 - Unit on the left needs to be lowered to conceal aluminum trim that's sticking out and needs an apron underneath
 - Unit on the right side needs to be lower to 27" knee height



- Fix ceiling grid



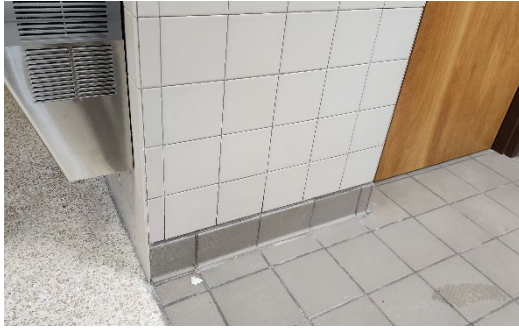
- Repair ceiling after removing power cord



- Electrical power missing at milk coolers



- Quarry base besides drinking fountains looks uneven and really bad.



- Tile at bottom of column (quarry & ceramic) looks really bad, see picture below.



- Missing grout at bottom quarry base



- Install trim or fix around electrical panel – grout is too uneven and thick



- Install missing fire extinguisher



- Install missing ceiling tiles



- Install missing piece of stainless steel at corner of cooler unit



- 3 compartment sink: Escutcheon plate missing at wall penetration.



- 2 compartment sink: Escutcheon plate missing at wall penetration.



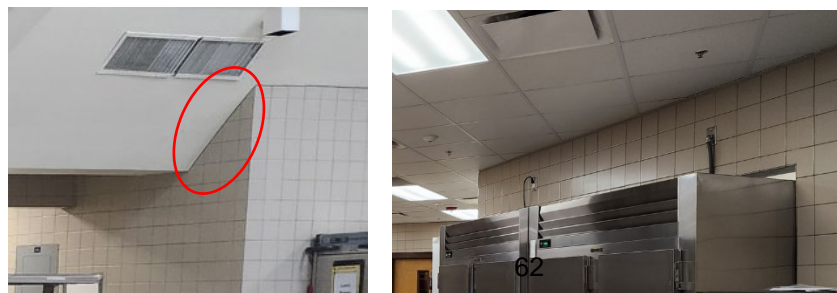
- Redo tile at corners



- Install corner metal trims at all ceramic tile corners around columns, furrdowns and around pass thru's. Tile is too uneven and noticeable.



- Grout is missing at angled furrdown. Provide grout or caulk that matches tile color all along the top where tile meets ceiling throughout kitchen like second picture below.



- Fly fan is not connected to power
- Doors don't close properly



- Fix bent piece on grill at floor trough under braising pan



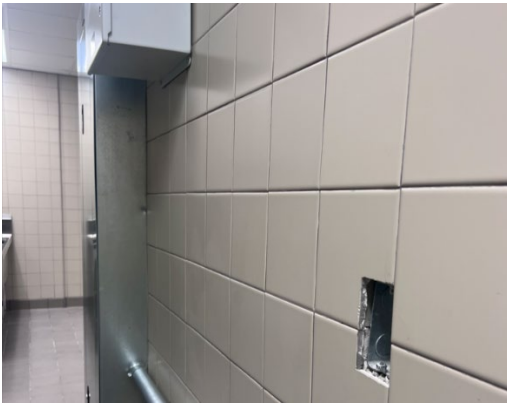
- Fire extinguisher cabinet by exterior door is dented at top

DRY STORAGE

- Escutcheon plates are missing
- Fill voids or holes on CMU wall
- Door silencers are missing

HALL

- Install missing cover at outlet in Hallway
- Seal ceiling penetrations



JANITOR

- Janitor floor sink is broken at bottom.
- Install stainless steel backsplash properly behind floor sink and caulk all around.

RESTROOM

- Remove protective plastic from back of mirror and grab bars completely
- Center of toilet from adjacent wall needs to be between 16-18



Office

- Fill voids or holes on walls and touch up paint
- Install missing j-box cover plate

Electrical room

- Cover holes around interior of door frames
- Install missing ceiling tiles & fill gaps between wall & ceiling



- Repair broken stucco piece.
- Repair wall around penetrations



- Seal penetrations on ceiling



- Existing Corridor: retouch paint on stucco



X. SPECIALTIES

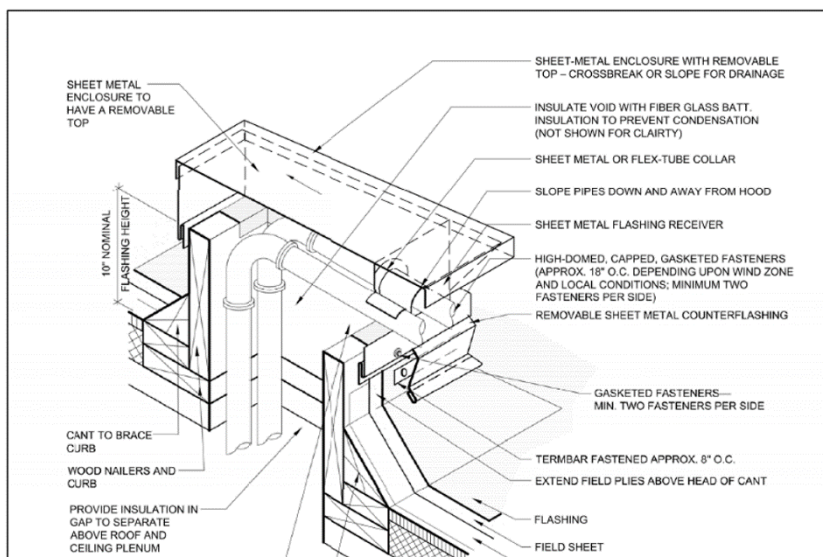
- Check all applications for T.A.S. approval and requirements.
- Grab bars: Ensure that top of grab bars are between 33"-36" AFF. Ensure that back grab bar and side grab bars are mounted as per details 38, 39 and 40 G2.1 (height, distance from back of wall for side grab bar and distance from centerline for the one behind the toilet).
- Toilet paper dispensers: Ensure that H/C dispenser does not restrict paper flow and that dispenser is not less than 19" to centerline AFF. Refer to Detail 39 on Sheet G2.1 for distance from toilet.
- Towel Dispensers: Ensure that dispenser is no more than 48" AFF for forward approach and 54" AFF for side approach.
- Install any missing fire extinguishers and add labels at all fire extinguisher cabinets.
- EDF is missing apron

XI FOOD SERVICE EQUIPMENT

Refer to attached punch list from FCA Design, Inc.

XII EXISTING ROOF

- Provide watertight metal housing at roof penetrations similar to detail below.



- Sleepers under roof top refrigeration rack should be not level and might be causing unit to malfunction



XIII Not applicable

XIV Not applicable

XV. MECHANICAL AND PLUMBING (Refer to Halff Associates punch list for additional items.)

Refer to attached Plumbing and Mechanical punch list for additional items

- All janitor sinks should have stainless steel splashes.
- Ensure that sinks are as per section 4.24.4 of A.D.A review and that height to lav. is no more than 34" max. height to top of lavatory with 27" knee clearance.
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- Insulate all water (hot and cold) lines and drain lines at sinks.
- Ensure that drinking fountain spout height is no more than 36" AFF at H/C unit.
- All water fountains shall be the same model like the H/C water fountains.
- Check water pressure on all sinks, water fountains, etc.
- Replace all air filters before turning in the building to the Owner.
- Mechanical Rooms: seal all pipes leading into school, and make sure all pipes at ceiling have insulation.
- Make sure water heaters are operating properly
- All units must be operable at time of substantial completion
- Make sure proper training is given to MISD staff on how to program the units, controls, software, graphics, etc.
- T&B Test and Balance

XVI. ELECTRICAL (Refer to Halff Associates punch list for additional items.)

Refer to attached electrical punch list for additional items

- Provide certificates on the following
 - Security system
 - Sound system
 - Fire alarm system
- Label all circuits at panel boxes
- Label all panels

Brown Middle School Kitchen Project

Electrical Room

1. Ceiling Tiles to be sealed where conduits are at (Throughout)
Seal all penetrations



2. Electrical Panels to be secured any that were opened by Contractor.



3. Vent stack in front of panel to remain?



4. Empty Electrical box at entrance to remain or is something missing?



5. Smoke Detector to be uncovered
6. Wall penetration on North wall to be repaired and sealed



7. Vent pipe above ceiling to be sealed
8. Fire Sprinkler head no escutcheon and is a bit to high above ceiling height (throughout)
9. A/C Vent register above ceiling abandoned



10. Above ceiling inspection to be done open J boxes and abandoned drain line (throughout)



11. Fire Alarm wiring needs to be secured with J hooks and cleaned up (throughout)



12. Abandoned condensate Line to be demoed above walk-in cooler freezer unit



13. Abandoned Fire Sprinkler Line to be demoed



Roof

- 1. Condensing Unit electrical wires penetrating through the roof needs electrical housing and to be sealed correctly not with duct tape



- 2. Condensing unit on roof is not working properly it keeps turning on and off making a noise and is lopsided



Interior

1. A/C Return Grills at Kitchen entrance not finished



2. Fire Alarm Pull Station is not ADA Accessible it's too close to the wall



3. Ceiling Grid South of the new serving line needs to be adjusted



4. A/C Grill on angle wall is missing a piece of metal and has a gap



5. Fire Extinguisher Cabinet is not ADA



6. Cafeteria Can lights not functioning needs a switch (removed when wall was demoed)



7. Existing serving counter new table install needs to be re-sealed on counter top areas and re-attached it was relocated and came apart



8. Fire Extinguisher missing next to existing serving line North wall



9. Fire Sprinkler escutcheons missing and some sprinkler heads are a bit too high above ceiling



10. VTC and Terrazzo transition needs clean up and repair at entrance of cafeteria and throughout replace with similar color to terrazzo floor

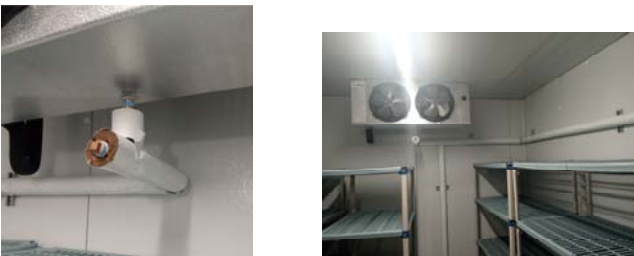


11. Electrical outlets on ceiling need electrical drop down cord



12. Steam Kettle does not have power on plans it shows equipment on FS Sheets and not on electrical plan

13. Walk -In Cooler Freezer is not functioning and need to properly insulate copper lines



14. Three compartment sink waterlines need the wall escutcheons and secure the lines not with zip ties (throughout) and drain pipe modification to floor sink



- 15. Clean Floor Tile in front of the serving line red orange stains
- 16. Grout on floor tile needs cleaning (throughout)
- 17. Mop Sink is damaged and needs to be sealed on the back wall



- 18. Fly Fan is not connected



- 19. All door closures need to be adjusted some are too heavy and some doors do not close
- 20. Electrical open box behind oven wall in front of dry storage



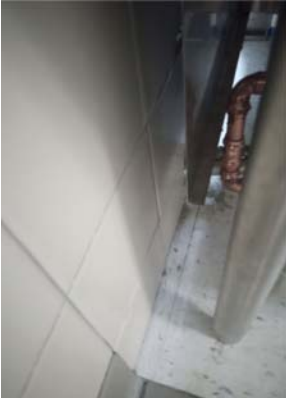
- 21. Water Fountain needs to be adjusted the high is up to high and has a gap between units
- 22. Wall penetrations on wall to be repaired and sealed (Throughout)
- 23. Restroom install pipe cover correctly and repair pipe penetrations



24. Grout Repair (Throughout) and paint touchup



25. Repair to wall between serving line and wall



26. Pipe stub out copper line needs install escutcheon



27. Install Cover to



28. Old Equipment Power is it to remain?



Outdoors

- 1. Wheel Stops missing at dock

Mechanical Room

- 1. Plumbing lines need to be secured



- 2. Clean up all items that were from old Water Heater such as electrical outlet



**McAllen Independent School District
Brown Middle School
Foodservice Equipment - Section 11400
Observation Report No. 01
FCA Job No. 1665**

April 17, 2023

Item No. 01 – Walk-In Cooler/Freezer

- 01. Seal trim at floor and sides.
- 02. Install missing plugs in cooler.

Item No. 05 – Three Compartment Sink

- 01. Leave air gap at drain above floor sink.
- 02. Cut pipe at 45 degree angle.

Item No. 19 – Preparation Sink

- 01. Leave air gap at drain above floor sink.
- 02. Cut pipe at 45 degree angle.

Item No. 22 – Serving Counter

- 01. Seal side splash at adjacent wall.

Item No. 29 – Serving Counter

- 01. Seal side splash at adjacent wall.

Item No. 30 – Fly Fan

- 01. Complete Installation.

Miscellaneous:

Fix Grout around floor drains and trench liner.
Drain Lines/Floor Sinks at serving lines create tripping hazard.
Seal mop sink to wall. Seal flashing and holes in flashing.
Floor drains need to be recessed below floor level.
Seal holes for conduit at ceiling panels.
Seal holes in wall at sinks.

GENERAL

- 01. Cut pipes at floor sinks at 45 degree angle.
- 02. Furnish required number of Equipment Schedules indicating the name, address and telephone number of the representative local service agencies (factory-authorized when possible).
- 03. Provide required number of service manuals containing all information stipulated in specification, including wiring schematics for all equipment/fixtures containing pre-wired load centers and piping/wiring for all exhaust hood fire protection systems.

12 April 2023

**MCALLEN I.S.D.
DE LEON MIDDLE SCHOOL KITCHEN RENOVATIONS**

PUNCH LIST

- I. GENERAL
 - a. Clean site and building
 - b. Provide closing documents (i.e. warranties, release of liens, operating manuals, etc.)
 - 1. Affidavit of Payment of Debts and Claims
 - 2. Contractor's Affidavit of Release of Liens
 - 3. Consent of Surety Company to Final Payment.
 - c. Provide Certificate of Occupancy
 - d. Submit a certified copy of the Architect's final punch list to be completed or corrected, stating that each item had been completed or otherwise resolved for acceptance and has been endorsed and dated by the Architect.
 - e. Submit final meter readings for utilities, a record of stored fuel, and similar data as of Substantial completion.
 - f. Submit evidence of continuing insurance coverage complying with insurance requirements
 - g. Provide "RECORD DRAWINGS". Mark up these drawings to show the actual installation.
 - h. Provide Record Specifications. Mark to show variations in actual work performed in comparison with the specifications and modifications
 - i. Pest Control: Engage and experienced exterminator to make a final inspection, and rid the project of rodents, insects and other pests.
 - j. Verify that all items installed follow A.D.A. requirements.
 - k. Instruct Owner's representative as to location of valves, operation of security system, a/c operation, filter changes, and other general operation information.
 - l. Provide inspection reports by fire marshal, sprinkler system installer, security system and intercom system.
 - m. Training: Provide training for each trade, i.e. Kitchen Equipment, Mechanical, Electrical, Plumbing and emergency systems to Owners representatives.
- II. SITE
 - a. Verify that site grading slopes away from building
 - b. Sidewalks and Porches: Verify that site grading slopes away from buildings on sidewalks.
 - (1) Cross slope max. 2%
 - (2) In the direction of travel 8.33% 1:12
- III. CONCRETE
 - a. Completed
- IV. MASONRY
 - a. Cover all holes on CMU and touch up paint
- V. STEEL
 - a. N/A
- VI. CARPENTRY
 - a. N/A
- VII. ROOFING & CAULKING

- VIII. DOORS AND WINDOWS (Punch list is pending)
- Check all hardware for A.D.A. compliance (i.e. weight on closures, sweep time, height requirements).
 - Deliver all keys to Owner's representative (master and the like).
 - Instruct owner as to proper operation of doors etc.
 - Provide silencers at all doors if missing
 - Provide weather stripping on all exterior doors.
 - Closers: Check pull weight and closing speed to ensure compliance.
 - Provide permanent key cylinders at all doors
 - Ensure that door lites are a max. of 43" AFF to bottom edge of glass. Refer to detail 33/G2.1.

IX. FINISHES

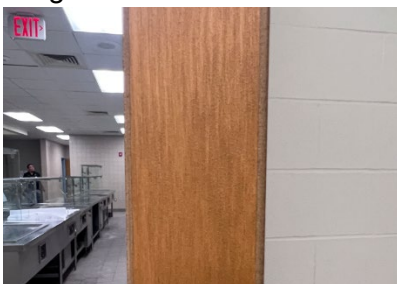
Please provide owner with extra supplies such as paint, ceiling tiles, ceramic & quarry tiles, etc.

GENERAL NOTES

- Clean all kitchen equipment and quarry tile, wall tile and all grout.
- Touch up paint at door and window frames where needed.
- All door signs are pending.
- Install any pending ceiling tiles.
- Caulk around outlets and switches.
- Install any missing door silencers at door frames.
- Check door closers and adjust weights.
- Re-do messy caulking above all hand sinks.
- Clean floor tile & grout
- Fire extinguishers need to be lowered to 27" at bubble. Or as an alternative a s.s. shelf can be installed at 27" or below
- Drain lines at serving lines are not draining directly into floor drains



- Edge on door needs to be sanded and re-stained



EXTERIOR

- Install bollards around freezer
- Clean dirty freezer / cooler walls.
- Mortar on brick beside door frame needs to match existing grayish color.

- Reroute downspout away from cooler



2 and 3 compartment sinks

- Drains from 2 and 3 compartment sinks shall be perpendicular to floor sink and shall be cut at a 45 deg. Angle and keep at least 1" away from the top surface of the floor sinks.
- Anchor both 2 and 3 compartment sinks as per details 2-7/FSB.6
- Caulk overshelves to wall, typical.
- Caulk top of splash to wall, typical.

Freezer / Cooler

- Level rooftop refrigeration rack
- Freezer door handle needs pieces.
- Refrigerant and condensation lines inside the freezer/cooler need to be insulated properly, insulate 90 deg, ends and other joints. Supports shall be on the insulation and not on the actual lines.
- Hinge, escutcheon plates missing
- Finish out S. S. trim at top corner
- Adjust and seal threshold
- Run current on threshold and seal from condensing around door
- Install cover on freezer unit.

Fire Sprinkler System

- Provide escutcheon plates at all sprinkler heads.

Dry storage D104

- Touch up paint and fill holes on CMU, especially around door frame.
- Touch up paint on window frames
- Caulk around outlets
- Set ceiling tiles properly down on grid
- Data wires sticking out of wall (school district)

Receiving D103

- Fly fan is not working
- Doors do not close properly
- Replace mis-aligned ceramic wall tiles between doors and freezer
- Clean flooring and re-grout where needed, especially around the floor drains
- Return air grilles in front of existing cooler are dirty
- Fire suppression pull station is missing screws. Pull is upside down
- Corner of tile and existing freezer needs to be finished out – too many holes/gaps



- Provide escutcheon plate around water line under sink



COOKING D108

- Caulk corner of vent hood and tile



- Insulate lines under sink



- Remove paint from sink



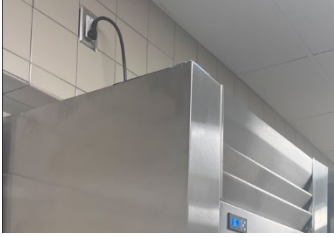
- Clean trash/debris at passthru's



- Remove marker lines from stainless steel opening



- Caulk around outlets



- Braising Pan: Adjust cover plate behind braising pan and caulk around



- Grout behind pipe for fire pull station for vent hood.



- Either replace ceramic tile or add larger escutcheon plate under sink and insulate pipes



- Clean dirty ceramic tile above pass thru window (circle stain) and above food prep sink.



- Cover hole around outlet and provide metal trim at all corners to cover uneven grout lines.



- Clean floor and re-grout where needed around all floor drains, typical

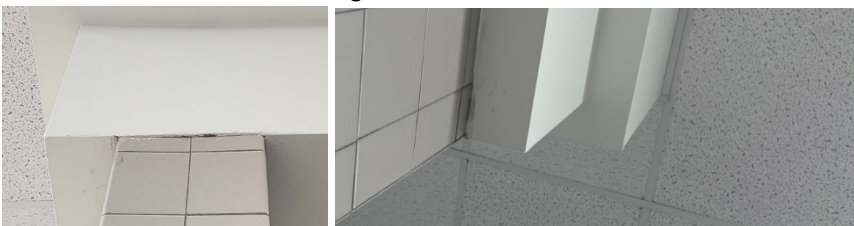


HALL D116

- Touch up paint at ceiling
- Clean dirty ceramic tile above EDF
- Conceal wires sticking out of ceiling at corner of hall
- EDF needs apron
- Grout line at corner of walls by EDF's is way too thick
- Provide metal trim at corner to cover jagged edges of tile and uneven grout lines.



- Caulk and clean tile and edge of furrdown



JANITOR D106

- Remove excess paint off tiles



- Cleaning needed



RESTROOM D105

- Center of toilet needs to be moved 16"-18" from center to adjacent wall



- Adult sinks need 27" min. knee clearance (34" top of sink max.) and add pipe insulation under sink



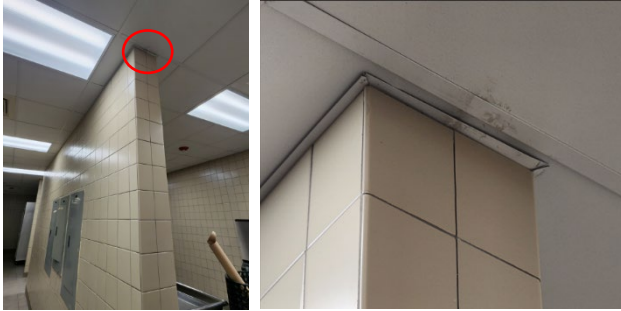
SOUTH SERVING LINE and HALL D118

- Grout at corner of walls is too thick
- Some quarry tiles are not leveled and are sticking up a bit. (see circled areas below)



Re-grout where needed, typical.

- Replace or repair damaged ceiling grid and clean

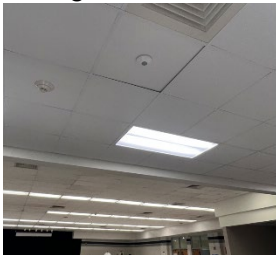


SERVING D114

- Replace or adjust ceiling tile so hole is not visible.



- Ceiling tile to be set in place properly



- Drain lines at serving need to drain into floor drains



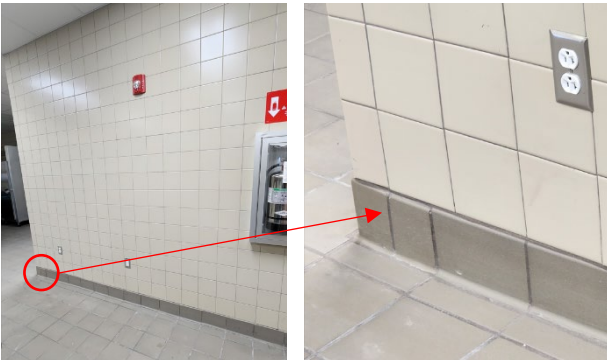
- Ceramic tile all along this edge of wall looks very uneven. Install metal trims along all corners or redo all tile and grout lines.



- Cover hole above outlet



- Install full quarry tile cove base in lieu of two pieces at this corner.



- Install stainless steel trim at edges of tile to cover ugly corners.



- Troulsen pass thru is missing cover at hinge



- Bottom cover is crooked. Left side is shorter than right side.



OFFICE D109

- Window frame is missing screw
- Fix ceiling grid/tiles



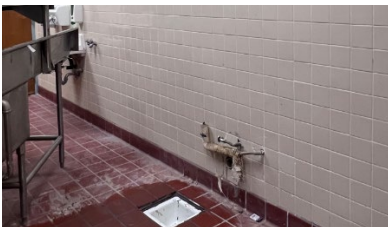
EXISTING CAFETERIA

- unit on right side needs an apron



EXISTING CONCESSIONS STAND

- Sink needs to be reconnected to water & drain properly



X. SPECIALTIES

- a. Check all applications for T.A.S. approval and requirements.
- b. Grab bars: Ensure that top of grab bars are between 33"-36" AFF. Ensure that back grab bar and side grab bars are mounted as per details 38, 39 and 40 G2.1 (height, distance from back of wall for side grab bar and distance from centerline for the one behind the toilet).
- c. Toilet paper dispensers: Ensure that H/C dispenser does not restrict paper flow and that dispenser is not less than 19" to centerline AFF. Refer to Detail 39 on Sheet G2.1 for distance from toilet.
- d. Towel Dispensers: Ensure that dispenser is no more than 48" AFF for forward approach and 54" AFF for side approach.
- e. Install any missing fire extinguishers and add labels at all fire extinguisher cabinets.
- f. EDF is missing apron

XI Not applicable

XII Not applicable

XIII Not applicable

XIV Not applicable

XV. MECHANICAL AND PLUMBING (PENDING)

Refer to attached Plumbing and Mechanical punch list for additional items

- a. All janitor sinks should have stainless steel splashes.
- b. Ensure that sinks are as per section 4.24.4 of A.D.A review and that height to lav. is no more than 34" max. height to top of lavatory with 27" knee clearance.
- c. Ensure that all toilets are 16"-18" away from wall and have the flush valve on the wide side of the room. Seat height should be 17"-19" to top of rim and urinals should be 17" max. to rim of basin.
- d. Insulate all water (hot and cold) lines and drain lines at sinks.
- e. Ensure that drinking fountain spout height is no more than 36" AFF at H/C unit.
- f. All water fountains shall be the same model like the H/C water fountains.
- g. Check water pressure on all sinks, water fountains, etc.
- h. Replace all air filters before turning in the building to the Owner.
- i. Mechanical Rooms: seal all pipes leading into school, and make sure all pipes at ceiling have insulation.
- j. Make sure water heaters are operating properly
- k. All units must be operable at time of substantial completion
- l. Make sure proper training is given to MISD staff on how to program the units, controls, software, graphics, etc.
- m. T&B Test and Balance

XVI. ELECTRICAL (PENDING)

Refer to attached electrical punch list for additional items

- a. Provide certificates on the following
 1. Security system
 2. Sound system
 3. Fire alarm system
- b. Label all circuits at panel boxes
- c. Label all panels

**McAllen Independent School District
De Leon Elementary School
Foodservice Equipment - Section 11400
Observation Report No. 01
FCA Job No. 1665**

April 17, 2023

Item No. 01 – Walk-In Cooler/Freezer

- 01. Install missing plugs in coolers.
- 02. Complete installation of evaporator.

Item No. 04 – Preparation Sink

- 01. Seal sink to wall.

Item No. 25 – Reach-In Heated Cabinet

- 01. Move outlet behind unit.

Miscellaneous:

Extend drain lines on all equipment to a floor sink.
Seal outlets at walls.
Drain lines to have air gap at floor sinks.

GENERAL

- 01. Cut pipes at floor sinks at 45 degree angle.
- 02. Furnish required number of Equipment Schedules indicating the name, address and telephone number of the representative local service agencies (factory-authorized when possible).
- 03. Provide required number of service manuals containing all information stipulated in specification, including wiring schematics for all equipment/fixtures containing pre-wired load centers and piping/wiring for all exhaust hood fire protection systems.

12 April 2023

**MCALLEN I.S.D.
DE LEON MIDDLE SCHOOL KITCHEN RENOVATIONS**

PUNCH LIST

- I. GENERAL
 - a. Clean site and building
 - b. Provide closing documents (i.e. warranties, release of liens, operating manuals, etc.)
 - 1. Affidavit of Payment of Debts and Claims
 - 2. Contractor's Affidavit of Release of Liens
 - 3. Consent of Surety Company to Final Payment.
 - c. Provide Certificate of Occupancy
 - d. Submit a certified copy of the Architect's final punch list to be completed or corrected, stating that each item had been completed or otherwise resolved for acceptance and has been endorsed and dated by the Architect.
 - e. Submit final meter readings for utilities, a record of stored fuel, and similar data as of Substantial completion.
 - f. Submit evidence of continuing insurance coverage complying with insurance requirements
 - g. Provide "RECORD DRAWINGS". Mark up these drawings to show the actual installation.
 - h. Provide Record Specifications. Mark to show variations in actual work performed in comparison with the specifications and modifications
 - i. Pest Control: Engage and experienced exterminator to make a final inspection, and rid the project of rodents, insects and other pests.
 - j. Verify that all items installed follow A.D.A. requirements.
 - k. Instruct Owner's representative as to location of valves, operation of security system, a/c operation, filter changes, and other general operation information.
 - l. Provide inspection reports by fire marshal, sprinkler system installer, security system and intercom system.
 - m. Training: Provide training for each trade, i.e. Kitchen Equipment, Mechanical, Electrical, Plumbing and emergency systems to Owners representatives.
- II. SITE
 - a. Verify that site grading slopes away from building
 - b. Sidewalks and Porches: Verify that site grading slopes away from buildings on sidewalks.
 - (1) Cross slope max. 2%
 - (2) In the direction of travel 8.33% 1:12
- III. CONCRETE
 - a. Completed
- IV. MASONRY
 - a. Cover all holes on CMU and touch up paint
- V. STEEL
 - a. N/A
- VI. CARPENTRY
 - a. N/A
- VII. ROOFING & CAULKING

- VIII. DOORS AND WINDOWS (Refer to attached punch list)
- a. Check all hardware for A.D.A. compliance (i.e. weight on closures, sweep time, height requirements).
 - b. Deliver all keys to Owner's representative (master and the like).
 - c. Instruct owner as to proper operation of doors etc.
 - d. Provide silencers at all doors if missing
 - e. Provide weather stripping on all exterior doors.
 - f. Closers: Check pull weight and closing speed to ensure compliance.
 - g. Provide permanent key cylinders at all doors
 - h. Ensure that door lites are a max. of 43" AFF to bottom edge of glass. Refer to detail 33/G2.1.

IX. FINISHES

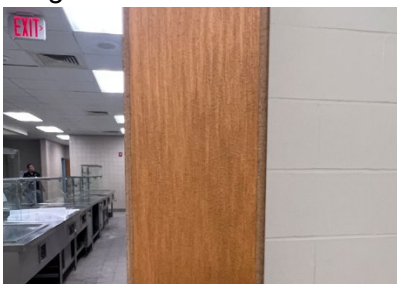
Please provide owner with extra supplies such as paint, ceiling tiles, ceramic & quarry tiles, etc.

GENERAL NOTES

- Clean all kitchen equipment and quarry tile, wall tile and all grout.
- Touch up paint at door and window frames where needed.
- All door signs are pending.
- Install any pending ceiling tiles.
- Caulk around outlets and switches.
- Install any missing door silencers at door frames.
- Check door closers and adjust weights.
- Re-do messy caulking above all hand sinks.
- Clean floor tile & grout
- Fire extinguishers need to be lowered to 27" at bubble. Or as an alternative a s.s. shelf can be installed at 27" or below
- Drain lines at serving lines are not draining directly into floor drains



- Edge on door needs to be sanded and re-stained



EXTERIOR

- Install bollards around freezer
- Clean dirty freezer / cooler walls.
- Mortar on brick beside door frame needs to match existing grayish color.

- Reroute downspout away from cooler



2 and 3 compartment sinks

- Drains from 2 and 3 compartment sinks shall be perpendicular to floor sink and shall be cut at a 45 deg. Angle and keep at least 1" away from the top surface of the floor sinks.
- Anchor both 2 and 3 compartment sinks as per details 2-7/FSB.6
- Caulk overshelves to wall, typical.
- Caulk top of splash to wall, typical.

Freezer / Cooler

- Level rooftop refrigeration rack
- Freezer door handle needs pieces.
- Refrigerant and condensation lines inside the freezer/cooler need to be insulated properly, insulate 90 deg, ends and other joints. Supports shall be on the insulation and not on the actual lines.
- Hinge, escutcheon plates missing
- Finish out S. S. trim at top corner
- Adjust and seal threshold
- Run current on threshold and seal from condensing around door
- Install cover on freezer unit.

Fire Sprinkler System

- Provide escutcheon plates at all sprinkler heads.

Dry storage D104

- Touch up paint and fill holes on CMU, especially around door frame.
- Touch up paint on window frames
- Caulk around outlets
- Set ceiling tiles properly down on grid
- Data wires sticking out of wall (school district)

Receiving D103

- Fly fan is not working
- Doors do not close properly
- Replace mis-aligned ceramic wall tiles between doors and freezer
- Clean flooring and re-grout where needed, especially around the floor drains
- Return air grilles in front of existing cooler are dirty
- Fire suppression pull station is missing screws. Pull is upside down
- Corner of tile and existing freezer needs to be finished out – too many holes/gaps



- Provide escutcheon plate around water line under sink



COOKING D108

- Caulk corner of vent hood and tile



- Insulate lines under sink



- Remove paint from sink



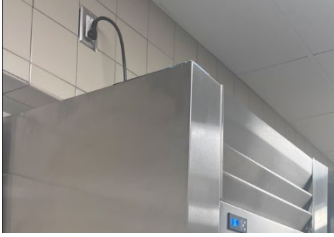
- Clean trash/debris at passthru's



- Remove marker lines from stainless steel opening



- Caulk around outlets



- Braising Pan: Adjust cover plate behind braising pan and caulk around



- Grout behind pipe for fire pull station for vent hood.



- Either replace ceramic tile or add larger escutcheon plate under sink and insulate pipes



- Clean dirty ceramic tile above pass thru window (circle stain) and above food prep sink.



- Cover hole around outlet and provide metal trim at all corners to cover uneven grout lines.



- Clean floor and re-grout where needed around all floor drains, typical

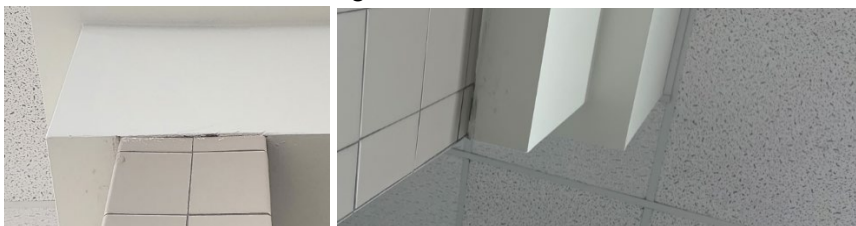


HALL D116

- Touch up paint at ceiling
- Clean dirty ceramic tile above EDF
- Conceal wires sticking out of ceiling at corner of hall
- EDF needs apron
- Grout line at corner of walls by EDF's is way too thick
- Provide metal trim at corner to cover jagged edges of tile and uneven grout lines.



- Caulk and clean tile and edge of furrdown



JANITOR D106

- Remove excess paint off tiles



- Cleaning needed



RESTROOM D105

- Center of toilet needs to be moved 16"-18" from center to adjacent wall



- Adult sinks need 27" min. knee clearance (34" top of sink max.) and add pipe insulation under sink



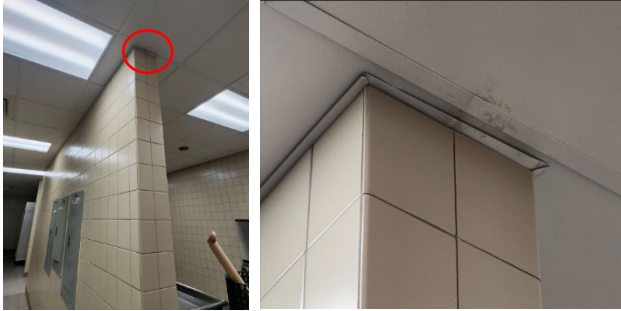
SOUTH SERVING LINE and HALL D118

- Grout at corner of walls is too thick
- Some quarry tiles are not leveled and are sticking up a bit. (see circled areas below)



Re-grout where needed, typical.

- Replace or repair damaged ceiling grid and clean



SERVING D114

- Replace or adjust ceiling tile so hole is not visible.



- Ceiling tile to be set in place properly



- Drain lines at serving need to drain into floor drains



- Ceramic tile all along this edge of wall looks very uneven. Install metal trims along all corners or redo all tile and grout lines.



- Cover hole above outlet



- Install full quarry tile cove base in lieu of two pieces at this corner.



- Install stainless steel trim at edges of tile to cover ugly corners.



- Troulsen pass thru is missing cover at hinge

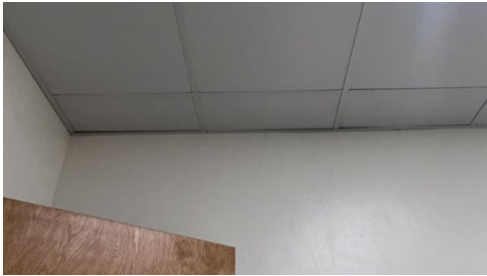


- Bottom cover is crooked. Left side is shorter than right side.



OFFICE D109

- Window frame is missing screw
- Fix ceiling grid/tiles



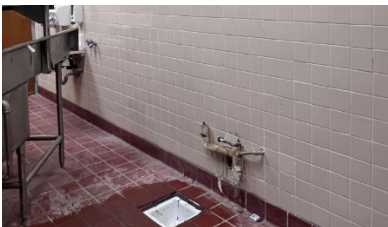
EXISTING CAFETERIA

- unit on right side needs an apron



EXISTING CONCESSIONS STAND

- Sink needs to be reconnected to water & drain properly



X. SPECIALTIES

- a. Check all applications for T.A.S. approval and requirements.
- b. Grab bars: Ensure that top of grab bars are between 33"-36" AFF. Ensure that back grab bar and side grab bars are mounted as per details 38, 39 and 40 G2.1 (height, distance from back of wall for side grab bar and distance from centerline for the one behind the toilet).
- c. Toilet paper dispensers: Ensure that H/C dispenser does not restrict paper flow and that dispenser is not less than 19" to centerline AFF. Refer to Detail 39 on Sheet G2.1 for distance from toilet.
- d. Towel Dispensers: Ensure that dispenser is no more than 48" AFF for forward approach and 54" AFF for side approach.
- e. Install any missing fire extinguishers and add labels at all fire extinguisher cabinets.
- f. EDF is missing apron

XI FOOD SERVICE EQUIPMENT

Refer to attached punch list from FCA Design Inc.

XII Not applicable

XIII Not applicable

XIV Not applicable

XV. MECHANICAL AND PLUMBING (PENDING)

Refer to attached Plumbing and Mechanical punch list for additional items

- a. All janitor sinks should have stainless steel splashes.
- b. Ensure that sinks are as per section 4.24.4 of A.D.A review and that height to lav. is no more than 34" max. height to top of lavatory with 27" knee clearance.
- c. Ensure that all toilets are 16"-18" away from wall and have the flush valve on the wide side of the room. Seat height should be 17"-19" to top of rim and urinals should be 17" max. to rim of basin.
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- e. Ensure that drinking fountain spout height is no more than 36" AFF at H/C unit.
- f. All water fountains shall be the same model like the H/C water fountains.
- g. Check water pressure on all sinks, water fountains, etc.
- h. Replace all air filters before turning in the building to the Owner.
- i. Mechanical Rooms: seal all pipes leading into school, and make sure all pipes at ceiling have insulation.
- j. Make sure water heaters are operating properly
- k. All units must be operable at time of substantial completion
- l. Make sure proper training is given to MISD staff on how to program the units, controls, software, graphics, etc.
- m. T&B Test and Balance

XVI. ELECTRICAL (PENDING)

Refer to attached electrical punch list for additional items

- a. Provide certificates on the following
 - 1. Security system
 - 2. Sound system
 - 3. Fire alarm system
- b. Label all circuits at panel boxes
- c. Label all panels

MCALLEN ISD DE LEON MIDDLE SCHOOL KITCHEN RENOVATION
DOOR HARDWARE PUNCH LIST 04/25/2023

General Notes:

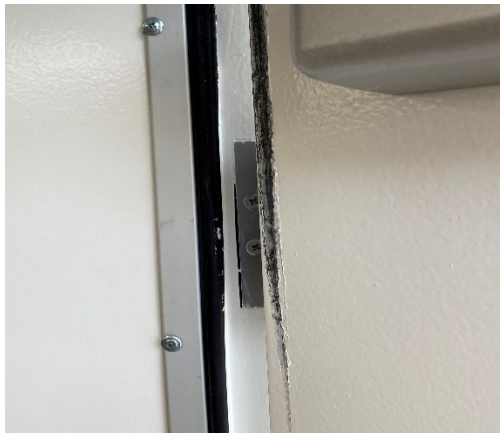
The permanent cores seem to be installed as I did not see any temporary (green or black) cores on the project, but the staff did not have keys yet. I'm not sure if the permanent cores have been installed and keys have simply not been distributed yet.

Door D103:

1. The exit device strike is missing the third screw and the two strike plates that keep the strikes from moving once they have been adjusted (picture below is typical).



2. The closers have a hold open feature on the arm, but they friction nut is not adjusted correctly so the doors do not hold open.
3. The door is not closing and latching correctly due to being in a bind caused by the weatherstrip. The weatherstrip needs to be moved back all around the frame but especially on the hinge side where it completely binds when the door is trying to close. The seal is past the stop and the door edge catches it. The paint should be touched up around the door once the weatherstrip is corrected.



4. The strike side of the door is rubbing on the strike side of the frame and along with the weather strip causing a bind the door does not close unless it is violently slammed. Shimming the hinges may help to create the correct clearance on the strike side of the door



Door D105:

1. The passage set and the indicator dead bolt are functioning correctly, but the strikes were ground down excessively. It does not look like the frames were out of square and the strikes and latches seem to line up fine, so I do not see why the strikes were ground down to the point they cut into the frame. The indicator dead bolt strike, at the very least should be replaced (see pic).



**McAllen Independent School District
De Leon Elementary School
Foodservice Equipment - Section 11400
Observation Report No. 01
FCA Job No. 1665**

April 17, 2023

Item No. 01 – Walk-In Cooler/Freezer

- 01. Install missing plugs in coolers.
- 02. Complete installation of evaporator.

Item No. 04 – Preparation Sink

- 01. Seal sink to wall.

Item No. 25 – Reach-In Heated Cabinet

- 01. Move outlet behind unit.

Miscellaneous:

Extend drain lines on all equipment to a floor sink.
Seal outlets at walls.
Drain lines to have air gap at floor sinks.

GENERAL

- 01. Cut pipes at floor sinks at 45 degree angle.
- 02. Furnish required number of Equipment Schedules indicating the name, address and telephone number of the representative local service agencies (factory-authorized when possible).
- 03. Provide required number of service manuals containing all information stipulated in specification, including wiring schematics for all equipment/fixtures containing pre-wired load centers and piping/wiring for all exhaust hood fire protection systems.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: *Judith Escamilla*

SUPERVISOR: *[Signature]*

Approved for presentation to the Board of Education:

Rosalba De Hoyos

INSURANCE PROPOSAL

PREPARED FOR:

MCALLEN ISD

PRESENTED BY:

**TIM KILLEEN
FROST INSURANCE
111 W HOUSTON STREET, 4TH FLOOR
SAN ANTONIO, TX 78205**

Wednesday, September 27, 2023

FROST

WHO WE ARE AND WHAT WE STAND FOR.

For five generations and over three centuries, Frost has been committed to helping families and businesses throughout Texas prosper. What began as a small San Antonio, Texas mercantile store in 1868 has grown to more than 110 financial centers across Texas. While much has changed over the years, the principles and values on which Frost was founded haven't changed one bit.

CHARACTER IS A PERSON'S GREATEST ASSET.

We survived the Great Depression, two world wars and the stock market crash. In the 1980s we survived the Texas banking collapse, the oil crisis and the real estate market crash. In fact, we were the only one of the top 10 Texas banks to survive the '80s intact. More recently, we navigated through the Great Recession without accepting federal bailout funds.

The reason we made it through the tough times is simple. Our customers stood by us, and we stood by them.

THAT'S WHAT HAPPENS WHEN YOU PUT PRINCIPLES FIRST.

SUPPLEMENT TO PROPOSAL

The descriptions of proposed insurance coverage contained in the proposal do not amend, alter or replace the terms, conditions, exclusion and other provision of policies that would be issued to you, nor do they amend, alter or replace any applicable laws, regulations, rating rules or plans.

No insurance policy covers every risk. We recommend a periodic, detailed risk identification and evaluation meeting in order to ensure proper coverage. No binder, insurance policy, change, addition, and/or deletion to insurance coverage goes into effect unless and until confirmed directly by a licensed agent. Please refer to policies for complete information concerning exact coverages, exclusions & limitations and obligations in the event of a claim. Upon receipt of your insurance policy, it is critical that you carefully review the entire insurance policy and ask your Frost Insurance agent if you have any questions. In the absence of any inquires, Frost Insurance will assume you understand all the coverage terms and conditions and accept them.

This proposal is based on values and exposures to loss disclosed to us in our discussion and correspondence with you or your staff.

Building, personal property and income coverage limits are arrived at based on information provided by the policyholder, third-parties and/or industry standard software used to estimate replacement costs. The actual cost to rebuild the structure or replace the personal property or income may exceed the policy limits, especially in circumstances where a catastrophic event has disrupted the normal supply of materials, labor, and resources. Frost Insurance is not in a position to make assurances or guarantees that the policy limits provided will be adequate to rebuild the structure or replace property or income. If there is doubt about the adequacy of the policy limits, the policyholder should obtain a professional appraisal or obtain the services of a qualified company or builder who is able to provide replacement cost estimates. Policyholder should also notify Frost Insurance if values change.

Higher liability limits are usually available and recommended in the form of increased limits, umbrella or excess liability policies.

Policies with premiums based on sales, payroll or other variable basis are subject to audit. If actual premium basis differs from estimated, additional or return premiums will result. Return premiums may be subject to minimum earned premiums. Frost Insurance should be notified if activity basis changes during policy period, changes to operations, expansions, new products, mergers, acquisitions, new companies or vacancies.

Frost Insurance recommends a careful review of all contracts before executed. In the event Frost Insurance is asked to review contracts, we will review only the insurance requirements. In performing this review, Frost Insurance is not providing legal advice or a legal opinion concerning any portion of the contract. In addition, Frost Insurance is not undertaking to identify all potential liabilities that may arise under the contract. The review is provided for your information, and should not be relied upon by third parties. Upon your authorization, we will make the necessary changes in your insurance program.

Certificates should be required from suppliers and subcontractors with evidence of coverage and liability limits at least equal to yours.

Insurance products are offered through Frost Insurance for solicitation in the state of Texas and are not insured by the FDIC or any other Federal Government Agency. In addition, these products are not a deposit or obligation of, or guaranteed by, Frost Bank.

SERVICE TEAM

Tim Killeen is the team leader for your account and works to maintain positive relationships with the Frost Service team and insurance markets and any other Frost services.

Account Manager – **Patricia Medina** is the daily contact for service issues and will coordinate services such as coverage questions, policy changes, claims reporting and claims handling.

Claims Coordinator – **Karen Arbuckle** is responsible for acting as your claims advocate and conducting claims reviews with you and the insurance company as necessary.

Name	Phone	Email
Tim Killeen	(210) 220-6444	tim.killeen@frostinsurance.com
Patricia Medina	(210) 220-6521	patricia.medina@frostinsurance.com
Karen Arbuckle	(210) 220-6440	karen.arbuckle@frostinsurance.com

Applicant Name: McAllen Independent School District.

Subjectivities

Westchester hereby indicates the coverage described below. However, any obligations the Insurer may have under this indication are conditioned upon each of the following conditions having first been met.

1. The Applicant has submitted to the Insurer the following documents, and the Insurer has received such documents no later than close of business on policy inception:
 - Submitted application need to be signed and dated within 45 days of the effective date.
 - Please remediate BitSight findings prior to binding or they will be excluded on the policy.

2. If coverage is subsequently bound by the Insurer, the Applicant has remitted the premium specified below to the Insurer so that the Insurer receives the premium no later than close of business on the 30th day from the date of the Binder or the Effective Date of the policy, whichever is later.

Chubb Cyber Enterprise Risk Management Policy

Option: 1

Maximum Single Limit of Insurance	\$3,000,000	Maximum Policy Aggregate Limit of Insurance	\$3,000,000
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First Party Insuring Agreements

Check if Included	Insuring Agreement	Limit of Insurance Each Incident/Aggregate	Retention/Waiting Period Each Incident	Cyber Incident Response Coach Retention
<input checked="" type="checkbox"/>	Cyber Incident Response Fund	Inside Limit		
	Cyber Incident Response Team	\$3,000,000/\$3,000,000	\$100,000	\$100,000
	Non-Panel Response Provider	\$250,000/\$250,000	\$100,000	N/A
<input checked="" type="checkbox"/>	Business Interruption Loss and Extra Expenses	\$3,000,000/\$3,000,000	\$100,000/18 Hours	N/A
<input checked="" type="checkbox"/>	Contingent Business Interruption Loss and Extra Expenses			
	Scheduled Providers	N/A	N/A	N/A
	Unscheduled Providers	\$3,000,000/\$3,000,000	\$100,000/24 Hours	N/A
	Digital Data Recovery	\$3,000,000/\$3,000,000	\$100,000	N/A

<input checked="" type="checkbox"/>				
<input checked="" type="checkbox"/>	Network Extortion	\$3,000,000/\$3,000,000	\$100,000	N/A

Third Party Liability Insuring Agreements

Check if Included	Insuring Agreement	Limit of Insurance Each Claim/Aggregate	Retention Each Claim
<input checked="" type="checkbox"/>	Cyber, Privacy And Network Security Liability	\$3,000,000/\$3,000,000	\$100,000
	Regulatory Proceedings	\$3,000,000/\$3,000,000	\$100,000
	Payment Card Loss	\$3,000,000/\$3,000,000	\$100,000
<input checked="" type="checkbox"/>	Electronic, Social & Printed Media	\$3,000,000/\$3,000,000	\$100,000

Cyber Neglected Software Exploit Coverage Terms and Conditions

Period of Neglect	Coinsurance	Limit
0-45 days	0%	\$3,000,000
46-90 days	0%	\$2,250,000
91-180 days	5%	\$1,500,000
181-365 days	10%	\$750,000
366+ days	25%	\$300,000

Cyber Other Terms and Conditions

Coverage	Retention	Coinsurance	Limit
Ransomware Encounter	\$100,000	0%	\$3,000,000
Widespread Severe Known Vulnerability Exploit	\$100,000	0%	\$3,000,000
Widespread Software Supply Chain Exploit	\$100,000	0%	\$3,000,000
All Other Widespread Events	\$100,000	0%	\$3,000,000
Widespread Severe Zero Day Exploit	\$100,000	0%	\$3,000,000

Cyber Crime Insuring Agreements

Check if Included	Insuring Agreement	Limit of Insurance Each Incident/Aggregate	Retention/Waiting Period Each Incident
<input checked="" type="checkbox"/>	Computer Fraud	\$250,000/\$250,000	\$100,000
<input checked="" type="checkbox"/>	Funds Transfer Fraud	\$250,000/\$250,000	\$100,000

Social Engineering Fraud \$250,000/\$250,000 \$100,000

Optional Extended Reporting Period: 12 months for 100% of last annual premium

Retroactive Date (only applicable to Third Party Liability Insuring Agreements): Full Prior Acts

Pending or Prior Date (only applicable to Third Party Insuring Agreements): 11-21-2022

Total Due: \$57,107.00

The Following Notice(s) and Endorsement(s) will be added to the basic contract(s)

Form Number	Title	Form Applicable to Option(s)
TR-19606e (0820)	POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE	1
PF-48169 (1016)	CHUBB CYBER ENTERPRISE RISK MANAGEMENT POLICY	1
PF-48257 (0918)	CYBER CRIME ENDORSEMENT	1
PF-48275 (0817)	NON-MALICIOUS COMPUTER ACT – SYSTEM FAILURE – BUSINESS INTERRUPTION AND CONTINGENT BUSINESS INTERRUPTION - SUBLIMIT	1
PF-293756 (0120)	HARDWARE OR EQUIPMENT REPLACEMENT WITH SUBLIMIT ENDORSEMENT	1
PF-48259 (1016)	POLICYHOLDER NOTICE CYBER SERVICES FOR INCIDENT RESPONSE	1
PF-48260 (1016)	POLICYHOLDER NOTICE CYBER SERVICES FOR LOSS MITIGATION	1
ALL-20887a (0316)	CHUBB PRODUCER COMPENSATION PRACTICES & POLICIES	1
ALL-21101 (1106)	TRADE OR ECONOMIC SANCTIONS ENDORSEMENT	1
PF-17914a (0416)	U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS	1
PF-48155 (0916)	ADDITIONAL INSURED - BLANKET PURSUANT TO A CONTRACT - CyberERM	1
PF-48160 (0916)	PERIOD OF RESTORATION - FILL IN	1
PF-49485 (0817)	BREACH RESPONSE INDEMNITTEE - BLANKET PURSUANT TO A CONTRACT	1
PF-333683 (1021)	PROTECTIVE SAFEGUARDS EXCLUSIONS ENDORSEMENT	1
PF-49468 (0817)	GENERAL ENHANCEMENT ENDORSEMENT - CYBER	1
PF-49501 (0817)	Preventative Shutdown	1
PF-49491 (0817)	Conduct Exclusion Amended – Final, Non-Appealable Adjudication	1
PF-49464 (0817)	Educational Institutions Endorsement	1
PF-49445 (0817)	Duty To Defend A Regulatory Proceeding	1
PF-50954 (0219)	Invoice Fraud Financial Loss Endorsement	1
PF-50955 (0219)	REPUTATIONAL EVENT WITH EXTENDED PERIOD OF ATTRITION ENDORSEMENT	1
Cc-1k11k (0422)	Signatures (All states except OH)	1
TRIA-11e (0820)	DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT	1

PF-48167 (10/16)

PF-56258 (0222)	Musical Work or Composition Exclusion	1
PF-45354 (0219)	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM	1
PF-50965 (0219)	BIOMETRIC PRIVACY SUBLIMIT ENDORSEMENT	1
AW0-02d (1019)	RISK CONTROL SERVICES FOR TEXAS POLICYHOLDERS	1
PF-48327 (1216)	Amendatory Endorsement – Texas	1
PF-333677 (1021)	GENERAL AMENDATORY ENDORSEMENT	1
PF-333692B (1021)	NEGLECTED SOFTWARE EXPLOIT ENDORSEMENT	1
PF-333680 (1021)	RANSOMWARE ENCOUNTER ENDORSEMENT	1
PF-333681 (1021)	WIDESPREAD EVENT ENDORSEMENT	1
PF-56230 (1221)	Coordination of Coinsurance Endorsement	1

Please Note the Following for the Terrorism Risk Insurance Act:

Coverage for acts of terrorism is included in your policy. The portion of your annual premium that is attributable to coverage for acts of terrorism is \$0, and does not include any charges for the portion of losses covered by the United States government under the Act.

Conditions of this Indication

This indication will remain valid until the expiration date of the Applicant’s current policy if Applicant has similar coverage found in this indication, otherwise this indication will expire 10-26-2023.

If between the date of this Indication and the Effective Date of the policy there is a significant adverse change in the condition of this Applicant, or an occurrence of an event, or other circumstances which could substantially change the underwriting evaluation of the Applicant, then, at the Insurer’s option, this indication may be withdrawn by written notice thereof to Applicant. The Insurer also reserves the right to modify the final terms and conditions upon review of the completed application and any other information requested by the underwriter herein. If such material change in the risk is discovered after binding, the insurance coverage will be void ab initio (“from the beginning”).

FOR POLICIES EFFECTIVE JULY 21, 2011 AND SUBSEQUENT, WE REQUIRE THE PRODUCER TO PROVIDE THE “HOME STATE” AS DEFINED IN THE NONADMITTED AND REINSURANCE REFORM ACT OF 2010 (NRRRA) UPON THE BINDING OF THIS PLACEMENT. IF THE STATE SET FORTH IN THE ABOVE-REFERENCED INSURED ADDRESS IS THE HOME STATE OF THE INSURED, NO ACTION IS REQUIRED. HOWEVER, IF THE HOME STATE OF THE INSURED IS OTHER THAN THAT SET FORTH IN THE INSURED ADDRESS, YOU MUST NOTIFY US IN WRITING PRIOR TO THE BINDING OF THIS PLACEMENT.

Note: If the Insuring Company noted above is either Westchester Surplus Lines Insurance Company or Illinois Union Insurance Company, then this insurance is issued pursuant to the state Surplus Lines laws that the insured is domiciled. Persons insured by Surplus Lines carriers do not have the protection of the above captioned state’s Guaranty Act to the extent of any right of recovery for the obligation of an insolvent unlicensed insurer.

Any applicable taxes, surcharges or countersignature fees, etc., are in addition to the above indicated figures. Your office is responsible for making State Surplus Lines Filings and complying with all applicable laws.

OPTIONAL COVERAGES

LIABILITY

General Liability

Public Liability (not Auto, Employer's or other specific liability type) for certain claims arising from business operations and for which you are legally liable.

Automobile Liability

Bodily Injury or damage to the property of a third party caused by the operation of the Insured's vehicles.

Workers' Compensation

Standard policy for providing coverage for payment of compensation and benefits required of the employer by the Workers' Compensation law for work-related bodily injury, by accident or disease, to an employee.

Products & Completed Operations Liability

This protects against claims of injuries or property damage from occurrences involving goods handled, processed or sold, or operations after the job has been completed.

Professional Liability

Liability coverage for claims made during the policy period for "errors and omissions" type claims.

Privacy & Security (also known as, Data Breach and Cyber Security)

Provides coverage for both first party losses (such as business interruption from hacking, viruses, denial of service, etc.) as well as third party losses (unauthorized access, disclosure of confidential information, transmission of computer virus and denial of access).

Liquor Legal Liability

Many states, including Texas, have statutes relating to specific responsibilities for persons serving, selling or manufacturing alcoholic beverages. Liquor Law Liability is purchased to protect the server, seller, manufacturer or distributor from suits involving Bodily Injury or Property Damage to third parties due to intoxication.

Pollution Liability

Provides bodily injury and property damage liability coverage for the release of pollutants, or coverage for handlers of hazardous waste materials.

Product Recall

Provides coverage for the cost of recalling a product by the manufacturer or distributor (merchandiser) which may cause bodily injury or property damage due to its continued use or existence. Covers possible BI & PD exposures and certain expenses.

Umbrella Liability

Provides liability limits over scheduled underlying liability policies.

Watercraft Liability

Primary coverage is generally provided automatically for Hired and Non-Owned Watercraft under 26' in length. Coverage for watercraft in excess of this length or owned watercraft must be specifically insured.

Aircraft Liability

Provides legal liability coverage for bodily injury and property damage claims from the public arising from operation of covered aircraft. Coverage may be provided for owned aircraft or aircraft which may be leased.

Employee Benefits Liability

Provides coverage to an injured party as a result of an incomplete detailing of employee benefits.

Fiduciary Liability

Protects insureds from claims for "breach of fiduciary duty" while acting as trustee for the organization's own employee pension and welfare benefit plans. This may take the form of unwise investment decisions, errors in enrollment and discriminatory practices. In addition, the Department of Labor can also initiate investigations into the investment practices of the fiduciary in order to assure compliance with ERISA and sound business practices.

Directors & Officers Liability

Policy covers liability claims and defense costs arising out of "wrongful acts." Coverage is provided in two distinct parts; one part for the personal liability of the directors and officers themselves, and one to indemnify the Insured Organization's obligation to its directors and officers.

Employment Practices Liability

Provides coverage for liabilities and defense costs arising out of employment related issues. Coverage may extend to Directors, Officers, and Employers with responsibilities of hiring/firing and the corporation.

Foreign Liability

Provides coverage for lawsuits filed outside the U.S. or Canada arising out of the insured's operations. Coverage may be written to include General Liability, Products Liability, Automobile and/or Workers' Compensation.

Franchisee Errors & Omissions

Provides coverage for legal liability imposed upon franchisee arising out of actual or alleged negligent acts in connection with assignment or contracting of franchisor rights to individual insureds or groups.

Patent Infringement Liability

Provides coverage for infringement of another person or entity's patent caused by the manufacture, use, distribution or advertising of a Covered Product.

PROPERTY**Real Property**

Provides coverage for damage to buildings and fixtures, machinery and equipment constituting a permanent part of, and pertaining to, the service of the building as defined by the policy.

Personal Property

Provides coverage for damage to contents and usually includes furniture, fixtures, machinery, equipment, stock and improvements and betterments; all owned by the Insured and while in or on the described buildings or in the open within one-thousand (1,000) feet thereof.

Boiler and Machinery

Direct Damage and Business Interruption/Extra Expense caused by sudden and accidental breakdown of Pressure Vessels & Refrigeration Systems, Mechanical objects, and Electrical objects.

Electronic Equipment

Specialty "all risk" coverage for electronic data processing equipment which is not provided under a standard contract. Includes media, extra expense and business interruption, as well as, owned or leased equipment.

Valuable Papers and Records

Covers loss to valuable documents and records such as books, maps, films, drawings, abstracts, deeds, mortgages and manuscripts. Cost of research to reconstruct damaged records, as well as, cost of new paper and transcription is covered.

Accounts Receivable

Protects sums due you, which become uncollectible because of damage or loss to records of accounts receivable.

Fine Arts

A schedule of items with special or artistic value insured on an "all risk" Agreed Amount Basis, both on and off premises. Special endorsement is required for breakage of fragile objects.

Equipment Floater

Covers machinery and equipment in transit or otherwise.

Transit Coverage

Policy for providing protection for shipments of owned merchandise, either incoming or outgoing.

Flood and Earthquake Coverage

Excluded by most policies, special arrangements, or a separate policy must be obtained.

Bailee Policy

Provides coverage for damage to customer's property occurring while the property is in your care, custody and control.

Builder's Risk

Provides coverage for materials, supplies, machinery, equipment and fixtures to be used in the construction, fabrication, installation or completion of described property while at a construction site or being transported.

Installation Floater

Provides coverage for damage to materials and supplies used in building or installation while they are at a job site or being transported.

Ordinance & Law

In the event of a loss, this coverage will pay for the increased costs necessary to comply with an ordinance or law regulating the construction, repair or demolition of the covered structure.

BUSINESS INTERRUPTION**Earnings**

Covers reduction in earnings less expenses, which do not continue as a result of a covered loss, subject to the monthly limitation of recovery. Earnings are defined as the sum of: (a) total net profit, (b) payroll expenses, (c) taxes, (d) interest, (e) rents, and (f) all other operating expenses earned by the business.

Extra Expense

Covers extra expenses over and above the usual costs necessary to keep a firm in business following an insured loss.

Contingent Business Interruption

Coverage which protects the Insured against a loss of earnings due to the direct loss to premises not owned, operated or controlled by the Insured.

Off-Premises Power Loss

Insures against consequential losses in earnings due to failure of off-premises power equipment from the specified perils insured against.

CRIME

Fidelity (Employee Dishonesty)

Provides employer with coverage for loss of money, merchandise or other property when due to the dishonesty of employee(s).

Forgery or Alteration

Insures against loss caused by forgery or alteration of outgoing drafts, checks, promissory notes, and similar instruments drawn against insured's account.

Theft, Disappearance and Destruction

Covers insured's money and securities from loss by theft, disappearance or destruction. (Inside and/or outside).

Robbery and Safe Burglary

Insures against loss of property, other than money and securities, by robbery or safe burglary. (Note: Coverage can be modified by endorsement to cover money and securities.)

Computer Fraud

Loss by computer fraud of money, securities or other property by illegal transfer involving use.

MISCELLANEOUS

Hired Car Physical Damage

Provides physical damage coverage for automobile physical damage to automobiles hired by the insured for coverages designated in the endorsement.

Kidnap & Ransom

Reimbursement to a designated Insured, relative or guest for ransoms paid following the actual or alleged kidnapping. Coverage can be bought on a commercial or personal basis.

Spoilage

Provides coverage for recall costs, business interruption, business rehabilitation costs and consultants costs for claims resulting from accidental contamination or malicious tampering with the insured's product.

Intellectual Property

Provides coverage to pay for litigation needed to protect your patents, copyrights and trademarks. Coverage is also available to defend you against a charge of infringements made by a third party.

Crisis Management Insurance

Provides coverage for crisis management services in the event of extortion or workplace violence.

PLEASE CONTACT YOUR ACCOUNT MANAGER IF YOU ARE INTERESTED IN LEARNING MORE ABOUT ANY OF THESE COVERAGES OR SECURING A QUOTE.

DEFINITIONS

Minimum and Deposit

This is the amount of premium due at inception. Although the policy is subject to adjustment based on a rate per exposure unit, under no circumstances will the annual earned premium be less than the minimum premium. Therefore, the policy may generate an additional premium on audit, but not a return.

If such a policy is cancelled mid-term, the earned premium is the greater of the annual minimum times the short rater or pro-rata factor, or the actual earned as determined by audit, subject to a short rate penalty if applicable.

Minimum Earned Premium

A minimum earned premium endorsement can be attached to either a flat charge policy or an adjustable policy. In either case, the amount is the least that will be retained by the insurance company once the policy goes into effect. The amount retained would be the greater of the actual earned premium whether calculated on a pro-rate or short rate basis, or the minimum earned premium.

Flat Cancellations

Surplus lines insurance companies normally do not allow flat cancellations. Once the policy is in effect, some premium will be earned.

Coinsurance

Property Coinsurance Formula, If Carried Insurance < Required Insurance				
Amount of Recovery =	Value of Loss	X	$\frac{\text{Amount of Carried Insurance}}{\text{Amount of Required Insurance}}$	- Deductible

Property Coinsurance Formula, If Carried Insurance \geq Required Insurance

Amount of Recovery =

Value of Loss

- Deductible

Example – Calculating the Property Coinsurance Payment

A business partially insures property worth \$250,000 for \$100,000, with a policy that requires at least 80% of its value to be insured for full coverage, and which has a \$1,000 deductible, and then suffers a \$20,000 loss. Since the amount of insurance required for full coverage = $.8 \times \$250,000 = \$200,000$, the business would have to pay 1/2 of that loss, since the property was only insured for half of the required amount of insurance. Using the above equation, the business would have to directly bear the cost of $\$20,000 \times \$100,000 / \$200,000 - \$1,000 = \$9,000$.

If you need further explanation, please do not hesitate to contact us.

The coverage descriptions in this proposal are abbreviated. Any coverage bound in accordance with the terms of this proposal is subject to the terms, conditions, limitations and exclusions of the applicable policy(ies). If there is any conflict between the coverage statements within this proposal and the applicable insurance policy(ies), the policy provisions will prevail. For questions regarding this proposal, contact our office.

ACCEPTANCE OF PROPOSAL

____ Accept as presented and authorizing Agency to bind coverage with the following payment options:

- ACH Via \$3.25 process fee
- Credit card via 3.5% credit card processing fee
- Payment by check
- Finance Agreement – 20% - 25% down payment, balance due in 10 installments, current APR will apply

____ Accept with changes noted below and authorize Agency to bind coverage with following payment option:

- ACH Via \$3.25 process fee
- Credit card via 3.5% credit card processing fee
- Payment by check
- Finance Agreement – 20% - 25% down payment, balance due in 10 installments, current APR will apply

Proposal Changes:

It is understood policies will be delivered electronically unless specifically requested otherwise.

For direct bill and premium financed policies, Agency cannot be relied upon to provide notice of lapse of coverage due to non-payment of premium to insurance company.

Client Name McAllen ISD

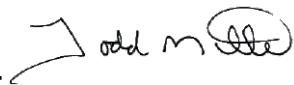
Signed _____ Date _____
(client signature)

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: _____

SUPERVISOR: 

Oct 11, 2023

Approved for presentation to the Board of Education:



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Interim Superintendent of Schools

Oct 11, 2023

Board Directive # 5: Acceptable Use Policy

Board Directive # 5

- During the Spring of 2023, the Board directed the Superintendent to assist the Board of Trustees to develop a Board Policy, to include sharing subsequent regulations with the Trustees, regarding the implementation of enhanced technology to regulate, monitor and prohibit personal, non-business-related use of district electronic equipment and block access to personal applications and software on district computers.
- This directive is covered in the following sources:
 - Board Policy CQ (Local) – Technology Resources
 - CQ (Regulation) – Technology Resources
 - McAllen ISD Technology Resources Acceptable & User Agreement

CQ (LOCAL)

- Limited Personal use:
 - Limited personal use of the District’s technology resources shall be permitted if the use:
 - Imposes no tangible cost on the District;
 - Does not unduly burden the District’s technology resources; and
 - Has no adverse effect on an employee’s job performance or on a student’s academic performance.
- Acceptable use:
 - The Superintendent shall develop and implement administrative regulations, guidelines, and user agreements consistent with the purposes and mission of the District and with law and policy.
 - All users shall be required to acknowledge receipt and understanding of all administrative regulations governing use of the District’s technology resources and shall agree in writing to allow monitoring of their use and to comply with such regulations and guidelines.
 - Noncompliance may result in suspension of access or termination of privileges and other disciplinary action consistent with District policies.

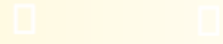
CQ (Regulation)

- Technology Resources:
 - Access to technology resources is contingent upon agreeing to the District’s acceptable use rules in the policy and procedures.
- Authorized use:
 - All employees and Board members will be required to sign or affirm the District’s acceptable use rules annually for issuance or renewal of an account.
- Unauthorized use:
 - Personal use must be kept to a minimum and should not interfere with or impair an employee's job performance or a student’s instructional program.
 - Personal use is prohibited if the user is:
 - Interfering with the use of technology resources by the District;
 - Burdening the District with additional costs; ¹²⁵
 - Interfering with the staff member's job duties or other obligations to the District;

Acceptable Use Agreement

- This policy must be followed:
 - Anytime there is a connection to the MISD's wired or wireless network via any device, personal or district owned; and
 - When using a district-owned device on any other non-MISD wired or wireless network.
- Users may use district technology resources for limited personal use, but there should be no expectation of privacy
- Consequences for violations of the Acceptable Use Policy
 - Improper use of technology resources provided by MISD is prohibited.
 - Violation of this Acceptable Use Policy can result in suspension of access or termination of privileges.
 - Some cases of unacceptable use may lead to disciplinary¹²⁶ and legal action.

Any questions?



Note: For Board member use of District technology resources, see BBI. For student use of personal electronic devices, see FNCE.

For purposes of this policy, “technology resources” means electronic communication systems and electronic equipment.

Availability of Access

Access to the District’s technology resources, including the internet, shall be made available to students and employees primarily for instructional and administrative purposes and in accordance with administrative regulations.

Limited Personal Use

Limited personal use of the District’s technology resources shall be permitted if the use:

1. Imposes no tangible cost on the District;
2. Does not unduly burden the District’s technology resources; and
3. Has no adverse effect on an employee’s job performance or on a student’s academic performance.

Use by Members of the Public

Access to the District’s technology resources, including the internet, shall be made available to members of the public, in accordance with administrative regulations. Such use shall be permitted so long as the use:

1. Imposes no tangible cost on the District; and
2. Does not unduly burden the District’s technology resources.

Acceptable Use

The Superintendent shall develop and implement administrative regulations, guidelines, and user agreements consistent with the purposes and mission of the District and with law and policy.

Access to the District’s technology resources is a privilege, not a right. All users shall be required to acknowledge receipt and understanding of all administrative regulations governing use of the District’s technology resources and shall agree in writing to allow monitoring of their use and to comply with such regulations and guidelines. Noncompliance may result in suspension of access or termination of privileges and other disciplinary action consistent with District policies. [See DH, FN series, FO series, and the Student Code of Conduct] Violations of law may result in criminal prosecution as well as disciplinary action by the District.

Internet Safety

The Superintendent shall develop and implement an internet safety plan to:

1. Control students' access to inappropriate materials, as well as to materials that are harmful to minors;
2. Ensure student safety and security when using electronic communications;
3. Prevent unauthorized access, including hacking and other unlawful activities;
4. Restrict unauthorized disclosure, use, and dissemination of personally identifiable information regarding students; and
5. Educate students about cyberbullying awareness and response and about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms.

Filtering

Each District computer with internet access and the District's network systems shall have filtering devices or software that blocks access to visual depictions that are obscene, pornographic, inappropriate for students, or harmful to minors, as defined by the federal Children's Internet Protection Act and as determined by the Superintendent.

The Superintendent shall enforce the use of such filtering devices. Upon approval from the Superintendent, an administrator, supervisor, or other authorized person may disable the filtering device for bona fide research or other lawful purpose.

Monitored Use

Electronic mail transmissions and other use of the District's technology resources by students, employees, and members of the public shall not be considered private. Designated District staff shall be authorized to monitor the District's technology resources at any time to ensure appropriate use.

Disclaimer of Liability

The District shall not be liable for users' inappropriate use of the District's technology resources, violations of copyright restrictions or other laws, users' mistakes or negligence, and costs incurred by users. The District shall not be responsible for ensuring the availability of the District's technology resources or the accuracy, age appropriateness, or usability of any information found on the internet.

Record Retention

A District employee shall retain electronic records, whether created or maintained using the District's technology resources or using personal technology resources, in accordance with the District's record management program. [See CPC]

Electronically Signed Documents

At the District's discretion, the District may make certain transactions available online, including student admissions documents,

student grade and performance information, contracts for goods and services, and employment documents.

To the extent the District offers transactions electronically, the District may accept electronic signatures in accordance with this policy.

When accepting electronically signed documents or digital signatures, the District shall comply with rules adopted by the Department of Information Resources, to the extent practicable, to:

- Authenticate a digital signature for a written electronic communication sent to the District;
- Maintain all records as required by law;
- Ensure that records are created and maintained in a secure environment;
- Maintain appropriate internal controls on the use of electronic signatures;
- Implement means of confirming transactions; and
- Train staff on related procedures as necessary.

Note: For information regarding use of the District's technology resources and electronic communications by Board members, see BBI(LOCAL). For student use of personal electronic devices, see FNCE. For additional provisions governing employee use of electronic media, see DH(LOCAL) and the employee handbook. For information regarding District, campus, and classroom websites, see CQA. For information regarding intellectual property and copyright compliance, see CY.

**Information
Technology**

The **D**epartment of **T**echnology (DOT) is responsible for design, development, implementation, and support of reliable information technology services that promote learning for all students.

DOT is also responsible for identifying and managing risks to the information systems and data assets by establishing and maintaining appropriate controls.

**Technology
Resources**

The District will make technology resources available to staff, students, parents, and members of the public as appropriate. Available technology resources include onsite internet access, District-owned hardware and software, District-approved online educational applications for use at school and at home, and digital instructional materials. **Access to technology resources is contingent upon agreeing to the District's acceptable use rules in the policy and procedures. CQ(EXHIBIT- MCALLEN ISD TECHNOLOGY RESOURCE ACCEPTABLE USE POLICY USER AGREEMENT)**

**Technology
Governance**

DOT will work with established advisory councils (like LEAD) to facilitate stakeholder input regarding policy development, major technology investment decisions, resource utilization, and risk management.

**Electronic
Signatures**

At the District's discretion, the District makes certain transactions available online, including student admissions documents, student grade and performance information, contracts for goods and services, and employment documents.

To the extent the District offers transactions electronically, the District may accept electronic signatures in accordance with CQ(LOCAL).

When accepting electronically signed documents or digital signatures, the District will comply with rules adopted by the Texas Department of Information Resources, to the extent practicable, to:

- Authenticate a digital signature for a written electronic communication sent to the District;

- Maintain all records as required by law;
- Ensure that records are created and maintained in a secure environment;
- Maintain appropriate internal controls on the use of electronic signatures;
- Implement means of confirming transactions; and
- Train staff on related procedures as necessary.

Note: For more information, see [DIR Guidelines for the Management of Electronic Transactions and Signed Records¹](#).

Content Filtering

The DOT administrator will select, implement, and maintain appropriate technology for filtering material considered inappropriate or harmful to minors. All internet traffic on the District's network will be filtered. Off-network web filtering for students will be provided for District-issued technology equipment authorized for student use off-campus.

The categories of material considered inappropriate and to which access will be blocked will include, but not be limited to, nudity/pornography; images or descriptions of sexual acts; promotion of violence, illegal use of weapons, drug use, discrimination, or participation in hate groups; instructions for performing criminal acts (e.g., bomb-making); and online gambling.

Content Filtering Exceptions

The DOT administrator will consider requests from users who wish to use a blocked site for bona fide research, instruction, or other lawful purposes. Users who wish to use an individually blocked site for bona fide research, instruction, or other lawful purposes must follow technology guidelines and processes to unblock the site.

Authorized Use

All students, employees, and Board members will be required to sign or affirm the District's acceptable use rules annually for issuance or renewal of an account. The acceptable use policy, procedures, and user agreement are subject to change annually. CQ(EXHIBIT- MCALLEN ISD TECHNOLOGY RESOURCE ACCEPTABLE USE POLICY USER AGREEMENT)

All other authorized users will be required to affirm the District's acceptable use rules before being granted access to the District's technology resources.

Privacy Expectations

District technology resources will be used for learning, teaching, and administrative purposes consistent with the District's mission

and goals. **Limited personal use is permitted**; however, the District does not grant ownership, privacy, or an expectation of privacy when using any device (district-issued or user-owned) in the contents of any electronic messaging, including email, voice mail, text, or other internet activities involving District technology resources. Electronic communications are considered public records and may be released pursuant to the requirements of the Texas Public Information Act (TPIA).

Unauthorized Use

Personal use must be kept to a minimum and should not interfere with or impair an employee's job performance or a student's instructional program. Personal use is prohibited if the user is:

- Interfering with the use of technology resources by the District;
- Burdening the District with additional costs;
- **Interfering with the staff member's job duties or other obligations to the District;**

All technology resource use is prohibited if the user is engaging in the activities below. The acceptable use rules and user agreement may specify additional unauthorized use of technology resources. CQ(EXHIBIT- MCALLEN ISD TECHNOLOGY RESOURCE ACCEPTABLE USE POLICY USER AGREEMENT)

1. Engaging in any activity that is illegal or prohibited by administrative policy, administrative regulation, District policy or state or federal law;
2. Infringing upon the intellectual property rights of others or violating copyright laws;
3. Accessing unauthorized confidential or sensitive information, student data, or any other information covered by existing state or federal privacy or confidentiality laws, regulations, rules, policies, procedures, or contract terms;
4. Using offensive, damaging, obscene, bullying, profane, lewd, threatening, disrespectful, discriminatory, hate or gang-related language, symbols, or pictures;

See the most current McAllen ISD Technology Resources Acceptable Use Policy and User Agreement for additional items.

Access

Access to District technology resources will be controlled and managed to ensure that only authorized individuals and computers have appropriate access in accordance with educational and business needs.

All computers that are permanently or intermittently connected to the District network will use an approved credentials-based access control system.

All systems containing Confidential or Regulated Data, as defined below, will employ credentials-based access control systems and encryption for data in transit and encryption for data at rest, in accordance with Federal Information Processing Standard (FIPS) Publication 140-2 standards.

General Guidelines

Access to District technology resources will be managed as follows:

1. Every user must have a user profile that defines roles and access privileges.
2. The District will conduct reviews of standard users' access annually.
3. The District will conduct reviews of system administrator user accounts semi-annually.
4. The District will revoke user access within 24 hours of termination of employment, student withdrawal, graduation, or other change in enrollment status.
5. Only authorized users will be granted access to District information systems, and the principle of least privilege will be enforced.
6. The District will assign user privileges based on an individual's role. Efforts will be made to prevent any user from having access not required for the role.
7. Default access for systems containing Confidential or Regulated data will be "deny-all."
8. The District will not permit anonymous or guest logins.
9. Any user identified as a security threat or as having violated District policies may be denied access to the District's technology resources.

Passwords

Passwords for District technology resources will be managed as follows:

- The District promotes the use of strong passwords, as defined by National Institute of Standards and Technology ([NIST Document SP 800-63-3²](#)).
- All District passwords must remain confidential and shall not be shared.

- Passwords must be stored and transmitted in an encrypted manner.
- The District will require that passwords be changed periodically as dictated by the DOT Security Guidelines.
- District-owned mobile devices and user-owned mobile devices that allow access to District e-mail or any Confidential or Regulated data must be password protected and all efforts be made to protect the data.

Parent Access

Parents/Guardians may be provided access to District technology resources, including student information, and learning management systems or mobile applications, in accordance with guidelines established by the campus or the administrative department.

Access is strictly limited to information for the specific child and must be revoked upon withdrawal, change in enrollment status, or when the child turns eighteen.

District Employee Access

With written approval of the immediate supervisor or the Superintendent or IT administrator, and upon acceptance of the District's acceptable use policy and user agreement, District employees will be granted access to the District's technology resources as appropriate.

Public Access

Members of the public may be provided access to District technology resources, including computer and internet access, online job applications, and access to the District's guest Wi-Fi services, in accordance with guidelines established by the campus or the administrative department.

Use of District technology resources by members of the public may not interrupt instructional activities or technology operations.

Participation in Social Media

Under appropriate system controls and supervision, participation in approved social media using the District's technology resources for educational and administrative purposes is permissible for students and staff per the guidelines outlined in the employee handbook and the student handbook.

Social media includes but is not limited to text messaging, instant messaging, email, web logs (blogs), electronic forums (chat rooms), video-sharing websites (e.g. YouTube), editorial comments posted on the internet, and social network sites (e.g., Facebook, Instagram, Twitter, LinkedIn).

Students participating in social media using the District's technology resources should assume that all content shared, including pictures, is public. No personally identifying information should be

published. Students should not respond to requests for personally identifying information or contact from unknown individuals.

Student Training on Safety and Security

Students participating in social media and other public internet services using the District's technology resources must receive training on the following:

1. All content shared, including pictures, is presumed to be public;
2. Personally identifiable information about themselves or others should not be shared;
3. Requests for personally identifiable information or to respond to any contact from unknown individuals should not be answered;
4. Students may not sign up for unauthorized programs or applications using the District's technology resources;
5. Risks of disclosing personal information on websites and applications using the students' own personal technology resources;
6. Recognizing cyberbullying and appropriate responses; and
7. Using appropriate online etiquette and behavior when interacting using social media or other forms of online communication or collaboration.

Approval of Technology Resources

The District will ensure that all technology resources in use within the District meet state, federal, and District standards for safety and security of District data, including a student's education records and personally identifiable information. [See FL(LEGAL) and (LOCAL).]

District staff wanting to use an online instructional resource, mobile application, digital subscription service, or other program or technology application requiring the user to accept terms of service or a user agreement, other than a District-approved resource, must first submit a request to DOT.

No student 13 years of age or younger will be asked to download or sign up for any application or online account using his or her personally identifiable information.

Technology
Resource
Standards

To provide a consistent and safe experience for users of District technology resources, the District creates standards for system access, hardware and software.

Selection of all hardware and software, including online subscriptions, applications (“apps”), instructional games, must follow a vetting and approval process to ensure that they meet instructional and/or administrative goals, meet security requirements and can be supported by the District. The acquisition, implementation and use guidelines are the following:

- The hardware/software has been approved by the corresponding department and associate/assistant superintendent for content and alignment to the District’s instructional goals.
- The hardware/software meets the technology security and compatibility requirements as set by the District. A pilot of the software may be needed to verify security and compatibility.
- The hardware/software must have broad benefits to more than one individual.
- Any hardware/software that is unapproved, unlicensed/un-tagged, or unsafe will be removed.
- Any software that requires employee or student data to be stored offsite will require an established agreement with the vendor regarding data security protocols before purchase.

Record Retention

A District employee shall retain electronic records, whether created or maintained using the District’s technology resources or using personal technology resources, in accordance with the District’s record management program. [See CPC]. All users will be responsible for the retaining all their district-related files in the district’s cloud resources and not on local hard drives.

Reporting Violations

Students and employees must immediately report any known violation of the District’s technology resource use policies to the campus principal (department lead for non-campus) and/or DOT administrator.

In addition, students and employees must immediately report to the campus principal (department lead for non-campus) and DOT administrator:

- Requests for personally identifiable information or contact from unknown individuals;
- Any content or communication that is abusive, obscene, pornographic, sexually oriented, threatening, harassing, damaging to another’s reputation, or illegal;

- Any activity that poses a security or cybersecurity risk to the District.

DOT will promptly record the incident according to appropriate procedures and notify law enforcement, or other appropriate state agency, of any suspected illegal activity relating to misuse of the District's technology resources and will cooperate fully with local, state, or federal officials in any investigation or valid subpoena.

Termination /
Revocation of Use

Inappropriate use of the District's technology resources may result in revocation or suspension of a user's access and the privilege to use these resources, as well as other disciplinary or legal action, in accordance with applicable laws, District policies, the Student Code of Conduct, the Employee Handbook, and District administrative procedures, guidelines and regulations.

**Student Use of
Personal Electronic
Devices for
Instructional
Purposes**

The following rules will apply to student use of personal telecommunications or other electronic devices for on-campus instructional purposes:

1. Agreements for acceptable use of the District's technology resources and personal telecommunications or other electronic devices for on-campus instructional purposes must be signed annually by the student and parent. CQ(EXHIBIT- MCALLEN ISD TECHNOLOGY RESOURCE ACCEPTABLE USE POLICY USER AGREEMENT)]
2. When using devices for instructional purposes while on campus, students must use the District's designated Wi-Fi or network resource. Any attempt to bypass the District's content filter will result in restrictions and/or disciplinary action as required by the Student Code of Conduct.
3. When not using devices for instructional purposes while on campus, students must follow the rules and guidelines for non-instructional use as published in the student handbook and referenced in FNCE(LOCAL).
4. The District is not responsible for damage to or loss of personally owned electronic devices brought from home. The District will not provide direct technical support for personal devices. The District may provide information to the students and parents as to how to configure approved personal devices for instructional use.
5. Campuses may impose additional rules and restrictions regarding use of personal electronic devices that do not conflict with District policies. Violation of these rules may result in suspension or revocation of system access and/or suspension or revo-

cation of permission to use personal electronic devices for instructional purposes while on campus, as well as other disciplinary action, in accordance with the Student Code of Conduct.

Information Security

All data, regardless of the form or format, which is created or used in support of the District business activities is owned by the District. District-owned data is an asset and must be protected from its creation through its useful life, to its timely and authorized disposal. District data must be maintained in a secure, accurate, and reliable manner and be readily available for authorized use.

Data Classification

The District uses the Texas Department of Information Resources guidelines to classify data. The District uses four data classifications: Public, Sensitive, Confidential and Regulated.

District-owned data is classified as follows:

1. Regulated Data is information that is controlled by a state or federal regulation or other third-party agreements. Examples of Regulated Data may include, but are not limited to:
 - a. Health information;
 - b. Credit card information; and
 - c. Criminal justice information.
2. Confidential Data is information that typically is excepted from the Texas Public Information Act. Examples of Confidential Data may include, but are not limited to:
 - a. Personally Identifiable Information (PII), such as a name in combination with social security number (SSN) and/or financial account numbers;
 - b. Intellectual property, such as vendor copyrights, patents, and trade secrets;
 - c. Passwords used for authenticating individuals; and
 - d. Network architecture schematics.
3. Sensitive Data is information that could be subject to release under a public information request but should be controlled to protect third parties. Examples of Sensitive Data may include but are not limited to:
 - a. Operational information;
 - b. Personnel records;
 - c. Salary information; and

- d. Internal communications.
- 4. Public Data is information that is freely and without reservation made available to the public. Examples of Public Data may include but are not limited to:
 - a. Press releases;
 - b. Public web postings; and
 - c. Publications.

Responsibilities

The following key roles and responsibilities apply to the District's information security practices.

Data Owner: The District executive responsible for specific information that must be protected. The Data Owner has the primary responsibility for data protection.

Systems Owner: The District administrator responsible for directing the operation of a computer system and the applications residing on that system. Systems Owners are those persons delegated the responsibility for protecting the information of the Data Owners. The Systems Owner may or may not be the Data Owner of any data maintained on the system for which they are responsible. The Systems Owner may or may not be the DOT administrator. Regardless of systems ownership, all applicable security controls must be documented and maintained.

Data User: Individuals for whom the systems are designed. Data users may include District employees, students, parents/guardians, District vendors, and members of the public at large. Data users access system resources to achieve some benefit related to their education, job duties, or citizen participation in District governance. Depending on the nature of the system, data users may or may not be individually identifiable.

The Data Owner, in consultation with the Superintendent or DOT administrator, is responsible for determining the data classification level. Once a classification has been defined, the computer systems containing that information must be approved by the Data Owner and Superintendent or IT administrator and must meet minimum standards for security controls.

If the system is deemed by the Data Owner, in consultation with the Superintendent or DOT administrator, to contain a particular threat due to type or magnitude of the information, the marketability of the information, or the potential for fraud or other misuse, additional security controls may be required.

Security Controls

The District's Information Security Control Standards Framework for information systems containing Public, Sensitive, Confidential, and Regulated Data are based on the [NIST, Special Publication 800-53](#)³.

These information security controls are subject to change as data protection practices and technologies evolve.

Data Sharing

District data will only be shared with authorized third parties through an approved Data Sharing Agreement or as otherwise authorized by law.

Each data sharing request is evaluated for appropriateness and compliance and must be authorized by the appropriate District signatories. Vendors and partners authorized to receive district data are required to protect District data in accordance with all applicable laws, regulations, and standards.

Software Licensing

All software used in the District must be legally licensed and approved. All software should be installed by technology department staff or authorized agents with IT approval.

Personal Software

The installation of personal software on District technology equipment is prohibited.

Adoption or Last
Amendment Date

This regulation was last amended on February 10, 2022

¹ DIR Guidelines for the Management of Electronic Transactions and Signed Records: [http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/Texas%20Uniform%20Electronic%20Transactions%20Act%20\(UETA\)%20Guidelines.pdf](http://publishingext.dir.texas.gov/portal/internal/resources/DocumentLibrary/Texas%20Uniform%20Electronic%20Transactions%20Act%20(UETA)%20Guidelines.pdf)

² NIST Special Publication 800-63 – Digital Identity Guidelines: <https://pages.nist.gov/800-63-3/sp800-63-3.html>

³ NIST, Special Publication 800-53: <https://nvd.nist.gov/800-53/Rev4>



McAllen ISD Technology Resources Acceptable & User Agreement

Any user (e.g., students, employees, guests, contractors) accessing the district's technology resources (e.g., equipment, network, Wi-Fi, internet, applications) using any district-issued or personal device (e.g., computer, data card and/or mobile device, phones, watches, printers, cables, all peripherals including data drives) will comply with:

- this policy (McAllen ISD Technology Resources Acceptable Use Policy);
- McAllen ISD's policies and regulations (CQ REGULATION, CQ LOCAL, CQ LEGAL);
- McAllen ISD's Employee Handbook, Student Handbook, and Student Code of Conduct;
- the Children's Internet Protection Act (CIPA); and
- the Family Educational Rights and Privacy Act (FERPA).

This policy must be followed:

- anytime there is a connection to the MISD's wired or wireless network via any device, personal or district owned; and
- when using a district-owned device on any other non-MISD wired or wireless network.

Privacy Expectations

All activity on the district's network when using a district-issued or personal device is public and property of the McAllen Independent School District. When using the district's resources, users have no privacy in the contents of their personal files, their communication or any of their transactions including but not limited to receiving, creating, accessing, sending, or storing information. The district logs user access, allocates filespace, and archives all user files. Electronic auditing mechanisms include, but are not limited to, login attempts, logouts, systems accessed, inbound and outbound file transfers and activity, internet activity including websites visited, date, time and user associated with system events, logs of remote desktop, server, device access, terminal connections to and from external systems, sent and received email messages, downloaded material, including files deleted, modified, and accessed from any user's account.

The district's technology resources are for instruction and to perform district duties. Users may use district technology resources for limited personal use, but there should be no expectation of privacy.

Compliance Expectations

All users will comply with this policy along with regulations and policies governing use of the district's technology resources. The district will cooperate to the extent legally required with Internet Service Providers (ISPs), local, state, and federal officials in any investigation related to the misuse of the district's resources.

Data Retention Expectations

All users will be responsible for retaining all their district-related files on the district's cloud resources (e.g., McAllen ISD's O365 OneDrive, SharePoint, Google Suite).

Technology Acceptable Use Expectations

All users are expected to act in a respectful, responsible, ethical, and legal manner in accordance with district policies, district guidelines and federal and state law. The following uses are prohibited and considered noncompliant with this policy:

1. Illegal activity and activity that violates district guidelines, regulations, and policy.
2. Hate mail, discriminatory remarks, profanity, and offensive, inflammatory, inappropriate language in communication.
3. Sending unauthorized broadcasts to distribution lists, regardless of content or recipients.
4. Communicating as self or by impersonating another user especially to harass, threaten or bully another individual.
5. Viewing, sending, receiving, downloading offensive, sexually suggestive, explicit, obscene, or pornographic material.
6. Transmitting material likely to be illegal, offensive, abusive, obscene, threatening, or damaging to another.
7. Accessing material or providing access to material that is harmful to minors or is determined inappropriate for minors.
8. Posting or transmitting pictures of minors without first obtaining proper written authorization.
9. Using unlicensed software, installing unauthorized software/demos/files/plugins, or altering district installed software.
10. Installing unauthorized operating systems or applications that are not supported by the district without prior approval.
11. Intentional retrieval or unauthorized modification of files, passwords, or data belonging to other users.
12. Unauthorized or illegal installation, distribution, reproduction, or use of copyrighted materials or intellectual property.
13. Loading or use of, or the attempt to load or use of, unauthorized games, programs, files, or other electronic media.
14. Sending communication focused on commercial, for-profit purposes or that contains personal information of others.
15. Participating in online gaming and/or gambling using district resources.

16. Promoting product advertisement or political lobbying.
17. Creating and distributing chain letters, sending spam, or setting up equipment so that it can act as an “open relay” for third-party spammers, or providing products or services for pay, i.e., outside employment.
18. Destruction, modification, abuse or unauthorized access to network hardware, software, and files.
19. Disfiguring equipment or displaying lack of reasonable care in its use.
20. Installing unauthorized access points, printers, or any other equipment without prior authorization.
21. Moving all technology equipment including network phones from designated areas without approval.
22. Cyberbullying or any other type of harassment prohibited by law, the Student Code of Conduct, or Board Policy.
23. Using district technology for social networking with students beyond the educational program.
24. Texting, messaging, or chatting with students for any other reason than for school related communication.
25. Attempting to view, edit, delete another user’s posting, transmittal, or receipt of electronic media.

Although the District will implement enhanced technology to monitor district devices and continue to block access to the downloading or uploading of personal applications and software on district devices, **all users of District devices shall abide by this Acceptable Use Policy.**

Filtering, Monitoring and Security Expectations

System security is protected using passwords. Failure to adequately protect or update passwords could result in unauthorized access. Internet filtering and monitoring applications are also used when district-issued or personal devices access the district’s resources. The following security guidelines shall be followed:

1. Users shall not reveal their passwords to or share their passwords with another individual.
2. Users must regularly change their password and may be directed to do so by district administration or state mandates.
3. Users are not to use any device that has been logged in under another user’s name. If a previous user has not logged out, the current user must immediately log out and then log back in with their own name and password.
4. Users shall take proper security steps to prevent making a device or network vulnerable, such as opening e-mail from unknown senders or loading unauthorized software.
5. Unauthorized access, including hacking (“white hat” or “black hat”), or logging into the network using another individual’s username and password, is strictly prohibited and will result in denial of privileges, discipline and/or termination. Such unauthorized access may also result in criminal charges.
6. Users shall not install or run any executable files (.exe, .bat, .com) that can render a district-issued or personal device as a network device. Installing this type of software creates network traffic and is not allowed.
7. Users shall not knowingly or intentionally introduce a virus to a device or network.
8. Users shall not purposely use encryption channels to avoid security review by system administrators except for appropriate business use as defined herein.
9. Users shall not pretend to be someone else when posting, transmitting, or receiving messages.
10. Users shall not attempt to gain unauthorized access to restricted information or resources.
11. Users shall not bypass (proxy), disable, or attempt to bypass or disable Internet filtering or monitoring applications.
12. Users shall not access websites not authorized under the filtering protocols.
13. Users shall not encrypt communication that evade security protocols.
14. Users shall not store student or employee data on personal devices or transmit such data externally without prior authorization.
15. Users shall not falsify the source or origin of software or other material contained in a file that is transmitted.

Family Educational Rights and Privacy Act (FERPA) Expectations

All users will comply with the FERPA requirements as it pertains to the protection of the privacy of student educational records. (20 U.S.C. § 1232g; 34 CFR Part 99). With respect to these guidelines, all users will ensure that student information that should not be accessed, stored, or released is not accessed, stored, or released without approval.

Children’s Internet Protection Act (CIPA) Expectations

All users will comply with the Children’s Internet Protection Act of 2001 (CIPA) designed to block or filter Internet access to pictures or activities that are: (a) obscene; (b) pornographic; or (c) harmful to minors. McAllen ISD has filtering and monitoring applications scanning the district’s technology resources and all internet enabled devices (district-issued and personal) are subject to these scans. All users must use their own credentials when accessing district technology resources. Any attempts to circumvent detection when accessing the district’s technology resources will be deemed as noncompliance with these guidelines.



In addition, all users will prevent access by minors to inappropriate content on the Internet, will ensure the safety and security of minors when using electronic mail, chat rooms and other forms of direct electronic communications, will prevent unauthorized access, including “hacking,” and other unlawful activities by minors online; will prevent unauthorized disclosure, use, and dissemination of personal information regarding minors; and will restrict minors' access to materials harmful to them.

To Parents and Students:

The McAllen Independent School District (MISD) understands the educational value of technology resources and recognizes the potential of these resources to enhance and support student learning.

While access to technology resources including the Internet allows students to explore limitless productive resources, families should be aware that some material accessible via the Internet may contain items that are inappropriate, inaccurate, or potentially offensive. While technology resources should be used to facilitate instructional learning, students may find ways to access other unproductive or harmful materials. While the benefits to students from technology resources vastly exceed the disadvantages, parents and guardians of minors are critical in setting and conveying the standards that their children should follow when using technology resources.

Authorized student use of technology resources must be consistent with the educational purposes for which these resources have been provided. The primary use of MISD technology resources is to assist students in completing educational activities and should be used in a manner that enhances educational experiences and complies with MISD policies. All student users must adhere to the provisions of this Acceptable Use Policy as a condition for continued use of the MISD technology resources.

Internet Safety Policy

In compliance with the Children's Internet Protection Act ("CIPA"), the McAllen Independent School District is required to adopt and implement internet safety policies and procedures addressing: (a) access by minors to inappropriate matter on the Internet; (b) the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications; (c) unauthorized access, including so-called "hacking," and other unlawful activities by minors online; (d) unauthorized disclosure, use, and dissemination of personal information regarding minors; and (e) measures restricting minors' access to materials harmful to them. Furthermore, each campus educates students on cyberbullying, appropriate online behavior, and social networking as required by Broadband Data Improvement Act.

MISD has implemented filtering and/or blocking software to restrict access to Internet sites containing pornography, obscene depictions, or other materials harmful to minors under 18 years of age, to the extent practicable, while using the MISD network. This control also applies to other forms of communication such as e-mail, chat rooms, social networking sites, instant messaging, and the like. However, no software is foolproof, and there is still a risk a user may be exposed to a site or message containing such materials. We ask parents and students to immediately report access to any inappropriate materials while on the MISD network to their school to help improve filters and security. The student's parent or guardian shall supervise and monitor device usage that occurs outside the MISD network (e.g., home WiFi).

Furthermore,

- students should not reveal personal information, including name, home address, telephone number, photos, passwords and the like on the Internet. Students are advised to never access, keep, or send anything that they would not want the public to see.
- Students shall not meet in person with anyone they have met only online via the Internet.
- The user is personally responsible for his or her actions in accessing and utilizing MISD technology resources.
- Students shall abide by all laws, regulations, the Student Code of Conduct, Acceptable Use Policy, and other related MISD security policies.
- Students should disconnect immediately and notify an adult if they encounter materials that violate the rules of appropriate use.



Improper use of technology resources provided by MISD is prohibited. Violation of this Acceptable Use Policy can result in suspension of access or termination of privileges. Some cases of unacceptable use may lead to disciplinary and legal action.

PRINT NAME

SIGNATURE

DATE

Política de uso aceptable y acuerdo de usuario de los recursos tecnológicos de McAllen ISD

Cualquier usuario (p. ej., estudiantes, empleados, invitados, contratistas) que acceda a los recursos tecnológicos del distrito (p. ej., equipo, red, Wi-Fi, Internet, aplicaciones) utilizando cualquier dispositivo personal o proporcionado por el distrito (p. ej., computadora, tarjeta de datos y/o dispositivo móvil, teléfonos, relojes, impresoras, cables, todos los periféricos, incluidas las unidades de datos) cumplirán con:

- esta política (Política de uso aceptable de recursos tecnológicos de McAllen ISD);
- Las políticas y regulaciones de McAllen ISD (CQ REGULATION, CQ LOCAL, CQ LEGAL);
- El Manual del Empleado, el Manual del Estudiante y el Código de Conducta del Estudiante de McAllen ISD;
- la Ley de Protección de Niños en Internet (CIPA); y
- la Ley de Privacidad y Derechos Educativos de la Familia (FERPA).

Esta política debe ser seguida:

- cada vez que haya una conexión a la red alámbrica o inalámbrica de MISD a través de cualquier dispositivo, personal o propiedad del distrito; y
- al usar un dispositivo propiedad del distrito en cualquier otra red inalámbrica o cableada que no pertenezca a MISD.

Expectativas de privacidad (ver CQ LOCAL)

Toda actividad en la red del distrito cuando se utiliza un dispositivo personal o proporcionado por el distrito es pública y propiedad del Distrito Escolar Independiente de McAllen. Al usar los recursos del distrito, los usuarios no tienen privacidad en el contenido de sus archivos personales, su comunicación o cualquiera de sus transacciones, incluidas, entre otras, la recepción, creación, acceso, envío o almacenamiento de información. El distrito registra el acceso de los usuarios, asigna espacio en el servidor de archivos y archiva todos los archivos de los usuarios. Los mecanismos de auditoría electrónica incluyen, entre otros, intentos de inicio de sesión, cierres de sesión, sistemas accedidos, transferencias y actividad de archivos entrantes y salientes, actividad de Internet, incluidos sitios web visitados, fecha, hora y usuario asociado con eventos del sistema, registros de escritorio remoto, servidor, acceso a dispositivos, conexiones de terminales hacia y desde sistemas externos, mensajes de correo electrónico enviados y recibidos, material descargado, incluidos archivos eliminados, modificados y accedidos desde la cuenta de cualquier usuario.

Los recursos tecnológicos del distrito son para la instrucción y para realizar las tareas del distrito. Los usuarios pueden usar los recursos tecnológicos del distrito para uso personal limitado (ver CQ LOCAL), pero no deben esperar privacidad.

Expectativas de cumplimiento (ver CQ LOCAL)

Todos los usuarios cumplirán con esta política junto con las normas y políticas que rigen el uso de los recursos tecnológicos del distrito. El distrito cooperará en la medida legalmente requerida con los proveedores de servicios de Internet (ISP), los funcionarios locales, estatales y federales en cualquier investigación relacionada con el uso indebido de los recursos del distrito.

Expectativas de retención de datos (ver CQ LOCAL)

Todos los usuarios serán responsables de conservar todos sus archivos relacionados con el distrito en los recursos de la nube del distrito (por ejemplo, O365 OneDrive, Sharepoint, Google Suite de McAllen ISD).

Expectativas de uso aceptable de la tecnología

Se espera que todos los usuarios actúen de manera respetuosa, responsable, ética y legal de acuerdo con las políticas del distrito, las pautas del distrito y las leyes federales y estatales. Los siguientes usos están prohibidos y se consideran no conformes con esta política:

1. Actividad ilegal y actividad que viola las pautas, regulaciones y políticas del distrito.
2. Correo de odio, comentarios discriminatorios, blasfemias y lenguaje ofensivo, incendiario e inapropiado en la comunicación.
3. Envío de transmisiones no autorizadas a listas de distribución, independientemente de su contenido o destinatarios.
4. Comunicarse como uno mismo o haciéndose pasar por otro usuario, especialmente para acosar, amenazar o intimidar a otra persona.
5. Ver, enviar, recibir, descargar material ofensivo, sexualmente sugestivo, explícito, obsceno o pornográfico.
6. Transmitir material que pueda ser ilegal, ofensivo, abusivo, obsceno, amenazante o dañino para otros.
7. Acceder a material o proporcionar acceso a material que sea dañino para menores o que se determine inapropiado para menores.
8. Publicar o transmitir imágenes de menores sin obtener primero la debida autorización por escrito.

9. Usar software sin licencia, instalar software/demostraciones/archivos/complementos no autorizados o alterar el software instalado por el distrito.
10. Instalar sistemas operativos no autorizados o aplicaciones que no son compatibles con el distrito sin aprobación previa.
11. Recuperación intencional o modificación no autorizada de archivos, contraseñas o datos pertenecientes a otros usuarios.
12. Instalación, distribución, reproducción o uso no autorizado o ilegal de materiales con derechos de autor o propiedad intelectual.
13. Cargar o usar, o intentar cargar o usar, juegos, programas, archivos u otros medios electrónicos no autorizados.
14. Envío de comunicaciones con fines comerciales, lucrativos o que contengan información personal de terceros.
15. Participar en juegos y/o apuestas en línea utilizando los recursos del distrito.
16. Promoción de publicidad de productos o cabildeo político.
17. Crear y distribuir cartas en cadena, enviar spam o configurar equipos para que puedan actuar como un "transmisor abierto" para spammers de terceros, o proporcionar productos o servicios por pago, es decir, empleo externo.
18. Destrucción, modificación, abuso o acceso no autorizado al hardware, software y archivos de la red.
19. Desfigurar el equipo o mostrar falta de cuidado razonable en su uso.
20. Instalar puntos de acceso, impresoras o cualquier otro equipo no autorizado sin autorización previa.
21. Mover todo el equipo tecnológico, incluidos los teléfonos de red, de áreas designadas sin aprobación.
22. Acoso cibernético o cualquier otro tipo de acoso prohibido por la ley, el Código de Conducta Estudiantil o la Política de la Junta.
23. Usar tecnología del distrito para redes sociales con estudiantes más allá del programa educativo.
24. Enviar mensajes de texto, enviar mensajes o chatear con los estudiantes por cualquier otro motivo que no sea la comunicación relacionada con la escuela.
25. Intentar ver, editar, eliminar la publicación, transmisión o recepción de medios electrónicos de otro usuario.

Filtrado, Monitoreo y Expectativas de Seguridad

La seguridad del sistema está protegida mediante contraseñas. Si no se protegen o actualizan adecuadamente las contraseñas, podría resultar en un acceso no autorizado. Las aplicaciones de monitoreo y filtrado de Internet también se utilizan cuando los dispositivos personales o emitidos por el distrito acceden a los recursos del distrito (ver CQ LOCAL). Se seguirán las siguientes pautas de seguridad:

1. Los usuarios no revelarán ni compartirán sus contraseñas con otra persona.
2. Los usuarios deben cambiar regularmente su contraseña y la administración del distrito o los mandatos estatales pueden indicarles que lo hagan.
3. Los usuarios no deben utilizar ningún dispositivo que haya iniciado sesión con el nombre de otro usuario. Si un usuario anterior no ha cerrado sesión, el usuario actual debe cerrar sesión inmediatamente y luego volver a iniciar sesión con su propio nombre y contraseña.
4. Los usuarios deberán tomar las medidas de seguridad adecuadas para evitar que un dispositivo o una red sean vulnerables, como abrir correos electrónicos de remitentes desconocidos o cargar software no autorizado.
5. El acceso no autorizado, incluida la piratería ("sombbrero blanco" o "sombbrero negro"), o iniciar sesión en la red con el nombre de usuario y la contraseña de otra persona, está estrictamente prohibido y dará lugar a la denegación de privilegios, medidas disciplinarias y/o terminación. Dicho acceso no autorizado también puede dar lugar a cargos penales.
6. Los usuarios no instalarán ni ejecutarán ningún archivo ejecutable (.exe, .bat, .com) que pueda convertir un dispositivo personal o proporcionado por el distrito en un dispositivo de red. La instalación de este tipo de software genera tráfico en la red y no está permitida.
7. Los usuarios no introducirán virus en un dispositivo o red a sabiendas o intencionadamente.
8. Los usuarios no utilizarán deliberadamente los canales de encriptación para evitar la revisión de seguridad por parte de los administradores del sistema, excepto para el uso comercial apropiado según se define en el presente.
9. Los usuarios no deberán pretender ser otra persona al publicar, transmitir o recibir mensajes.
10. Los usuarios no intentarán obtener acceso no autorizado a información o recursos restringidos.
11. Los usuarios no deberán eludir (proxy), deshabilitar o intentar eludir o deshabilitar las aplicaciones de monitoreo o filtrado de Internet.
12. Los usuarios no accederán a sitios web no autorizados bajo los protocolos de filtrado.
13. Los usuarios no cifrarán las comunicaciones que evadan los protocolos de seguridad.



14. Los usuarios no almacenarán datos de estudiantes o empleados en dispositivos personales ni transmitirán dichos datos externamente sin autorización previa.
15. Los usuarios no deben falsificar la fuente o el origen del software u otro material contenido en un archivo que se transmite.

Expectativas de la Ley de Privacidad y Derechos Educativos de la Familia (FERPA)

Todos los usuarios cumplirán con los requisitos de FERPA en lo que respecta a la protección de la privacidad de los registros educativos de los estudiantes. (20 USC § 1232g; 34 CFR Parte 99). Con respecto a estas pautas, todos los usuarios se asegurarán de que la información de los estudiantes a la que no se debe acceder, almacenar o divulgar no se acceda, almacene o divulgue sin aprobación.

Expectativas de la Ley de Protección de Niños en Internet (CIPA) (ver CQ LEGAL)

Todos los usuarios cumplirán con la Ley de Protección de Niños en Internet de 2001 (CIPA) diseñada para bloquear o filtrar el acceso a Internet a imágenes o actividades que son: (a) obscenas; (b) pornográfico; o (c) perjudiciales para los menores. McAllen ISD tiene aplicaciones de filtrado y monitoreo que escanean los recursos tecnológicos del distrito y todos los dispositivos habilitados para Internet (provistos por el distrito y personales) están sujetos a estos escaneos. Todos los usuarios deben usar sus propias credenciales al acceder a los recursos tecnológicos del distrito. Cualquier intento de eludir la detección al acceder a los recursos tecnológicos del distrito se considerará como incumplimiento de estas pautas.

Además, todos los usuarios evitarán el acceso de menores a contenido inapropiado en Internet, garantizarán la seguridad de los menores cuando utilicen el correo electrónico, las salas de chat y otras formas de comunicación electrónica directa, evitarán el acceso no autorizado, incluido el "hackeo", y otras actividades ilícitas de menores en línea; evitará la divulgación, el uso y la difusión no autorizados de información personal relativa a menores; y restringirá el acceso de los menores a materiales que les resulten perjudiciales.

A los padres y estudiantes:

El Distrito Escolar Independiente de McAllen (MISD) comprende el valor educativo de los recursos tecnológicos y reconoce el potencial de estos recursos para mejorar y apoyar el aprendizaje de los estudiantes.

Si bien el acceso a los recursos tecnológicos, incluido Internet, permite a los estudiantes explorar recursos productivos ilimitados, las familias deben tener en cuenta que algunos materiales accesibles a través de Internet pueden contener elementos inapropiados, inexactos o potencialmente ofensivos. Si bien los recursos tecnológicos deben usarse para facilitar el aprendizaje instructivo, los estudiantes pueden encontrar formas de acceder a otros materiales improductivos o dañinos. Si bien los beneficios para los estudiantes de los recursos tecnológicos superan ampliamente las desventajas, los padres y tutores de los menores son fundamentales para establecer y transmitir los estándares que sus hijos deben seguir al usar los recursos tecnológicos.

El uso autorizado de los recursos tecnológicos por parte de los estudiantes debe ser coherente con los fines educativos para los que se han proporcionado estos recursos. El uso principal de los recursos tecnológicos de MISD es ayudar a los estudiantes a completar actividades educativas y debe usarse de una manera que mejore las experiencias educativas y cumpla con las políticas de MISD. Todos los estudiantes usuarios deben cumplir con las disposiciones de esta Política de uso aceptable como condición para el uso continuo de los recursos tecnológicos de MISD.

Política de seguridad en Internet

De conformidad con la Ley de protección infantil en Internet ("CIPA"), el Distrito Escolar Independiente de McAllen debe adoptar e implementar una política de seguridad en Internet que aborde: (a) el acceso de menores a material inapropiado en Internet; (b) la seguridad y protección de los menores al usar correo electrónico, salas de chat y otras formas de comunicación electrónica directa; (c) acceso no autorizado, incluido el llamado "pirateo" y otras actividades ilegales por parte de menores en línea; (d) divulgación, uso y difusión no autorizados de información personal sobre menores; y (e) las medidas que restringen el acceso de los menores a los materiales nocivos para ellos. Además, cada campus educa a los estudiantes sobre el acoso cibernético, el comportamiento en línea apropiado y las redes sociales según lo exige la Ley de mejora de datos de banda ancha.

MISD ha implementado software de filtrado y/o bloqueo para restringir el acceso a sitios de Internet que contienen pornografía, representaciones obscenas u otros materiales dañinos para menores de 18 años, en la medida de lo posible, mientras usan la red de MISD. Este control también se aplica a otras formas de comunicación, como correo electrónico, salas

de chat, sitios de redes sociales, mensajería instantánea y similares. Sin embargo, ningún software es infalible y aún existe el riesgo de que un usuario pueda estar expuesto a un sitio o mensaje que contenga dichos materiales. Pedimos a los padres y estudiantes que informen de inmediato a su escuela el acceso a cualquier material inapropiado mientras están en la red MISD para ayudar a mejorar los filtros y la seguridad. El padre o tutor del estudiante deberá supervisar y monitorear el uso del dispositivo que ocurra fuera de la red de MISD (por ejemplo, WiFi en el hogar).

Además,

- los estudiantes no deben revelar información personal, incluyendo nombre, domicilio, número de teléfono, fotos, contraseñas y similares en Internet. Se aconseja a los estudiantes que nunca accedan, guarden o envíen nada que no quieran que el público vea.
- Los estudiantes no se reunirán en persona con nadie que hayan conocido solo en línea a través de Internet.
- El usuario es personalmente responsable de sus acciones al acceder y utilizar los recursos tecnológicos de MISD.
- Los estudiantes deberán cumplir con todas las leyes, reglamentos, el Código de Conducta Estudiantil, la Política de Uso Aceptable y otras políticas de seguridad relacionadas con MISD.
- Los estudiantes deben desconectarse inmediatamente y notificar a un adulto si encuentran materiales que violan las reglas de uso apropiado.

Consecuencias por Violación de la Política de Uso Aceptable

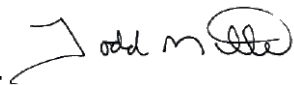
Se prohíbe el uso indebido de los recursos tecnológicos proporcionados por MISD. La violación de esta Política de uso aceptable puede resultar en la suspensión del acceso o la terminación de los privilegios. Algunos casos de uso inaceptable pueden dar lugar a medidas disciplinarias y legales.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: _____

SUPERVISOR: 
Oct 11, 2023

Approved for presentation to the Board of Education:



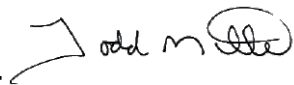
150 _____
Interim Superintendent of Schools
Oct 11, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: _____

SUPERVISOR: 
Oct 11, 2023

Approved for presentation to the Board of Education:



Resolution Regarding Teacher Retirement System of Texas

WHEREAS the Teacher Retirement System of Texas was established in 1937, and

WHEREAS the Teacher Retirement System of Texas is actually the retirement system for all public-education employees in Texas, including bus drivers, police officers, cafeteria employees, custodians, counselors, secretaries, nurses, maintenance staff, librarians, classroom aides, interpreters, administrators, and teachers; and

WHEREAS the Teacher Retirement System of Texas is the largest public retirement system in the state, with over 1.9 million members; and

WHEREAS retired Teacher Retirement System of Texas members who have retired since September 1, 2004, have not had a single cost-of-living adjustment; and

WHEREAS Teacher Retirement System of Texas retirees who retired prior to September 1, 2004, have not had a cost-of-living adjustment since October of 2013 when they received a 3% adjustment, capped at \$100 per month; and

WHEREAS Teacher Retirement System of Texas retirees are subject to two federal provisions that drastically reduce or even eliminate any earned Social Security benefits; and

WHEREAS this cost-of-living adjustment will have no impact on Texas taxpayers; and

WHEREAS Texas voters will have the opportunity to vote ON Proposition 9 in the November 7 election, providing Teacher Retirement System of Texas retirees who retired on or before August 31, 2020, with a sorely needed cost-of-living adjustment;

NOW, THEREFORE, BE IT RESOLVED that the Board of Trustees of the McAllen Independent School District, speaking on behalf of the individually elected Trustees of the District, declares that such Trustees want our voters to be aware of this proposition that allows TRS retirees to receive any cost of living adjustment which may from time-to-time become available.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

SUBJECT: Report Regarding Fine Arts Center Update

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
District Operations will provide the Board of Trustees with an update on the status of the Fine Arts Center

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS: None

LEGAL REVIEW: None

BUDGETARY CONSIDERATIONS: None

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

Attachment:

SUBMITTED BY: 

SUPERVISOR: 

For further information contact:
Name: Ruben D. Treviño
Office: (956) 632-3200
eMail: ruben.trevino@mcallsisd.net

Approved for presentation to the Board of Education:



FINE ARTS CENTER Update

MCALLEN ISD FINE ARTS CENTER

Total Project Budget - \$12,000,000

Soft Cost -\$1,000,000

Remaining Construction Budget - 11,000,000

(Soft Cost) Design and Pre- Construction Fees -
Spent - \$395,000

Soft Cost Remaining Budget -\$605,000

Next Steps:

- Administration is proposing a facilities needs assessment at each comprehensive high school to properly identify educational space needed for the fine arts programs.
- This committee will be composed of:
 - Facilities, Maintenance and Operations Director
 - Campus Principal
 - Fine Arts Director
 - Assistant Superintendent for District Operations
- Results of the facilities needs assessment and administration recommendations to meet the needs will be given by the end of January 2024.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

SUBJECT: Discussion and Possible Action on Competitive Sealed Proposal No. 2024-1015 Safety/Security Film Application Re-Bid

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited proposals for forced entry-resistant film for all campuses.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Six hundred sixty-three (663) contractors were invited to submit proposals, ten (10) contractors responded including four (4) no bids, two (2) non-responsive. On October 10, 2023, the evaluation committee, comprised of Ruben Treviño, Executive Director for Facilities, Maintenance, and Operations; Melissa Ortiz, Project Manager for Facilities, Maintenance, and Operations; Laura Williams, Purchasing Director; Elizabeth Cabrera, Purchasing Coordinator; and Graciela Garza, Senior Buyer, evaluated the proposals.

LEGAL REVIEW:

A draft copy of the AIA contract is attached.

BUDGETARY CONSIDERATIONS:

The contract price for this project is contingent upon approval from the School Safety and Security Committee. The base contract price is \$320,329.78 which includes a \$20,000.00 contingency. The base contract price does not include alternate options that the School Safety and Security Committee members may elect to select. Funds for this project are available through the 2022-2025 Safety Schools Standard Formula Grant.


RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees:

- A. approve the ranking for selection of General Contractor for Competitive Sealed Proposal ("CSP") No. 2024-1015 Safety/Security Film Application Re-Bid; and
- B. approve that Administration begin with negotiations with the highest-ranked Contractor Safe Haven Defense Arizona LLC, from Phoenix, AZ. If the District is unable to negotiate a satisfactory contract with the selected Contractor, the District shall, formally and in writing, end negotiations with that Contractor and proceed to the next in the order of the selection ranking until the contract is reached or all submittals are rejected; and
- C. authorize the Interim Superintendent to execute a contract in accordance with the procedures set out in Texas Government Code, Section 2269.254, once Contractor negotiations have been successfully achieved.

Attachment:

SUBMITTED BY: 

SUPERVISOR: 

For further information contact:
Name: Ruben Treviño, Executive Director of
Facilities, Maintenance, and Operations
Office: (956) 632-3200
Email: ruben.trevino@mcallsisd.net

Approved for presentation to the Board of Education:



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Interim Superintendent of Schools

Vendor Names		G&S Glass LLC	Safe Haven Defense LLC	FASTSIGNS (Huntington Sky Production, LTD.)	Basic IDIQ Inc.
Rank		2	1	4	3
Maximum points	100.00	80.00	86.70	68.84	70.96
Price	62	62	53	50	49
Price per square feet (14 mil Base Bid)		\$ 21.00	\$ 25.00	\$ 25.35	\$ 25.83
Estimated Square Feet	12000	\$ 252,000.00	\$ 300,000.00	\$ 304,200.00	\$ 309,960.00
Contingency		\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
Base Bid (Includes Contingency)		\$272,000.00	\$320,000.00	\$324,200.00	\$329,960.00
Offeror's experience and reputation	18	2.5	16.5	1	2.5
Three (3) K-12 reference forms (BA 50-67)	1.5	0	0	0	0
<i>Rating of 2 or better; plus similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)</i>					
Three (3) Supplier Reference Letters (BA161)	1.5	1.5	1.5	0	1.5
Claims, judgments, arbitration proceedings or suits (BA68)	1	1	1	1	1
Three (3) current or past K-12 projects (BA 70-87)	12	0	12	0	0
<i>Similar scope and size (2 pts for scope; 2 pts for size per reference)</i>					
Current or past Non K-12 projects (BA 89-106)	2	0	2	0	0
<i>Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)</i>					
Quality of the offeror's goods or services	2	0	2	2	2
Repeat business for similar scope/size (BA107)	2	0	2	2	2
The impact on the ability of the district to comply with rules relating to historically underutilized businesses - HUB (BA18)	1	1	0	1	0
Offeror's safety record	7	5.5	5.5	4.5	7
"OSHA Form 300 Log (BA163)	1.5	1.5	0	0	1.5
Safety program manual and/or procedures. (BA164)	2	2	2	2	2
Drug/alcohol prevention policy and/or procedures. (BA165)	1	1	1	1	1
"Workers Compensation Experience Rating" (BA162)	1.5	0	1.5	1.5	1.5
Frequency of safety inspections (BA108)	1	1	1	0	1
Offeror's Proposed Personnel	6	6	6	6	6
Staff experience (industry) (BA113-132)	3	3	3	3	3
Staff experience (firm) (BA113-132)	3	3	3	3	3
Whether the offeror's financial capability is appropriate to the size and scope of the project	2	1	2	2	2
Financial Statement (BAI68)	1	0	1	1	1
Surety Letter (BAI66)	1	1	1	1	1
Any other relevant factors specifically listed in the CSP	2	2	2	2	2
On-time project completion (BA50-67; BA70-87; BA 89-106)	1	1	1	1	1
Projects currently in progress. (134-157)	1	1	1	1	1

AIA[®] Document A101[®] – 2017

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

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

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

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

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

_____, a _____ of the State of _____
[Address]
[Address continued]
Phone: _____
Fax: _____
E-mail: _____

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

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

_____, a _____ of the State of _____
[Address]
[Address continued]
Phone: _____
Fax: _____
E-mail: _____

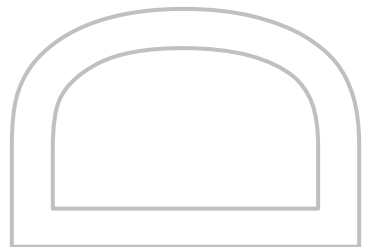
The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

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



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TABLE OF ARTICLES

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

EXHIBIT A	MODIFIED AIA DOCUMENT A201-2017, 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.

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.
- 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:

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).

§ 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;

- .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:

- .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
- 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.

§ 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:

§ 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

.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.)

- 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 <i>(Signature)</i>	CONTRACTOR <i>(Signature)</i>
Tony Forina, Board President, Board of Trustees, McAllen Independent School District	
<i>(Printed name and title)</i>	<i>(Printed name and title)</i>



Additions and Deletions Report for AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 17:45:40 ET on 12/05/2022.

PAGE 1

AGREEMENT made as of the _____ day of _____ in the year TWO THOUSAND TWENTY-

...

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

...

(Name, legal status, address and other information)

_____, a _____ of the State of _____
[Address]
[Address continued]
Phone: _____
Fax: _____
E-mail: _____

...

...

_____, a _____ of the State of _____
[Address]
[Address continued]
Phone: _____
Fax: _____
E-mail: _____

PAGE 2

EXHIBIT A	<u>INSURANCE AND BONDS</u> <u>MODIFIED AIA DOCUMENT A201-2017, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION</u>
EXHIBIT B	<u>CONTRACTOR'S PROPOSAL</u>
EXHIBIT C	<u>PAYMENT AND PERFORMANCE BONDS</u>
EXHIBIT D	<u>CONTRACTOR'S INSURANCE CERTIFICATES</u>
EXHIBIT E	<u>DRAWINGS</u>
EXHIBIT F	<u>SPECIFICATIONS</u>

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.



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.

...

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.

§ 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

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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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

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- 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)

...

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:

...

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.]

...

Mr. Ruben Treviño
 Executive Director of Facilities, Maintenance, and Operations
 McAllen Independent School District
 2000 N. 23rd St.
 McAllen, Texas 78501-6126
 Phone: 956-618-6000
 Fax: _____
 E-mail: ruben.trevino@mcallenisd.net

...

[Name]
 [Title]

 [Address]
 [Address continued]
 Phone: _____
 Fax: _____
 E-mail: _____

...

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, ~~Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, A201™–2017, General Conditions of the Contract for Construction,~~ and elsewhere in the Contract Documents. The Contractor’s insurance certificates are attached hereto as Exhibit D.

§ 8.5.2 The Contractor shall provide bonds as set forth in ~~AIA Document A101™–2017 Exhibit A, Article 11 of the AIA Document A201™–2017, General Conditions of the Contract of Construction,~~ and elsewhere in the Contract Documents. The original bonds required herein are attached to the this Agreement as Exhibit C, upon execution of the Agreement.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

in any other format agreed to by the Owner, Contractor and Architect in writing.

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

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

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

§ 8.7.4 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars (\$1,000,000.00) or more, the Contractor agrees to : (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the contract, either: (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

§ 8.7.5 Contractor shall take all actions and shall comply with all federal, state, and local legal requirements.

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

§ 8.7.7 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at \$100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement. This provision does not apply to sole proprietorships.

...

.2 ~~AIA Document A101™ 2017, Exhibit A, Insurance and Bonds [Subsection Deleted.]~~

...

.5 Drawings. The Drawings are those prepared by _____ dated _____ and which are listed in the Index of Drawings attached hereto as **Exhibit E**, which are incorporated herein by reference.

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.6 Specifications. The Specifications are those prepared by _____ dated _____ and which are listed in the Table of Contents attached hereto as **Exhibit F**, which are incorporated herein by reference.

...

Not Applicable

NOTE: Any Supplementary Conditions or other Conditions of this Contract listed above, the Project Manual or other terms or conditions attempted to be incorporated into this Contract, which contradict or conflict with the terms of this document or the terms and conditions set out in the AIA Document A201™-2017, General Conditions of the Contract for Construction shall be void and subordinate to the terms set out in the AIA Document A201™-2017, General Conditions of the Contract for Construction.

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- EXHIBIT A MODIFIED AIA DOCUMENT A201-2017, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
- EXHIBIT B CONTRACTOR'S PROPOSAL
- EXHIBIT C PAYMENT AND PERFORMANCE BONDS
- EXHIBIT D CONTRACTOR'S INSURANCE CERTIFICATES
- EXHIBIT E DRAWINGS
- EXHIBIT F SPECIFICATIONS

<u>MCALLEN INDEPENDENT SCHOOL DISTRICT</u>	
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...

<u>Tony Forina, Board President, Board of Trustees, McAllen Independent School District</u>	
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AIA[®] Document A201[®] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

[Redacted Project Name and Location]

THE OWNER:

(Name, legal status and address)

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

THE ARCHITECT:

(Name, legal status and address)

_____, a _____ of the State of _____
[Address]
[Address continued]
Phone: _____
E-mail: _____

THE CONTRACTOR/CONSTRUCTION MANAGER

_____, a _____ of the State of _____
[Address]
[Address continued]
Phone: _____
E-mail: _____

ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503[™], Guide for Supplementary Conditions.

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- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 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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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.

§ 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.

- .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

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

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.

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.

§ 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

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

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

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.

§ 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

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)

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

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.

§ 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 activities 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

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

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.

§ 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

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

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

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

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 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

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.

§ 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.

§ 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

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

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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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;

- .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 materialmen's 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 materialmen's 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.*

§ 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.

§ 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.

§ 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.

§ 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

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

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

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.

§ 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

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.

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, lightning, 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 <i>where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price</i> , 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.

§ 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.

- .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

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.

§ 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

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.

§ 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 Contract 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.

§ 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.

§ 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.

§ 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

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.]

§ 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)

§ 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.

§ 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 <i>(Signature)</i>		CONSTRUCTION MANAGER <i>(Signature)</i>
Tony Forina, Board President, Board of Trustees, McAllen Independent School District		_____
<i>(Printed name and title)</i>		<i>(Printed name and title)</i>

(Paragraphs deleted)

Additions and Deletions Report for AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 17:51:12 ET on 12/05/2022.

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: _____

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 "TM" 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.

§ 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: (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

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.

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.

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§ 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

~~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.

§ 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

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

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

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

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

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

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

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

~~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~~

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.

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§ 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

~~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 activities 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 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 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.

...

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.

...

§ 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.

...

§ 3.12.8 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~~

~~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.~~

...

§ 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.

...

§ 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,

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.

...

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.

...

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.

...

§ 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,

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

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.

...

§ 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.~~ 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.

§ 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.

~~§ 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.~~

~~§ 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.~~

...

~~§ 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.~~

§ 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.

...

§ 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

.3 The Subcontractor provides bonds as required by law of prime contractors and by Owner.

...

§ 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

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.

...

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, 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.

...

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.

§ 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.

§ 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 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 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.

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§ 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.

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§ 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.

§ 8.3.1 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

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. ~~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.

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§ 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.

§ 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

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 materialmen's 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 materialmen's 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.

§ 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.~~

...

§ 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; 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.

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§ 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, 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

~~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.~~

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~~§ 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.~~

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~~§ 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 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);~~

- .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, sepi, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes.

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,

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 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, Fraternalization 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~~, 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.

§ 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, 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.

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§ 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

additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. State of Texas.

<p><u>Workmen's Compensation:</u> (Including Waiver of Subrogation Endorsement)</p>	<p>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.</p>
<p><u>Employer's Liability:</u></p>	<p>Bodily Injury by Accident - \$500,000 Each Accident. Bodily Injury by Disease - \$500,000 Each Employee. Bodily Injury by Disease - \$500,000 Policy Limit.</p>
<p><u>Commercial General Liability:</u> (Premises Operations, Independent Contractors, Products/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage)</p>	<p>\$1,000,000.00 – combined single limit for bodily injury and property damage \$2,000,000.00 - aggregate</p>
<p><u>Property Damage</u> Independent Contractors Contractual Liability</p>	<p>\$1,000,000.00 each occurrence \$2,000,000.00 aggregate per project (Same limits as above) (Same limits as above)</p>
<p><u>Automobile Liability:</u> Bodily Injury/Property Damage</p>	<p>\$1,000,000.00 combined single limit \$1,000,000.00 each occurrence</p>
<p><u>Umbrella or Excess Liability</u></p>	<p>\$2,000,000.00 - each occurrence \$2,000,000 - aggregate</p>
<p><u>Owner's Protective Liability Insurance:</u> Contractor must obtain an owner's liability insurance policy, at Contractor's expense, naming the District and its employees.</p>	<p>Bodily Injury - \$1,000,000 Each Occurrence Aggregate - \$1,000,000.</p>
<p><u>All Risk Builders Risk</u> against the perils of fire, lightning, 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.</p>	
<p><u>Professional Liability for Construction Manager-At-Risk.</u> 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.</p>	

§ 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

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.

- .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;

- .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

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

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 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.

...

§ 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.

...

§ 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 Contract 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

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.

§ 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, 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;

- .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.~~

§ 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.

- ~~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.]~~

~~§ 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~~

.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

~~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.




**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: _____

SUPERVISOR: 

Approved for presentation to the Board of Education:



305

Interim Superintendent of Schools



MOAKCASEY

PROVEN LEADERS ADVANCING TEXAS SCHOOLS



2023

EFFICIENCY AUDIT

McAllen Independent School District

EFFICIENCY AUDIT FOR MCALLEN INDEPENDENT SCHOOL DISTRICT

October 2023

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SECTION I – EXECUTIVE SUMMARY

MoakCasey, LLC was contracted to conduct an efficiency audit for McAllen Independent School District (“the District”). The purpose of an efficiency audit is to investigate the District’s operations to examine fiscal management, efficiency, and utilization of resources.

The District’s efficiency audit report follows the [guidelines](#) prescribed by the Legislative Budget Board. These guidelines identify the scope and areas of investigation.

Because the District is proposing a maintenance and operations (M&O) tax rate for fiscal year 2024 that exceeds their voter-approval tax rate, House Bill 3 (86th Legislature) generally requires a school district’s board of trustees to conduct an efficiency audit before seeking voter approval to adopt the M&O tax rate. Statute does provide for a two-year exemption from this requirement if all or part of the District is located in an area declared a disaster area by the governor under Chapter 418, Government Code.

The efficiency audit incorporates Texas Education Agency (TEA) Public Education Information Management System (PEIMS) standard data for school years 2017-18 through 2022-23, TEA PEIMS financial data for 2021-22, Texas Academic Performance Reports (TAPR) data for 2021-22, 2022 TEA FIRST Ratings, and 2022 TEA Accountability Ratings.

A summary of audit results are presented in Section II of the report. Section III provides an overview of objectives and approach performed during the efficiency audit. District data on accountability, students, staffing and finances, with peer districts and state comparisons are described in Section IV of this report. Section V describes additional financial, operational, and academic information for the district.

SECTION II – SUMMARY OF AUDIT RESULTS

On November 7, 2023, McAllen Independent School District (“the District”) is holding an election to increase the District’s maintenance and operations (M&O) property tax rate in tax year 2023 or school year 2023-24. M&O taxes are used for the operation of public schools.

Without an election, the District’s M&O tax rate would be \$0.8034. The District is proposing to increase the M&O tax rate by \$0.0414 through a voter approval tax rate election (VATRE) to \$0.8448. The District expects to generate approximately \$3.5 million in M&O tax revenue in the first school year, which represents about 1.9 percent of the District’s current adopted operating budget for the 2023-24 school year.

If the District’s VATRE is successful, the estimated increase in M&O property taxes paid by the owner of a single-family residential property at the current average taxable value of homesteads in the district of \$219,349 will increase by \$40.

	2023 Tax Year (Without VATRE)	2023 Tax Year (With VATRE)
Average Market Value for Single-Family Residence	\$219,349	\$219,349
Average Taxable Value for Single-Family Residence*	\$97,794	\$97,794
M&O Tax Rate	\$0.8034	\$0.8448
M&O Levy	\$786	\$826
Difference		\$40

**Assumes passage of Proposition 4 on the Constitutional Amendment Election to be held November 7th, 2023.*

From tax year 2022, a single-family residential property with a \$200,000 market value would expect a decrease of \$753. Due to ongoing and additional M&O tax rate compression and the increased homestead exemption from \$40,000 to \$100,000, the estimated district M&O property tax bill would be \$1,001 in tax year 2023, compared to \$1,754 in tax year 2022.

The District has also proposed an interest and sinking (I&S) tax rate of \$0.1563 to service its debt. These proposed tax rates are in addition to the tax rates adopted by the city, county, and special taxing districts. The District intends to use the additional tax revenue to implement required school safety initiatives and increase employee salaries by 1 percent to maintain competitive salaries. If the VATRE does not pass, the District would need to potentially reduce staffing through attrition and seek additional opportunities to meet state-mandated school safety requirements.

The District’s 2022-23 M&O tax rate of \$1.0206 was greater than the peer districts’ M&O tax rate and the state average M&O tax rate. Similar to its peer districts, the District’s proposed M&O tax rate includes \$0.1700 Tier II pennies in their proposed 2023-24 M&O tax rate. The state average 2023-24 M&O tax rate is not yet available.

District Name	2022-23 M&O Tax Rate	2023-24 M&O Tax Rate*
MCALLEN ISD	\$1.0206	\$0.8448**
DONNA ISD	\$0.9729	\$0.7575
EDINBURG CISD	\$0.9746	\$0.7892**
HARLINGEN CISD	\$1.0082	\$0.7722
LA JOYA ISD	\$0.9746	\$0.7892**
MISSION CISD	\$0.9429	\$0.7892**
PHARR-SAN JUAN-ALAMO ISD	\$0.9746	\$0.7892**
STATE AVERAGE	\$0.9124	Not available

**2023-24 M&O tax rates for peer districts are as reported by the district or local media.*

***Some of these peer districts are also holding tax ratification elections this November.*

The District has previously held a tax ratification election (TRE) in school year 2018-19 to increase the M&O tax rate by \$0.1150 for a total tax rate of \$1.1550. The District’s TRE passed in September 2018.

The District engaged MoakCasey, LLC in June 2023 to conduct the efficiency audit. Efficiency audits focus on informing voters about the District’s fiscal management, efficiency, utilization of resources, and whether the District has implemented best practices. The information includes data and tools that the State of Texas currently utilizes to measure school district efficiency.

Below is key information about the District:

- The District’s total operating revenue for the most recent school year totaled \$16,808 per student, while its peer districts average and State average were \$14,944 per student and \$12,383 per student, respectively.
- The District’s total operating expenditures for the most recent year totaled \$14,238, while its peer districts average was \$14,422 per student. The State’s total average operating expenditures totaled \$11,874 per student.

- The District has earned a Superior Rating for the School Financial Integrity Rating System of Texas (FIRST) for the 2022-23 school year and for the previous five years.
- The Texas Education Agency reviews and tracks the performance of both school districts and individual schools with the Texas A-F Accountability System. The District received the highest accountability rating possible (A) along with 2 of their 6 peer districts. The District had the highest overall score of 95 among the peer districts.

District Name	Rating	Overall Score
MCALLEN ISD	A	95
DONNA ISD	B	86
EDINBURG CISD	A	91
HARLINGEN CISD	B	89
LA JOYA ISD	B	88
MISSION CISD	B	87
PHARR-SAN JUAN-ALAMO ISD	A	91

Source: 2022 TEA Accountability Ratings

The details by campuses are shown below:

Grade	Number of Campuses
A	19
B	10
C	0
D	0
F	0
Not Rated	1
Not Rated (SB 1365)	0

Source: 2022 TEA Accountability Ratings

Additional details and audit results are included in Section IV.

SECTION III – OBJECTIVES AND APPROACH

The objective of this efficiency audit is to assess the District’s fiscal management, efficiency, and utilization of resources, and whether the District has implemented best practices utilized by Texas school districts.

Approach

To complete the efficiency audit, MoakCasey, LLC performed the following procedures:

1. Selected 5 to 10 peer districts, developed a simple average for peer districts, and used the same peer district group throughout the audit.
2. Reported on the overall 2022 accountability rating (A-to-F and the corresponding scale score of 1 to 100).
3. Compared the District’s peer districts’ average 2022 accountability rating and listed the following District’s campus information:
 - a. Accountability rating count for each campus level within the district.
 - b. Names of the campuses that received an F accountability rating.
 - c. Campuses that are required to implement a campus turnaround plan.
4. Reported on the District’s School 2022 FIRST rating. For a rating of less than A, listed the indicators not met.
5. Reported on student characteristics for the District, its peer districts, and the state average using 2021-22 and 2022-23 data including:
 - a. Total Students
 - b. Economically Disadvantaged
 - c. English Learners
 - d. Special Education
 - e. Bilingual/ESL Education
 - f. Career and Technical Education
6. Reported on the 2021-22 attendance rate for the District, its peer districts, and the state average.
7. Reported on the five-year enrollment for the District, including the most recent school year and four years prior, the average annual percentage change based on the previous five years, and the projected enrollment for the 2023-24 school year.
8. Reported on the following indicators related to the District’s revenue, it’s peer district’ average, and the state average, and explained any significant variances using 2021-22 data.

- a. Local M&O Tax (Retained)(without debt service and recapture)
 - b. State
 - c. Federal
 - d. Other local and intermediate
 - e. Total revenue
9. Reported on the following indicators related to the District’s expenditures, its peer districts’ average, and the state average, and explained significant variances from the peer districts’ average, if any, using 2021-22 data.
- a. Instruction
 - b. Instructional resources and media
 - c. Curriculum and staff development
 - d. Instructional leadership
 - e. School leadership
 - f. Guidance counseling services
 - g. Social work services
 - h. Health services
 - i. Transportation
 - j. Food service operation
 - k. Extracurricular
 - l. General administration
 - m. Plant maintenance and operations
 - n. Security and monitoring services
 - o. Data processing services
 - p. Community services
 - q. Total operating expenditures
10. Reported on the following indicators for payroll and select District salary expenditures compared to its peer districts’ average and the state average and explained any significant variances from the peer districts’ average in any category, using 2021-22 and 2022-23 data.
- a. Payroll as a percentage of all funds
 - b. Average teacher salary
 - c. Average administrative salary
 - d. Superintendent salary
11. Reported on the General Fund operating fund balance, excluding debt service and capital outlay, for the past five years and per student for the District and its peer districts, using 2021-22 and 2022-23 data. Analyzed unassigned balance per student and as a percentage of three-month operating expenditures and explained any significant variances.

12. Reported the District's allocation of staff, and student-to-teacher and student-to-total staff ratios for the District, its peer districts, and the state average for the 2022-23 school year. The following staff categories were used:
 - a. Teaching
 - b. Support
 - c. Administrative
 - d. Paraprofessional
 - e. Auxiliary
 - f. Students per total staff
 - g. Students per teaching staff
13. Reported on the District's teacher turnover rate, as well as its peer districts and the state's average for the 2021-22 school year.
14. Reported on the following programs offered by the District, including the number of students served, percentage of enrolled students served, program budget, program budget as a percentage of the District's budget, total staff for the program, and student-to-staff ratio for the program, using data from the 2021-22 and 2022-23 school years.
 - a. Special Education
 - b. Bilingual Education
 - c. Migrant Programs
 - d. Gifted and Talented Programs
 - e. Career and Technical Education
 - f. Athletics and Extracurricular Activities
 - g. Alternative Education Program/Disciplinary Alternative Education Program
 - h. Juvenile Justice Alternative Education Program
15. Described how the District maximizes available resources from state sources and regional education service centers to develop or implement programs or deliver services.
16. Report on the District's annual external audit report's independent auditor's opinion as required by *Government Auditing Standards*.
17. Explained the basis of the TEA assigning the District a financial-related monitoring/oversight role during the past three years, if applicable.
18. In regards to the District's budget process, provided a response to each of the following questions:
 - a. Does the District's budget planning process include projections for enrollment and staffing?
 - b. Does the District's budget process include monthly and quarterly reviews to determine the status of annual spending?
 - c. Does the District use cost allocation procedures to determine campus budgets and cost centers?
 - d. Does the District analyze educational costs and student needs to determine campus budgets?

19. Provided a description of the District’s self-funded program, if any, and analyzed whether program revenues are sufficient to cover program costs.
20. Reported whether the District administrators are evaluated annually and, if so, explained how the results inform District operations.
21. In regards to the District’s compensation system, provided a response to the following questions:
 - a. Does the District use salary bonuses or merit pay systems? If yes, explain the performance-based systems and the factors used.
 - b. Do the District’s salary ranges include minimum, midpoint, and maximum increments to promote compensation equity based on the employee’s education, experience, and other relevant factors?
 - c. Does the District periodically adjust its compensation structure using verifiable salary survey information, benchmarking, and comparable salary data?
 - d. Has the District made any internal equity and/or market adjustments to salaries within the past two years?
22. In regards to planning, provided a response for each of the following questions:
 - a. Does the District develop a District Improvement Plan (DIP) annually?
 - b. Do all campuses in the District develop a Campus Improvement Plan (CIP) annually?
 - c. Does the District have an active and current facilities master plan? If yes, does the District consider these factors to inform the plan:
 - i. Does the District use enrollment projections?
 - ii. Does the District analyze facility capacity?
 - iii. Does the District evaluate facility condition?
 - d. Does the District have an active and current energy management plan?
 - e. Does the District maintain a clearly defined staffing formula for staff in maintenance, custodial, food service, and transportation?
23. In regards to District academic information, provided a response for each of the following questions:
 - a. Does the District have a teacher mentoring program?
 - b. Are decisions to adopt new programs or discontinue existing programs made based on quantifiable data and research?
 - c. When adopting new programs, does the District define expected results?
 - d. Does the District analyze student test results at the district and/or campus level to design, implement and/or monitor the use of curriculum and instructional programs?
 - e. Does the District modify programs, plan staff development opportunities, or evaluate staff based on analyses of student test results.

SECTION IV – DISTRICT DATA ON ACCOUNTABILITY, STUDENTS, STAFFING AND FINANCES, WITH PEER AND STATE COMPARISONS

1. Peer Districts

MoakCasey, LLC analyzed several factors among districts statewide to select and provide 15 peer districts for the McAllen Independent School District (“the District”). The peer districts were selected based on how they compared to the District in terms of enrollment, 5-year growth, average daily attendance (ADA) to weighted average daily attendance (WADA) ratio, Tier II M&O tax rate, geographic proximity, and National Center for Education Statistics (NCES) type. The district selected 6 of the 15 peer districts, as shown below.

Figure 1. Peer Districts

108902	DONNA ISD
108904	EDINBURG CISD
031903	HARLINGEN CISD
108912	LA JOYA ISD
108908	MISSION CISD
108909	PHARR-SAN JUAN-ALAMO ISD

2. Accountability Rating

The Texas Education Agency (TEA) annually assigns an A-to-F rating and a corresponding scaled score (1 to 100) to each district and campus based on student assessment results and other accountability measures. Due to the COVID-19 pandemic, the TEA did not issue school year 2019-20 ratings.

The District received the highest accountability rating possible (A) along with 2 of their 6 peer districts. The District had the highest overall score of 95. The peer district average score was 89.

Figure 2. Accountability Rating Comparison

	District Rating (A-F)	District Score (1-100)	Peer Districts Average Score (1-100)
Rating/Score	A	95	89

Source: 2022 TEA Accountability Ratings

The District has 30 campuses. Two-thirds of the campuses in the District received an A rating and the remaining third received a B rating. One campus was not rated. There were no districts that received an F accountability rating. There were no districts that were required to implement a campus turnaround plan.

Figure 3. Accountability Rating by Campus Level

	Elementary/ Secondary	Elementary	Middle School	High School
A	0	14	3	2
B	0	4	3	3
C	0	0	0	0
D	0	0	0	0
F	0	0	0	0
Not Rated	1	0	0	0
Not Rated: SB 1365	0	0	0	0

Source: 2022 TEA Accountability Ratings

3. Financial Rating

The State of Texas’ school financial accountability rating system, known as the School Financial Integrity Rating System of Texas (FIRST), ensures that Texas public schools are held accountable for the quality of their financial management practices and that they improve those practices. The system is designed to encourage Texas public schools to better manage their financial resources to provide the maximum allocation possible for direct instructional purposes.

The School Financial Integrity Rating System of Texas (FIRST) holds school districts accountable for the quality of their financial management practices. The rating is based on five critical indicators as well as minimum number of points for an additional ten indicators. Beginning with 2015-16 Rating (based on the 2014-15 financial data), the Texas Education Agency moved from a “Pass/Fail” system and began assigning a letter rating. The ratings and corresponding points are shown below:

Rating	Points
A = Superior	90-100
B = Above Standard	80-89
C = Meet Standards	60-79
F = Substandard Achievement	Less than 60

The District has earned a Superior rating of A from the FIRST for the 2021-22 school year. The District has also received a Superior rating in the previous four school years.

Figure 4. FIRST Rating	District Rating (A-F)
Rating	A

Source: 2022 TEA FIRST Ratings

4. Student Characteristics

Every student is served differently in public schools based on their unique characteristics. Such data is captured by the Texas Education Agency on an annual basis. Figure 5 provides student counts for five select student characteristics, which are described below:

- Economically Disadvantaged – This term, while not explicitly defined in statute, can be used interchangeably with educationally disadvantaged, according to the Texas Education Agency (TEA). Educationally disadvantaged is defined by the Texas Education Code (TEC) §5.001(4) as a student who is “eligible to participate in the national free or reduced-price lunch program”.
- English Learners – TEC §29.052 refers to Emergency Bilingual students as those who are in the process of acquiring English and have a primary language other than English as Limited English Proficient (LEP). TEA guidance states that the term English Learners can be used interchangeably with Emergent Bilingual.
- Special Education – Federal and state law both offer definitions of special education students. Federal regulations define a “child with a disability” under 34 CFR, §300.8(a). State statute defines special education eligibility under TEC §29.003 or the Texas Administrative Code §89.1040.
- Bilingual/ESL Education – The Texas Education Code §29.055 describes students enrolled in a bilingual education program as those students in a “full-time program of dual-language instruction that provides for learning basic skills in the primary language of the students enrolled in the program and for carefully structured and sequenced mastery of the English language skills.” Students enrolled in an English as a Second Language (ESL) program receive “intensive instruction in English from teachers trained in recognizing and dealing with language differences.”
- Career and Technical Education – Students enrolled in State-approved Career and Technology Education (CTE) programs. Specific eligibility criteria for CTE are included in section 5 of the Student Attendance Accounting Handbook.

The District’s percentage of students for each of the five categories above exceed the state average for the 2022-23 school year.

The District classified 72.5 percent of their total student population count as economically disadvantaged. The District’s peer district average show that 88.2 percent of students were characterized as economically disadvantaged. Both the District’s and their peer districts’ economically disadvantaged student population are notably higher than the state average of 60.2 percent.

English Learner students at the District equal 36.0 percent of the student population, which is less than the peer district average and greater than the state average percentage.

Special Education students at the District equal 14.3 percent of the student population, which is greater than the peer district average of 10.2% and the state average of 10.7 percent.

Bilingual/ESL Education students at the District equal 36.6 percent of the student population, which is less than the peer district average and greater than the state average percentage.

Career and Technical Education students in the District equal 33.6 percent of the student population, which is greater than the peer district average and the state average percentage.

Figure 5. Selected Student Characteristics

	Total Student Population Count	Percentage of Student Population	Peer Districts Average Percentage	State Average Percentage*
Total Students	20,399	100.0%	N/A	N/A
Economically Disadvantaged	14,787	72.5%	88.2%	60.2%
English Learners	7,338	36.0%	42.0%	20.3%
Special Education	2,925	14.3%	10.2%	10.7%
Bilingual/ESL Education	7,463	36.6%	42.4%	18.2%
Career & Technical Education**	6,814	33.6%	25.1%	25.8%

Source: 2022-23 TEA PEIMS Standard Reports

*State Average includes charter students.

**Career & Technology is membership from 2021-22 TAPR

5. Attendance Rate

The District had an attendance rate of 97.3 percent in the 2020-21 school year. This was 2.0 percent above both their peer district average of 95.3 percent and 2.3 percent above the state average of 95.0 percent.

Figure 6. Attendance Rate

	District Total	Peer Districts Average	State Average
Attendance Rate	97.3%	95.3%	95.0%

Source: 2021-22 TEA TAPR

6. Five-Year Enrollment

Figure 7 displays the District’s enrollment for the last five years. The District’s average annual percentage change is a decrease of 2.8 percent. From 2018-19 to 2022-23, the District’s enrollment has decreased by 2,476 students. Based off the 2023-24 enrollment projection, the District is expected to have a continued decrease in enrollment.

Figure 7. 5-Year Enrollment

2022-23	20,399
2021-22	20,410
2020-21	21,602
2019-20	22,427
2018-19	22,875
Average Annual percentage change	-2.8%
2023-24 Projection*	19,827

Source: 2017-18 through 2022-23 TEA PEIMS Standard Reports

*District provided information

8. District Revenue

Figure 8 below presents the district tax revenue for the 2021-22 school year for the District, the peer district average, and the state average.

The District receives \$16,808 in total revenue per student, which exceeds the peer district average of \$14,944 and the state average of \$12,383. The district receives more local net M&O tax revenue per student at \$4,269 than the peer district average of \$2,010 and less than the state average of \$5,308. As a result, the District relies on significantly less state revenue than their peer district average and more than the state average. The District also has a greater federal revenue per student amount than the peer district average and state average.

Figure 8. District Tax Revenue

	DISTRICT		PEER DISTRICTS AVERAGE		STATE AVERAGE*	
	Per Student	% of Total	Per Student	% of Total	Per Student	% of Total
Local Net M&O Tax Revenue	\$4,269	25.4%	\$2,010	13.5%	\$5,308	42.9%
State Revenue	\$5,791	34.5%	\$7,946	53.2%	\$4,070	32.9%
Federal Revenue	\$6,087	36.2%	\$4,787	32.0%	\$2,599	21.0%
Other Local / Intermediate Revenue	\$661	3.9%	\$200	1.3%	\$406	3.3%
TOTAL REVENUE	\$16,808	100%	\$14,944	100%	\$12,383	100.0%

Source: 2021-22 TEA PEIMS Standard Reports

*State Average does not include charter districts.

District Comment: The District is proposing a total tax rate of 1.0011 per \$100 valuation with a VATRE, a decrease of .0953 per \$100 valuation, compared to tax year 2022. The District received ESSER federal funding which differs District to District. Local revenues were higher in school year 2021-2022 due to a one-time settlement payment which will not be received in future years.

9. District Expenditures

The District spends \$14,238 in total operating expenditures per student, which is greater than the peer district average of \$14,422 and state average of \$11,874. The District's largest expenditures per student are in Instruction, Plant Maintenance & Operations, and Food Service.

Figure 9. Actual Operating Expenditures

	DISTRICT		PEER DISTRICTS AVERAGE		STATE AVERAGE*	
	Per Student	% of Total	Per Student	% of Total	Per Student	% of Total
Instruction	\$7,678	53.9%	\$7,983	55.4%	\$6,675	56.2%
Instructional Resources & Media	\$181	1.3%	\$252	1.7%	\$126	1.1%
Curriculum & Staff Development	\$471	3.3%	\$326	2.3%	\$284	2.4%
Instructional Leadership	\$215	1.5%	\$279	1.9%	\$204	1.7%
School Leadership	\$714	5.0%	\$687	4.8%	\$655	5.5%
Guidance Counseling	\$655	4.6%	\$566	3.9%	\$473	4.0%
Social Work	\$117	0.8%	\$94	0.7%	\$43	0.4%
Health	\$174	1.2%	\$206	1.4%	\$143	1.2%
Transportation	\$256	1.8%	\$421	2.9%	\$362	3.1%
Food Service Operation	\$924	6.5%	\$903	6.3%	\$596	5.0%
Extracurricular	\$506	3.6%	\$569	3.9%	\$370	3.1%
General Administration	\$409	2.9%	\$358	2.5%	\$364	3.1%
Plant Maintenance & Operations	\$1,193	8.4%	\$1,357	9.4%	\$1,142	9.6%
Security & Monitoring	\$257	1.8%	\$225	1.6%	\$133	1.1%
Data Processing	\$405	2.8%	\$118	0.8%	\$243	2.0%
Community	\$82	0.6%	\$78	0.5%	\$60	0.5%
TOTAL Operating Expenditures	\$14,238	100.0%	\$14,422	100.0%	\$11,874	100.0%

Source: 2021-22 TEA PEIMS Financial Reports

*State Average does not include charter districts.

10. District Payroll Expenditures Summary

Figure 10 presents the payroll expenditure summary for the District, the peer district average, and the state average.

The average base teacher salary at the District is less than both their peer district average and the state average. The average administrative base salary and superintendent salary at the District is less than the peer district average and greater than the state average. Data for the state average of superintendent base salary is comprised of school districts that have enrollments ranging from 24 students to 194,607 students in the 2021-22 school year.

Despite the District providing lower average salaries than the peer district average and state average, the District allocates more to payroll as a percentage of all operating expenses.

Figure 10. Payroll Expenditure Summary

	District	Peer Districts Average	State Average
Payroll as a Percentage of All Operating Expenditures	81.4%	80.0%	78.8%*
Average Teacher Base Salary	\$59,431	\$62,203	\$60,716
Average Administrative Base Salary	\$83,422	\$96,654	\$92,683
Superintendent Base Salary	\$267,300	\$293,662	\$165,700

Source: 2022-23 TEA PEIMS Standard Report and 2021-22 TEA PEIMS Actual Financial Reports

*Only State Average for payroll expenditures does not include charter districts. Staffing salary does include charter districts.

11. Fund Balance

The General Fund is the operating fund in a governmental entity. Fund balance represents the current resources/assets available to the government less any current obligations/liabilities. Within fund balance there are five categories: non-spendable, restricted, committed, assigned and unassigned. The categories are defined by Governmental Accounting Standards Board (GASB) Statement No. 54: Fund Balance Reporting and Governmental Fund Type Definitions:

- **Non-spendable** fund balance includes funds that cannot be spent because they are not in spendable form, or legally required by contract for a specific future use.
- **Restricted** fund balance includes amounts that can only be spent for specific purposes stipulated by enabling legislation, creditors, grantors, contributors, or other governmental laws and regulations.
- **Committed** fund balance includes amounts that can be used only for the specific purposes determined by constraints imposed by the district's board of trustees.
- **Assigned** fund balance is fund balance is intended to be used by the government for specific purposes but do not meet the criteria to be classified as restricted or committed.
- **Unassigned** fund balance is the residual classification for the government's general fund and includes all spendable amounts not contained in the other classifications above.

The Texas Education Agency evaluates unassigned fund balance by comparing it to three-months (25%) of annual operating expenditures or 75 days of operational expenditures. If the District does not meet goal of three-months, the percentage is shown as less than 100%. Amounts that exceed three months are reflected as percentage greater than 100%.

The District's unassigned fund balance for the 2021-22 school year totaled \$56.4 million compared to its three-month operating expenditures of \$47.5 million. Recently, the Texas Education Agency and Commissioner Morath have endorsed a strategy to avoid a "fiscal cliff" when the Elementary and Secondary School Emergency Relief (ESSER) grant period ends. Districts can use ESSER funds to supplant local expenditures, build up fund balance, and then draw down those local funds over a longer period than what is allowed under the ESSER grants. However, it is recommended that the fund balance be used for emergencies related to an unforeseen event and not be relied upon for on-going operational expenditures.

Figure 11. General Fund Balance

	Unassigned Fund Balance per Student	Unassigned Fund Balance as Percentage of 3-month Operating Expenditures	Unassigned Fund Balance Amount	3-Months of Operating Expenditures	Shortfall in 3-month Goal
2021-22	\$2,764	118.9%	\$56,415,900	\$47,465,380	\$0
2020-21	\$2,593	96.4%	\$56,020,075	\$58,119,849	(\$2,099,774)
2019-20	\$2,509	99.8%	\$56,262,851	\$56,379,572	(\$116,721)
2018-19	\$2,382	102.4%	\$54,487,758	\$53,195,153	\$0
2017-18	\$2,284	101.0%	\$54,187,604	\$53,664,632	\$0

Source: 2017-18 through 2021-22 TEA PEIMS Standard Report and 2017-18 through 2021-22 TEA PEIMS Actual Financial Reports

District Comment: The District’s unassigned fund balance has stayed level each year. The Texas Education Agency (TEA) has guidance related to district savings in the Financial Integrity Ratings System of Texas (FIRST). Indicator 6 requires districts to have less than a 25% decline in fund balance over three years or 75 days operating expenditures maintained in fund balance. The district uses the 2.5 months requirement to comply.

12. District Staffing Levels

Figure 12 presents the staff ratios for the District, peer district average, and state average. The District’s teaching staffing ratios is equivalent to the peer district staffing ratio of 44.7 percent. The District’s staffing ratio for support staff, administrative staff, and paraprofessional staff is percent greater than the peer district average. The District’s staffing ratio for auxiliary staff is 5 percent less than the peer district average. The state average ratio of teaching staff and administrative staff exceeds the District’s staffing ratios.

The District had less students per total staff than the peer districts average and the state average. The students per teaching staff at the District is also less than the peer district average and the state average.

Figure 12. Staff Ratio Comparisons

	District	Peer Districts Average	State Average*
<u>% of Total Staff</u>			
Teaching Staff	44.7%	44.7%	48.6%
Support Staff	12.2%	10.2%	11.0%
Administrative Staff	4.3%	3.4%	4.6%
Paraprofessional Staff	12.4%	10.4%	11.3%
Auxiliary Staff	26.4%	31.4%	24.6%
Students per Total Staff	6.1	6.5	7.2
Students per Teaching Staff	13.6	14.5	14.8

Source: 2022-23 TEA PEIMS Standard Report

*State Average includes charter students.

13. Teacher Turnover Rates

The District has a teacher turnover rate of 14.1 percent, which is greater than the peer district average of 9.9 percent and less than the state average of 17.7 percent.

Figure 13. Teacher Turnover Rate

	District	Peer Districts Average	State Average
Teachers	14.2%	9.9%	17.7%

Source: 2021-22 TEA TAPR

District Comment: The passing of the VATRE will allow the District to be more competitive with staff compensation.

14. Special Programs

Figure 14. Special Program Characteristics

	Number of Students Served	Percentage of Enrolled Students Served	Program Budget per Student Served*	Program Budget as a Percentage of District Budget*	Total Staff for Program*	Students Per Total Staff for Program
Special Education	2,925	14.3%	\$10,873	14.3%	538.3	0.2
Bilingual Education	3,707	18.2%	\$1,266	2.1%	50.0	0.0
Migrant Programs*	371	1.8%	\$3,836	0.6%	7.0	0.0
Gifted and Talented	2,347	11.5%	\$357	0.4%	7.0	0.0
Career and Technical*	6,814	33.6%	\$1,522	4.7%	97.4	0.0
Athletics and Extracurricular*	14,338	70.7%	\$673	4.3%	15.0	0.0
Alternative Education/Disciplinary Alternative Education*	55	0.3%	\$38,364	0.9%	23.0	0.4
Juvenile Justice Alternative Education*	3	0.0%	\$13,333	0.0%	0.0	0.0

Source: 2022-23 TEA PEIMS Standard Report and 2021-22 TEA TAPR

* Information provided by school district.

SECTION V – ADDITIONAL FINANCIAL, OPERATIONAL, AND ACADEMIC INFORMATION

DISTRICT FINANCIAL INFORMATION

15. State and Regional Resources

The District maximizes available resources from state sources and regional service centers to develop and implement programs or deliver services.

The District uses several staff sources from the Texas Education Agency. Additionally, the District utilizes the resources from the Region 1 Education Service Center, including: human resources updates, seeking out candidates for job opportunities, finance updates and training, budgeting tools, purchasing guidance and training, staff development tracking, teacher and staff training, grant opportunities, and much more.

16. Reporting

The District's financial statements have been audited by Burton, McCumber & Longoria, LLP for the year ended June 30, 2022. The goal of the independent audit was to provide reasonable assurance that the financial statements of the District for the fiscal year ended June 30, 2022, are free of material misstatement. The independent auditor concluded, based upon the audit, that there was a reasonable basis for rendering an opinion that the District's financial statements for the fiscal year ended June 30, 2022, are in accordance with the Generally Accepted Accounting Principles (GAAP).

17. Oversight

The Texas Education Agency has not assigned the District a financial-related monitoring/oversight role in the last three years.

18. Budget Process

Figure 15. Budget Process	Y/N/NA
Does the district’s budget planning process include projections for enrollment and staffing?	Yes
Does the district’s budget process include monthly and quarterly reviews to determine the status of annual spending?	Yes
Does the district use cost allocation procedures to determine campus budgets and cost centers?	Yes
Does the district analyze educational costs and student needs to determine campus budgets?	Yes

The District evaluates enrollment projections to determine the estimated state revenues through the Foundation School Program. The District also uses a staffing salary projection to determine salary raises, if any, as well as any positions needed, which is processed through a position management system.

The District’s submits a monthly financial analysis to the District’s Board of Trustees. The financial analysis compares the previous year’s month to current year’s month of budgeted and actual revenues and expenditures. The District reviews the report and provides the Board with any significant changes that have occurred.

The District bases campus budgets on campus enrollment a set per student dollar amount for middle schools, and high schools separately. The per student allocation is reviewed annually based on the outcome of the previous year’s outcome.

The District annually analyzes student enrollment, needs, and educational costs to determine how local funds are allocated to each campuses. The District uses a formula-based system that considers the number of special population students (i.e., economically disadvantaged, bilingual, special education, etc.), the needs of that population, campus academic data, and campus improvement plan needs to determine campus allocations.

19. Self-funded Programs

The District provides a self-funded health insurance, workers' compensation, and unemployment compensation program.

Revenues from the health insurance program and the worker's compensation programs were not sufficient to cover program costs in the 2022-23 school year. This fund maintains a positive fund balance which helped cover the necessary expenses for the fiscal year. The District is holding discussions with the District's Executive Leadership Team as well as the Board of Trustees to increase employer/employee health plan contributions during the yearly budgetary process to consider adjustments to the rates. Adjustments are made to rates based on historical trends and projected estimates.

The District's unemployment compensation program revenues in the 2022-23 school year were sufficient to cover program costs.

DISTRICT OPERATIONAL INFORMATION

20. Staffing

All District administrators are evaluated annually. The evaluations include meetings with their supervisors to discuss progress toward districts goals, concerns, and to share ideas for improvement for the employee as well as the district. Information from the evaluations are used by the District’s Executive Leadership Team to guide any needed changes in operations and/or systems.

21. Compensation System

Figure 16. Compensation System	Y/N/NA
Does the district use salary bonuses or merit pay systems? If yes, explain the performance-based systems and the factors used.	No
Do the district’s salary ranges include minimum, midpoint, and maximum increments to promote compensation equity based on the employee’s education, experience, and other relevant factors?	Yes
Does the district periodically adjust its compensation structure using verifiable salary survey information, benchmarking, and comparable salary data?	Yes
Has the district made any internal equity and/or market adjustments to salaries within the past two years?	Yes

The District does not provide bonuses or merit pay systems.

Salary ranges at the District include minimum, midpoint, and maximum increments to promote compensation equity based on the employee’s education, experience, and other relevant factors.

The District annually adjusts its compensation structure with assistance from the Texas Association of School Boards (TASB). TASB assist the District in salary data reviews and compares them with similar districts or the market rate to make recommendations based on the results. The District then makes adjustments within the constraints of the budget and recommendations for Board approval.

In the past two years, the District has made salary adjustments based on recommendations from TASB.

District Comment: The District is in the process of collecting data for the newly created Teacher Incentive Allotment (TIA) by the Texas Legislature as part of HB3. This plan will provide a realistic pathway for top teachers to earn a higher salary and help retain highly effective teachers at traditionally hard-to-staff schools.

22. Planning

Figure 17. Operational Information	Y/N/NA
Does the district develop a District Improvement Plan (DIP) annually?	Yes
Do all campuses in the district develop a Campus Improvement Plan (CIP) annually?	Yes
Does the district have an active and current facilities master plan? If yes, does the district consider these factors to inform the plan:	Yes
Does the district use enrollment projections?	Yes
Does the district analyze facility capacity?	Yes
Does the district evaluate facility condition?	Yes
Does the district have an active and current energy management plan?	Yes
Does the district maintain a clearly defined staffing formula for staff in maintenance, custodial, food service, and transportation?	Yes

The District’s District Improvement Plan (DIP) is created annually as a team effort. The DIP includes a Comprehensive Needs Assessment that allows the District to identify their strengths and improvement areas. The DIP also summarizes four principal areas: demographics, student achievement, processes and programs, and perceptions. All districts stakeholders are included in the process and information is shared through the District's Planning and Sharing Committee, Leaders in Education Assembly for the District.

All campuses in the district develop a Campus Improvement Plan (CIP) annually. The plan’s progress is monitored throughout the school year and is evaluated at the end of the year to streamline district efforts and maintain a system of accountability.

The District uses a facilities master plan that is frequently updated. Enrollment counts are provided weekly per campus to help the District identify the facilities in shortage or excess of classrooms. Some schools are at capacity and enrollment is monitored closely as to assure that student needs and spacing situations are identified and handled in a timely manner. The District’s facilities master plan includes maximum occupancy per campus compared to our enrollment counts. The District has identified facilities that are in need of expansion and those that have excess capacity. The District collaborates with parents to try to redistribute to other available campuses as well as master schedule planning. Additionally, the District evaluates facility condition through a Facility Condition Index (FCI), which is performed for building. The Districts uses the FCI to guide the needs of each facility.

The District's energy management plan consists of start and end times for HVAC systems, monitors ambient temperature, and turns on equipment based on requests for weekend use.

The District maintains a clearly developed compensation plan with staffing formula for staff in maintenance, custodial, food service, and transportation. The staffing formula for custodial and child nutrition staffing is clearly defined in our staffing guidelines for elementary, middle school and high school. The District bases transportation staffing on current requirements of the district, which fluctuates based on student enrollment and needs. Maintenance staffing at the District is based on square footage of the campus and district needs, which are adjusted accordingly.

DISTRICT ACADEMIC INFORMATION

23. Programs

Figure 18. Academic Information	Y/N/NA
Does the district have a teacher mentoring program?	Yes
Are decisions to adopt new programs or discontinue existing programs made based on quantifiable data and research?	Yes
When adopting new programs, does the district define expected results?	Yes
Does the district analyze student test results at the district and/or campus level to design, implement and/or monitor the use of curriculum and instructional programs?	Yes
Does the district modify programs, plan staff development opportunities, or evaluate staff based on analyses of student test results?	Yes

The District provides a mentor to all new teachers in their first year. The District utilizes Performance-based Academic Coaching Teams (PACT) mentoring provided by the Texas Education Agency and the Texas Tech University to train mentors and guide them throughout the school year. The PACT website also provides resources for new teachers.

The District uses quantifiable data and research to measure the effectiveness of all instructional programs using their Value-Added Progress Monitoring system to determine the impact of instructional resources on student growth and determine whether programs are continued or discontinued. The District uses needs assessment data found in CIP and DIP to make determinations regarding program purchases. All purchases are vetted to ensure alignment to state and grade level standards.

Before adopting a new program, the District defines expected results through the District’s use of CIPs and DIPs. The plans establish goals related to student learning.

The District analyzes student test results at the district and/or campus level to design, implement and/or monitor the use of curriculum and instructional programs. The District uses a Value-Added Progress Monitoring system to determine program effectiveness.

The District evaluates teaching staff based on analyses of student test results through the state-approved Texas Teacher Evaluation and Support System (T-TESS) appraisal system for teachers. The T-TESS includes an evaluation on student growth as evidenced through the state assessment data.

APPENDIX A – Data Sources

Figure 2. Accountability Rating Comparison

Source: 2022 TEA Ratings

Link: <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/2022-accountability-rating-system>

Figure 3. Accountability Ratings by Campus Level

Source: 2022 TEA Ratings

Link: <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/2022-accountability-rating-system>

Figure 4. School FIRST Rating

Source: 2022 TEA FIRST Ratings

Link: <https://tealprod.tea.state.tx.us/First/forms/Main.aspx>

Figure 5. Selected Student Characteristics

Source: 2022-23 TEA PEIMS Standard Reports

Link: <https://rptsvr1.tea.texas.gov/adhocrpt/adspr.html>;
<https://rptsvr1.tea.texas.gov/perfreport/tapr/2022/download/DownloadData.html>

Note: Beginning in 2020-21, Career & Tech is not available. Career & Tech 2021-22 membership from TAPR (DPETVOCC, Total membership - DPETALLC) is used. State totals include charter students.

Figure 6. Attendance Rate

Source: 2021-22 TEA TAPR

Link: <https://rptsvr1.tea.texas.gov/perfreport/tapr/2022/download/DownloadData.html>

Note: DA0AT21R, DA0AT21N, DA0AT21D; State average is from the State Report

Figure 7. 5-Year Enrollment

Source: 2017-18 through 2022-23 PEIMS Standard Reports

Link: <https://rptsvr1.tea.texas.gov/adhocrpt/adspr.html>

Note: Average Annual Percent Change is the average of each year's annual change year over year.

Figure 8. District Tax Revenue

Source: 2021-22 TEA PEIMS Financial Reports

Link: <https://tea.texas.gov/finance-and-grants/state-funding/state-funding-reports-and-data/peims-financial-data-downloads>

Note: State Totals per Student exclude charter districts. Per student amounts are per enrolled student (not membership).

Item	FIELD Name
Local M&O Tax (Retained)	ALL FUNDS-LOCAL TAX REVENUE FROM M&O (excluding recapture)
State (Less TRS On-Behalf)	ALL FUNDS-STATE REVENUE (excludes TRS on-behalf)
Federal	ALL FUNDS-FEDERAL REVENUE
Other Local and Intermediate	ALL FUNDS-OTHER LOCAL & INTERMEDIATE REVENUE
TOTAL Revenue	Sum of Above

Figure 9. District Actual Operating Expenditures

Source: 2021-22 TEA PEIMS Financial Reports

Link: <https://tea.texas.gov/finance-and-grants/state-funding/state-funding-reports-and-data/peims-financial-data-downloads>

Note: State Totals per Student exclude charter districts. Per student amounts are per enrolled student (not membership).

Item	PEIMS Function Code(s)	Field Name
Instruction	11, 95	ALL FUNDS-INSTRUCTION + TRANSFER EXPEND-FCT11,95
Instructional Resources & Media	12	ALL FUNDS-INSTRUC RESOURCE MEDIA SERVICE EXP, FCT12
Curriculum & Staff Development	13	ALL FUNDS-CURRICULUM/STAFF DEVELOPMENT EXP, FCT13
Instructional Leadership	21	ALL FUNDS-INSTRUC LEADERSHIP EXPEND, FCT21
School Leadership	23	ALL FUNDS-CAMPUS ADMINISTRATION EXPEND, FCT23
Guidance Counseling	31	ALL FUNDS-GUIDANCE & COUNSELING SERVICES EXP, FCT31
Social Work	32	ALL FUNDS-SOCIAL WORK SERVICES EXP, FCT32
Health	33	ALL FUNDS-HEALTH SERVICES EXP, FCT33
Transportation	34	ALL FUNDS-TRANSPORTATION EXPENDITURES, FCT34
Food Service Operation	35	ALL FUNDS-FOOD SERVICE EXPENDITURES, FCT35
Extracurricular	36	ALL FUNDS-EXTRACURRICULAR EXPENDITURES, FCT36
General Administration	41, 92	ALL FUNDS-GENERAL ADMINISTRAT EXPEND-FCT41,92
Plant Maintenance & Operations	51	ALL FUNDS-PLANT MAINTENANCE/OPERA EXPEND, FCT51
Security & Monitoring	52	ALL FUNDS-SECURITY/MONITORING SERVICE EXPEND, FCT52
Data Processing	53	ALL FUNDS-DATA PROCESSING SERVICES EXPEND, FCT53
Community	61	ALL FUNDS-COMMUNITY SERVICES, FCT61

Figure 10. Payroll Expenditure Summary

Source: 2022-23 TEA PEIMS Standard Report and 2021-22 TEA PEIMS Actual Financial Reports
 Link: Staff FTE Counts and Salary Reports - <https://rptsvr1.tea.texas.gov/adhocrpt/adpeb.html>
 Payroll Expenditure - <https://tea.texas.gov/finance-and-grants/state-funding/state-funding-reports-and-data/peims-financial-data-downloads>
 Note: Average Base Salary includes charter districts; Payroll expenditure state totals exclude charter districts.

Item	FIELD Name
Operating Expenditures	ALL FUNDS-TOTAL OPERATING EXPENDITURES BY OBJ
Payroll	ALL FUNDS-TOTAL PAYROLL EXPENDITURES

Figure 11. General Fund Balance

Source: 2017-18 through 2021-22 TEA PEIMS Standard Report and 2017-18 through 2021-22 TEA PEIMS Actual Financial Reports
 Link: Fund Balance - <https://tea.texas.gov/finance-and-grants/state-funding/state-funding-reports-and-data/peims-single-file-financial-data-downloads>;
 Operating Expenditures - <https://tea.texas.gov/finance-and-grants/state-funding/state-funding-reports-and-data/peims-financial-data-downloads>
 Note: Per student amounts are per enrolled student (not membership).

Item	FIELD Name
Unreserved/Unassigned Fund Balance	FUND = 199, OBJECT = 3600
Operating Expenditures	GEN FUNDS-TOTAL OPERATING EXPENDITURES BY OBJ

Figure 12. Staff Ratio Comparisons

Source: 2022-23 TEA PEIMS Standard Reports
 Link: <https://rptsvr1.tea.texas.gov/adhocrpt/adpeb.html>

Figure 13. Teacher Turnover Rates

Source: 2021-22 TEA TAPR
 Link: <https://rptsvr1.tea.texas.gov/perfreport/tapr/2022/download/DownloadData.html>
 Note: DPSTURNR, DPSTURNN, DPSTURND

Figure 14. Special Program Characteristics

Source: 2022-23 TEA PEIMS Standard Reports, 2021-22 TEA TAPR, and District provided information
 Link: <https://rptsvr1.tea.texas.gov/perfreport/tapr/2022/download/DownloadData.html>
 Note: Migrant (DPNTMIGC), TOTAL STUDENTS (DPNTALLC), Career & Tech membership (DPETVOCC and DPETALLC)

APPENDIX B – Target and Peer Group Data

Table 1. Accountability Data

District Name	Rating	Overall Score
MCALLEN ISD	A	95
DONNA ISD	B	86
EDINBURG CISD	A	91
HARLINGEN CISD	B	89
LA JOYA ISD	B	88
MISSION CISD	B	87
PHARR-SAN JUAN-ALAMO ISD	A	91

Source: TEA 2022 Accountability Ratings

Table 2. Student Data

District Name	Enrollment	Economic Disadv.	English Learners	Special Ed	Bilingual	ESL	Career & Tech Membership	Total Membership
MCALLEN ISD	20,399	14,787	7,338	2,925	3,707	3,756	6,814	20,282
DONNA ISD	13,165	12,630	7,363	1,376	3,397	2,976	3,926	13,060
EDINBURG CISD	33,911	27,988	12,747	2,647	6,029	6,563	7,591	32,043
HARLINGEN CISD	17,034	13,505	2,654	2,074	1,851	1,389	4,240	17,022
LA JOYA ISD	24,804	23,226	14,222	2,971	6,716	6,961	7,365	24,024
MISSION CISD	14,502	12,568	5,620	1,499	2,263	3,274	5,505	13,838
PHARR-SAN JUAN-ALAMO ISD	30,003	27,749	13,478	3,026	10,677	4,432	3,819	29,242

Source: 2022-23 TEA PEIMS Standard Reports

Table 2. Student Data (continued)

District Name	Attendance Numerator	Attendance Denom.	Attendance Rate
MCALLEN ISD	3,159,944	3,246,755	97.3%
DONNA ISD	1,978,048	2,123,901	93.1%
EDINBURG CISD	4,835,254	5,075,013	95.3%
HARLINGEN CISD	2,560,906	2,673,742	95.8%
LA JOYA ISD	3,816,144	3,973,759	96.0%
MISSION CISD	2,024,060	2,110,697	95.9%
PHARR-SAN JUAN-ALAMO ISD	4,224,884	4,446,583	95.0%

Source: 2021-22 TAPR

Table 3. Staff Data – Average Base Pay

District Name	Teacher FTE	Teacher Base Pay	Teacher Average Base Pay	Admin. FTE	Admin. Base Pay	Admin. Average Base Pay	Super. FTE	Super. Base Pay	Super. Average Base Pay	Payroll Expenditures
MCALLEN ISD	1,505.22	\$89,456,926	\$59,431	144.62	\$12,064,586	\$83,422	1.00	\$267,300	\$267,300	\$236,605,658
DONNA ISD	892.51	\$53,518,124	\$59,964	61.79	\$6,084,373	\$98,466	1.00	\$268,076	\$268,076	\$151,532,193
EDINBURG CISD	2,305.66	\$148,366,254	\$64,349	105.70	\$10,955,274	\$103,644	1.00	\$298,700	\$298,700	\$352,885,809
HARLINGEN CISD	1,197.78	\$70,768,714	\$59,083	113.30	\$10,278,432	\$90,719	1.00	\$267,500	\$267,500	\$178,346,201
LA JOYA ISD	1,785.64	\$110,518,933	\$61,893	157.68	\$14,810,572	\$93,929	1.00	\$306,874	\$306,874	\$292,618,237
MISSION CISD	971.35	\$62,656,186	\$64,504	83.39	\$8,368,508	\$100,360	1.00	\$320,322	\$320,322	\$153,164,415
PHARR-SAN JUAN-ALAMO ISD	2,069.15	\$127,814,550	\$61,772	178.78	\$17,222,394	\$96,330	1.00	\$300,500	\$300,500	\$366,510,806

Source: 2022-23 TEA PEIMS Standard Report and 2021-22 TEA PEIMS Actual Financial Reports

Table 4. Staff Data – Other Staff FTEs and Teacher Turnover

District Name	Support FTE	Paraprof. FTE	Auxiliary FTE	Total Staff FTE	Teacher Turnover Numerator	Teacher Turnover Denominator	Teacher Turnover Rate
MCALLEN ISD	411.22	417.74	891.05	3,369.85	219.0	1,547.4	14.2
DONNA ISD	278.89	272.85	750.88	2,256.92	105.4	972.9	10.8
EDINBURG CISD	433.95	536.16	1,438.18	4,819.65	175.5	2,244.4	7.8
HARLINGEN CISD	261.22	315.43	867.60	2,755.33	181.3	1,241.9	14.6
LA JOYA ISD	417.11	350.11	1,307.58	4,018.12	161.4	1,885.0	8.6
MISSION CISD	218.30	243.38	747.80	2,264.22	119.8	976.8	12.3
PHARR-SAN JUAN-ALAMO ISD	489.38	429.19	1,364.91	4,531.41	194.1	2,167.1	9.0

Source: 2022-23 TEA PEIMS Standard Report

Table 5. Financial Data – District Revenue

District Name	Local Tax Revenue (Retained)	State Revenue (less TRS On-Behalf)	Federal Revenue	Other Local Revenue	Total Revenue
MCALLEN ISD	\$87,123,427	\$118,202,542	\$124,238,651	\$13,485,478	\$343,050,098
DONNA ISD	\$19,121,110	\$107,628,012	\$58,000,763	\$4,168,627	\$188,918,512
EDINBURG CISD	\$84,075,035	\$227,471,896	\$125,464,560	\$4,973,068	\$441,984,559
HARLINGEN CISD	\$43,283,931	\$123,524,263	\$67,871,835	\$5,659,295	\$240,339,324
LA JOYA ISD	\$31,493,704	\$216,504,538	\$134,797,825	\$2,554,077	\$385,350,144
MISSION CISD	\$25,612,399	\$109,495,781	\$89,004,660	\$1,499,483	\$225,612,323
PHARR-SAN JUAN-ALAMO ISD	\$56,920,326	\$244,950,693	\$145,197,701	\$7,118,018	\$454,186,738

Source: 2021-22 TEA PEIMS Standard Reports

Table 6. Financial Data – All Funds Operating Expenditures by Function Code

District Name	11 + 95	12	13	21	23	31	32	33	34
MCALLEN ISD	\$156,714,135	\$3,691,859	\$9,620,082	\$4,396,549	\$14,578,803	\$13,362,301	\$2,397,064	\$3,556,540	\$5,226,638
DONNA ISD	\$103,313,560	\$2,340,866	\$6,502,406	\$4,198,922	\$7,831,197	\$6,508,349	\$1,145,570	\$2,316,858	\$6,213,326
EDINBURG CISD	\$260,368,077	\$9,288,080	\$4,394,263	\$6,377,404	\$18,318,907	\$16,550,072	\$2,947,974	\$5,226,686	\$15,250,792
HARLINGEN CISD	\$117,102,122	\$3,659,302	\$5,697,893	\$5,243,367	\$12,887,123	\$8,226,554	\$605,852	\$2,893,240	\$5,637,564
LA JOYA ISD	\$209,040,635	\$8,276,043	\$8,455,150	\$7,186,457	\$18,903,995	\$16,560,168	\$3,673,463	\$6,753,578	\$12,689,094
MISSION CISD	\$103,486,823	\$2,279,859	\$5,342,304	\$2,703,402	\$9,520,967	\$9,948,778	\$736,308	\$2,949,612	\$4,560,434
PHARR-SAN JUAN-ALAMO ISD	\$241,126,885	\$6,839,476	\$11,898,260	\$10,448,061	\$21,545,831	\$15,559,751	\$3,069,264	\$6,497,325	\$10,163,863

Source: 2021-22 TEA PEIMS Financial Reports

Table 7. Financial Data – All Funds Operating Expenditures (continued)

District Name	35	36	41+92	51	52	53	61	TOTAL
MCALLEN ISD	\$18,851,933	\$10,317,292	\$8,346,245	\$24,351,260	\$5,240,313	\$8,262,495	\$1,679,115	\$290,592,624
DONNA ISD	\$12,763,767	\$6,368,230	\$4,909,752	\$17,157,444	\$3,098,244	\$2,427,763	\$1,076,547	\$188,172,801
EDINBURG CISD	\$29,721,223	\$19,644,434	\$7,688,192	\$37,697,629	\$6,763,566	\$448,607	\$1,174,028	\$441,859,934
HARLINGEN CISD	\$12,693,656	\$8,101,072	\$7,399,251	\$23,588,936	\$2,758,006	\$4,117,186	\$3,426,386	\$224,037,510
LA JOYA ISD	\$23,499,568	\$13,024,084	\$10,534,359	\$34,842,595	\$5,995,222	\$1,376,144	\$1,362,314	\$382,172,869
MISSION CISD	\$13,151,187	\$7,961,656	\$5,876,541	\$19,843,061	\$3,008,844	\$2,835,385	\$1,125,199	\$195,330,360
PHARR-SAN JUAN-ALAMO ISD	\$25,168,582	\$18,654,100	\$10,018,802	\$42,728,568	\$7,515,642	\$4,067,916	\$1,956,723	\$437,259,049


Source: 2021-22 TEA PEIMS Financial Reports

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: _____

SUPERVISOR: 

Approved for presentation to the Board of Education:





MONTHLY INVESTMENT REPORT

McAllen ISD

JULY 31, 2023



MEEDER
PUBLIC FUNDS

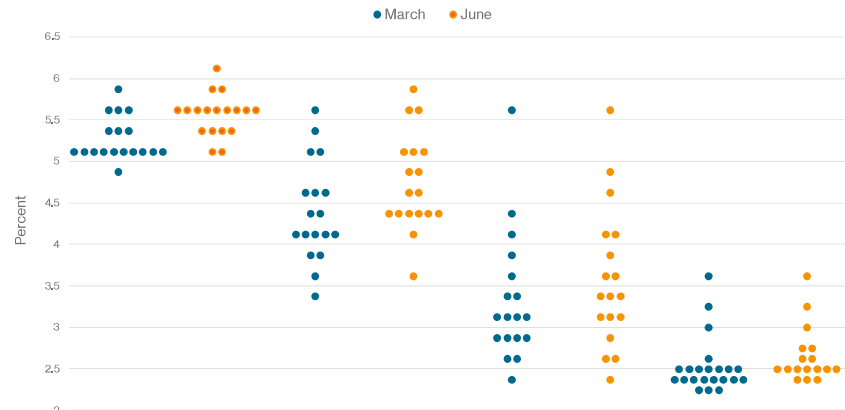
A Fed Pause (For Now?)

For what might be the last time in the current rate hiking cycle, the Federal Open Market Committee voted to raise rates at the July meeting. At the press conference following the release, Chairman Jerome Powell iterated that the future path of rates is not set and that the future path of rate changes is data dependent. Recent economic data shows that, to date, the economy has been resilient in the face of the historic rate hiking cycle, albeit at a slower pace. With the target range for the federal funds rate now at 5.25% - 5.50%, market participants are now looking to the economy for insight into the Federal Reserve's next move.

The July jobs report showed nonfarm payrolls increased by 209,000 in June, marking the first time in 15 months that the increase was less than the consensus estimate. The increase is still well above the 20-year average of 108,000 but is evidence that the labor market is coming into balance. Total labor force participation held steady at 62.6%, but the prime labor force participation rate increased to 83.5%, its highest level in 20 years. The prime labor force participation rate measures the participation of workers between the ages of 25 – 54. This expansion in the prime labor supply is a welcome sign for a Federal Reserve keen on loosening the tight labor market.

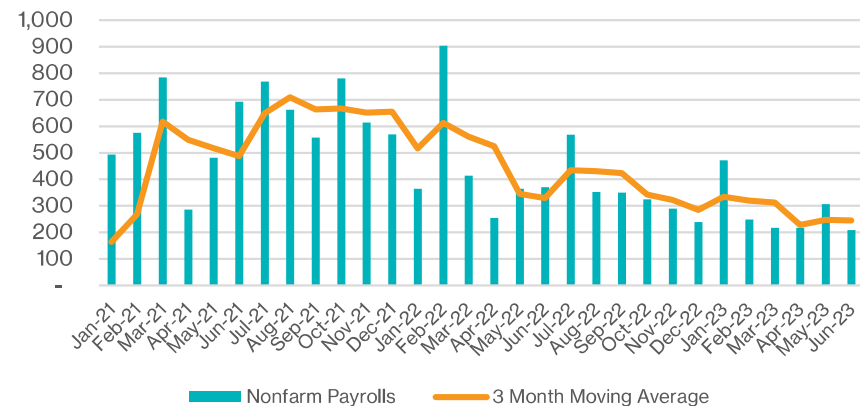
Likewise, inflation data pointed to a moderation in prices. On a year-over-year (YoY) basis, headline CPI increased by 3% in June while core CPI increased by 4.8%. Core CPI strips out food and energy prices; the fall in energy prices over the last several months has led to the divergence between the two measures. Over the last month, both headline and core CPI increased by 0.2%. This is the smallest monthly core CPI increase since August 2021, led lower by an 8.1% monthly decline in airfare and a 0.5% drop in used vehicle prices. One data point does not make a trend, and the Federal Reserve and market makers will be keenly watching the upcoming CPI releases for evidence that price increases are consistently slowing.

DOT PLOT COMPARISON



SOURCE: BLOOMBERG

TRENDS IN THE LABOR MARKET



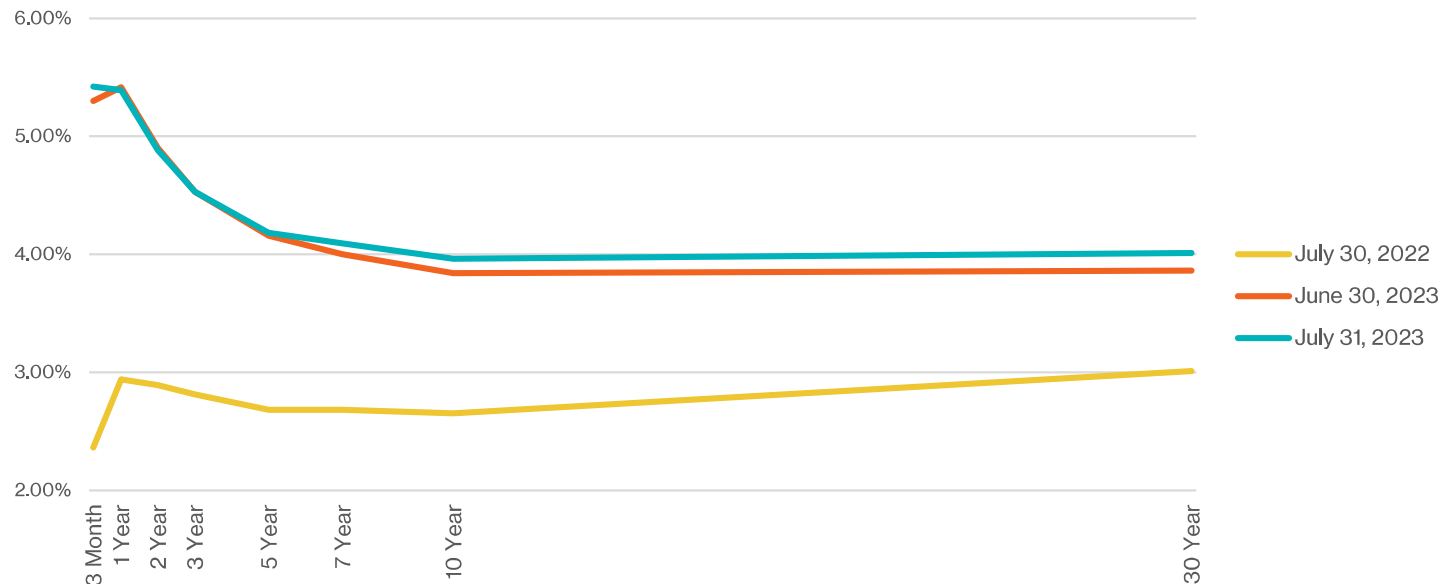
SOURCE: BLOOMBERG

Rates Move Higher

Following the FOMC’s decision, markets are pricing in no rate changes for the rest of the month as markets believe the Federal Reserve is content leaving rates where they are, and that economic data will support not hiking again. Markets have pushed pricing for cuts into mid-2024 as recession fears have waned. Treasury rates bounced throughout the month but ended the month mostly where they began. The 2 Year US Treasury yield decreased 0.02% to 4.88%, and the 5 Year US Treasury yield increased 0.02% to 4.18%. Long-term treasury rates are more reflective of the market’s outlook on growth. The 10 Year US Treasury yield increased by 0.16% to 3.96%, steeping the curve some. At the end of July, the yield curve was still inverted by 0.92% as markets anticipate the Federal Reserve to cut rates in the future.

With recession fears fading and issuance remaining constrained, spreads on credit products, including corporate bonds, commercial paper, and municipal bonds, ground tighter in July. Spreads on agency bonds widened marginally as issuance stayed elevated during the month. We will continue to look to add value by picking up incremental yield on high-quality bonds. Although the yield curve is still inverted, adding duration and buying at current yields will benefit portfolio income when the yield curve eventually normalizes, and rates fall when this hiking cycle ends.

US Treasury Yield Curve



McAllen Independent School District
 Monthly Investment Report
 July 1, 2023 – July 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.

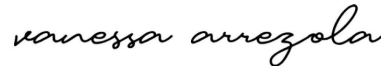
<u>Portfolio as of 06/30/23:</u>		<u>Portfolio as of 07/31/23:</u>	
Beginning Book Value	\$ 153,890,280	Ending Book Value	\$ 151,437,291
Beginning Market Value	\$ 153,147,348	Ending Market Value	\$ 150,754,534
		Unrealized Gain/Loss	\$ (682,757)
WAM at Beginning Period Date ¹	89 days	WAM at Ending Period Date ¹	82 days
<i>(Decrease in market value is due to seasonal cash outflows)</i>		Change in Market Value ²	\$ (2,392,814)
	Average Yield to Maturity for period		4.417%
	Average Yield 1-year Treasury Bill for period		5.370%
	Average Yield 2-year Treasury Note for period		4.830%



Iris Luna, Interim 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. Meeder Public Funds has assisted in the preparation of this consolidated investment report, with additional input provided by McAllen ISD.

Your Portfolio

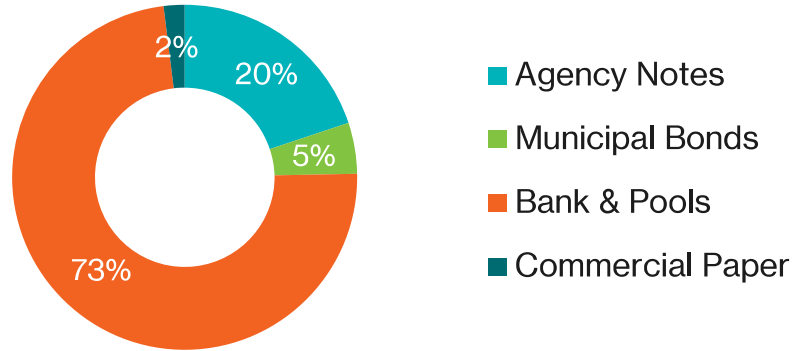
As of July 31, 2023



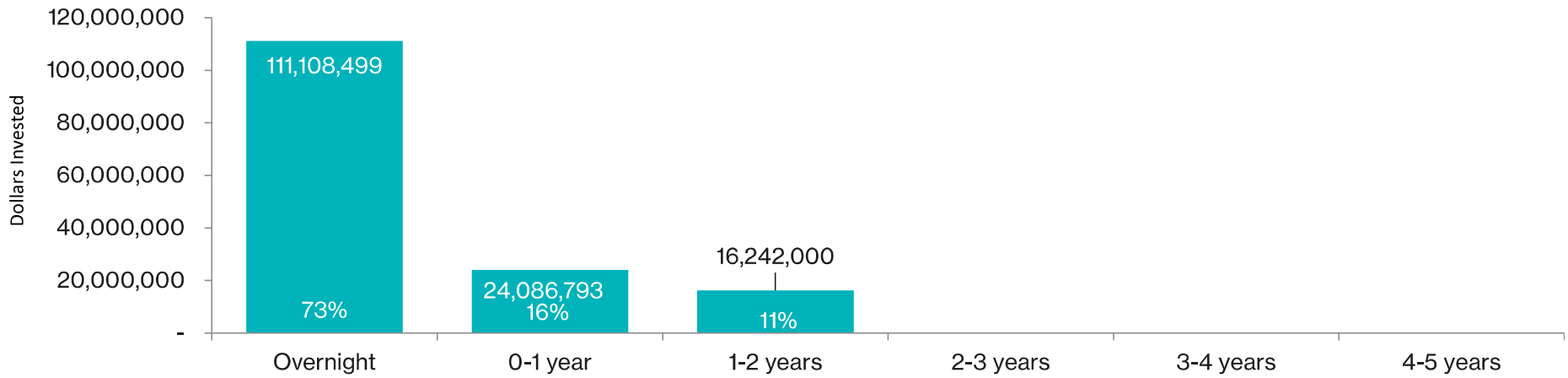
Your Portfolio Statistics

Weighted Average Maturity 0.22 years
Weighted Average Yield (All Funds) 4.42%

Your Asset Allocation



Your Maturity Distribution



Allocation Percentage Per Year




**McAllen ISD
Portfolio Management
Portfolio Summary
July 31, 2023**

Meeder Public Funds
901 S. MoPac
Suite 300
Austin, TX 78746
-

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 365 Equiv.
BNY Mellon	2,585,407.46	2,585,407.46	2,585,407.46	1.71	1	1	0.000
Frost Bank	23,475,628.24	23,475,628.24	23,475,628.24	15.50	1	1	4.840
Commercial Paper Disc. -Amortizing	3,000,000.00	2,965,008.00	2,968,713.33	1.96	262	76	5.221
Federal Agency Coupon Securities	30,142,000.00	29,507,709.88	30,142,000.00	19.90	787	355	2.522
Municipal Bonds	7,195,000.00	7,173,317.30	7,218,079.47	4.77	588	185	2.580
Texpool/Texpool Prime	22,143,994.52	22,143,994.52	22,143,994.52	14.62	1	1	5.242
Lone Star	62,903,468.43	62,903,468.43	62,903,468.43	41.54	1	1	5.231
	151,445,498.65	150,754,533.83	151,437,291.45	100.00%	191	82	4.417
Investments							
Cash and Accrued Interest							
Accrued Interest at Purchase		466.67	466.67				
Subtotal		466.67	466.67				
Total Cash and Investments	151,445,498.65	150,755,000.50	151,437,758.12		191	82	4.417

Total Earnings	July 31 Month Ending	Fiscal Year To Date
Current Year	544,224.57	544,224.57

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.



 Iris Luna, Interim Asst Supt of Bus Operations

Oct 10, 2023

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

Security Type	Number of Investments	Par Value	Book Value	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Activity Fund						
Frost Bank	1	2,015,797.89	2,015,797.89	1.33	4.840	1
Subtotal	1	2,015,797.89	2,015,797.89	1.33	4.840	1
Fund: Clearing Fund						
Frost Bank	1	3,261,141.77	3,261,141.77	2.15	4.840	1
Subtotal	1	3,261,141.77	3,261,141.77	2.15	4.840	1
Fund: Capital Projects Fund						
Frost Bank	2	619,382.51	619,382.51	0.41	4.840	1
Lone Star	4	9,422,149.82	9,422,149.82	6.22	5.222	1
Subtotal	6	10,041,532.33	10,041,532.33	6.63	5.199	1
Fund: Debt Service Fund						
Frost Bank	1	103,201.28	103,201.28	0.07	4.840	1
Lone Star	2	3,680,103.62	3,680,103.62	2.43	5.223	1
Subtotal	3	3,783,304.90	3,783,304.90	2.50	5.212	1
Fund: General Fund						
Frost Bank	1	15,346,341.76	15,346,341.76	10.13	4.840	1
Federal Agency Coupon Securities	7	22,600,000.00	22,600,000.00	14.92	2.565	328
Commercial Paper Disc. -Amortizing	1	3,000,000.00	2,968,713.33	1.96	5.221	76
Lone Star	3	42,873,990.90	42,873,990.90	28.31	5.236	1
Municipal Bonds	2	3,595,000.00	3,614,355.75	2.39	3.963	216
Texpool/Texpool Prime	2	22,143,994.52	22,143,994.52	14.62	5.242	1
Subtotal	16	109,559,327.18	109,547,396.26	72.33	4.588	78
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
Fund: Proprietary Fund						

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

Security Type	Number of Investments	Par Value	Book Value	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Proprietary Fund						
Frost Bank	1	2,129,763.03	2,129,763.03	1.41	4.840	1
Lone Star	2	6,927,224.09	6,927,224.09	4.57	5.215	1
Subtotal	3	9,056,987.12	9,056,987.12	5.98	5.127	1
Fund: QSCB - Reserve Fund						
BNY Mellon	1	2,585,407.46	2,585,407.46	1.71	0.000	1
Federal Agency Coupon Securities	3	7,542,000.00	7,542,000.00	4.98	2.393	437
Municipal Bonds	2	3,600,000.00	3,603,723.72	2.38	1.193	153
Subtotal	6	13,727,407.46	13,731,131.18	9.07	1.627	280
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	38	151,445,498.65	151,437,291.45	100.00	4.417	82



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

Meeder Public Funds
 901 S. MoPac
 Suite 300
 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	07/01/2023	2,015,797.89	2,015,797.89	2,015,797.89	4.840	4.773	4.840	1
Subtotal and Average				2,015,797.89	2,015,797.89	2,015,797.89		4.774	4.840	1
Total Investments and Average				2,015,797.89	2,015,797.89	2,015,797.89		4.774	4.840	1

Fund CLEAR - Clearing Fund
Investments by Fund
July 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	07/01/2023	3,261,141.77	3,261,141.77	3,261,141.77	4.840	4.773	4.840	1
Subtotal and Average				3,261,141.77	3,261,141.77	3,261,141.77		4.774	4.840	1
Total Investments and Average				3,261,141.77	3,261,141.77	3,261,141.77		4.774	4.840	1

Fund CP - Capital Projects Fund
Investments by Fund
July 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	07/01/2023	611,084.88	611,084.88	611,084.88	4.840	4.773	4.840	1
SYS10109	10109	Frost Bank Public Checking	07/01/2023	8,297.63	8,297.63	8,297.63	4.840	4.773	4.840	1
Subtotal and Average				619,382.51	619,382.51	619,382.51		4.774	4.840	1
Lone Star										
108906G	10101	Lone Star Corporate Overnight	12/18/2019	401,008.12	401,008.12	401,008.12	5.310	5.237	5.310	1
108906I	10108	Lone Star Corporate Overnight	02/21/2020	4,673,608.41	4,673,608.41	4,673,608.41	5.310	5.237	5.310	1
108906H	10102	Lone Star Government ON	12/18/2019	394,519.64	394,519.64	394,519.64	5.120	5.049	5.120	1
108906J	10113	Lone Star Government ON	03/12/2020	3,953,013.65	3,953,013.65	3,953,013.65	5.120	5.049	5.120	1
Subtotal and Average				9,422,149.82	9,422,149.82	9,422,149.82		5.151	5.222	1
Total Investments and Average				10,041,532.33	10,041,532.33	10,041,532.33		5.128	5.199	1

Fund DS - Debt Service Fund
Investments by Fund
July 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	07/01/2023	103,201.28	103,201.28	103,201.28	4.840	4.773	4.840	1
Subtotal and Average				103,201.28	103,201.28	103,201.28		4.774	4.840	1
Lone Star										
108906B	10032	Lone Star Corporate Overnight	10/22/2015	1,992,011.49	1,992,011.49	1,992,011.49	5.310	5.237	5.310	1
108906C	10089	Lone Star Government ON	08/05/2019	1,688,092.13	1,688,092.13	1,688,092.13	5.120	5.049	5.120	1
Subtotal and Average				3,680,103.62	3,680,103.62	3,680,103.62		5.151	5.223	1
Total Investments and Average				3,783,304.90	3,783,304.90	3,783,304.90		5.141	5.212	1

Fund GEN - General Fund
Investments by Fund
July 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	07/01/2023	15,346,341.76	15,346,341.76	15,346,341.76	4.840	4.773	4.840		1
Subtotal and Average				15,346,341.76	15,346,341.76	15,346,341.76		4.774	4.840		1
Commercial Paper Disc. -Amortizing											
4497W1XG6	10163	ING Funding CP	01/27/2023	2,968,713.33	3,000,000.00	2,965,008.00	4.940	5.149	5.221	10/16/2023	76
Subtotal and Average				2,968,713.33	3,000,000.00	2,965,008.00		5.150	5.221		76
Federal Agency Coupon Securities											
3130AUQC1	10164	FHLB Note	01/30/2023	5,000,000.00	5,000,000.00	4,986,104.15	4.875	4.808	4.875	01/30/2024	182
3130ANDP2	10143	FHLB Call Note	08/18/2021	2,400,000.00	2,400,000.00	2,394,292.08	0.250	0.246	0.250	08/18/2023	17
3130APQM0	10150	FHLB Call Note	11/18/2021	3,000,000.00	3,000,000.00	2,828,389.20	1.000	0.986	1.000	11/18/2024	475
3130APQU2	10151	FHLB Call Note	11/22/2021	2,000,000.00	2,000,000.00	1,969,945.34	0.650	0.641	0.650	11/22/2023	113
3130AQLR2	10153	FHLB Call Note	02/07/2022	2,500,000.00	2,500,000.00	2,439,345.53	1.000	0.986	1.000	02/07/2024	190
3130AQYM9	10156	FHLB Step Note	02/28/2022	4,500,000.00	4,500,000.00	4,384,479.87	2.500	2.054	2.083	02/28/2025	577
3135GAH20	10165	FNMA Call Note	04/28/2023	3,200,000.00	3,200,000.00	3,170,603.62	5.250	5.182	5.254	01/27/2025	545
Subtotal and Average				22,600,000.00	22,600,000.00	22,173,159.79		2.530	2.565		328
Municipal Bonds											
476637AU7	10167	Jersey City NJ Redev Agency	05/24/2023	2,514,173.26	2,495,000.00	2,518,303.30	6.500	5.516	5.592	05/24/2024	297
678720KM4	10145	Oklahoma County OK ISD	09/23/2021	1,100,182.49	1,100,000.00	1,095,534.00	0.500	0.234	0.238	09/01/2023	31
Subtotal and Average				3,614,355.75	3,595,000.00	3,613,837.30		3.909	3.963		216
Texpool/Texpool Prime											
999921	10092	Texpool	08/05/2019	11,029,835.68	11,029,835.68	11,029,835.68	5.124	5.053	5.123		1
999920	10034	Texpool Prime	11/03/2015	11,114,158.84	11,114,158.84	11,114,158.84	5.360	5.286	5.359		1
Subtotal and Average				22,143,994.52	22,143,994.52	22,143,994.52		5.170	5.242		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	26,164,538.53	26,164,538.53	26,164,538.53	5.310	5.237	5.310		1
108906D	10090	Lone Star Government ON	08/05/2019	16,709,452.37	16,709,452.37	16,709,452.37	5.120	5.049	5.120		1
Subtotal and Average				42,873,990.90	42,873,990.90	42,873,990.90		5.164	5.236		1
Total Investments and Average				109,547,396.26	109,559,327.18	109,116,332.27		4.525	4.588		77

Fund PLAN457 - Plan 457 Fund
Investments by Fund
July 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	07/01/2023	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
July 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	07/01/2023	2,129,763.03	2,129,763.03	2,129,763.03	4.840	4.773	4.840	1
Subtotal and Average				2,129,763.03	2,129,763.03	2,129,763.03		4.774	4.840	1
Lone Star										
108906A	10025	Lone Star Corporate Overnight	08/05/2015	3,467,806.17	3,467,806.17	3,467,806.17	5.310	5.237	5.310	1
108906E	10091	Lone Star Government ON	08/05/2019	3,459,417.92	3,459,417.92	3,459,417.92	5.120	5.049	5.120	1
Subtotal and Average				6,927,224.09	6,927,224.09	6,927,224.09		5.144	5.215	1
Total Investments and Average				9,056,987.12	9,056,987.12	9,056,987.12		5.057	5.127	1

Fund QSCB - QSCB - Reserve Fund
Investments by Fund
July 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	07/01/2023	2,585,407.46	2,585,407.46	2,585,407.46					1
Subtotal and Average				2,585,407.46	2,585,407.46	2,585,407.46		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	1,995,243.40	0.250	0.246	0.250	08/18/2023	17
3130AQJM6	10152	FHLB Call Note	01/28/2022	3,000,000.00	3,000,000.00	2,818,001.19	1.250	1.276	1.294	01/28/2025	546
3134GYQP0	10166	FHLMC Call Note	05/01/2023	2,542,000.00	2,542,000.00	2,521,305.50	5.375	5.301	5.375	05/01/2025	639
Subtotal and Average				7,542,000.00	7,542,000.00	7,334,550.09		2.360	2.393		437
Municipal Bonds											
578060EQ4	10161	Mayes County OK ISD	06/29/2022	1,603,391.91	1,600,000.00	1,567,600.00	3.300	2.351	2.384	06/01/2024	305
678720KM4	10146	Oklahoma County OK ISD	09/23/2021	2,000,331.81	2,000,000.00	1,991,880.00	0.500	0.234	0.238	09/01/2023	31
Subtotal and Average				3,603,723.72	3,600,000.00	3,559,480.00		1.177	1.193		152
Total Investments and Average				13,731,131.18	13,727,407.46	13,479,437.55		1.605	1.627		280

Fund QSCBDS - QSCB - Debt Service
Investments by Fund
July 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	07/01/2023	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 July 1, 2023 - July 31, 2023

Meeder Public Funds
 901 S. MoPac
 Suite 300
 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
07/01/2023	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
07/01/2023	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
07/01/2023	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
07/01/2023	10142	GEN	Maturity	953107AB5	1,000,000.00	WESTHT 1.0M 0.47% Mat.	07/01/2023	0.00	0.00	1,000,000.00	1,000,000.00
07/01/2023	10148	GEN	Maturity	73358W4V3	1,505,000.00	PORTNW 1.5M 1.09% Mat.	07/01/2023	0.00	0.00	1,505,000.00	1,505,000.00
07/01/2023	10149	QSCB	Maturity	73358W4V3	2,500,000.00	PORTNW 2.5M 1.09% Mat.	07/01/2023	0.00	0.00	2,500,000.00	2,500,000.00
07/26/2023	10162	GEN	Interest	3133ENV98	5,000,000.00	FFCBC 5.0M 4.67% Mat. 07/26/2023	07/26/2023	0.00	116,750.00	0.00	116,750.00
07/26/2023	10162	GEN	Maturity	3133ENV98	5,000,000.00	FFCBC 5.0M 4.67% Mat. 07/26/2023	07/26/2023	0.00	0.00	5,000,000.00	5,000,000.00
07/28/2023	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
07/30/2023	10164	GEN	Interest	3130AUQC1	5,000,000.00	FHLB 5.0M 4.88% Mat. 01/30/2024	01/30/2024	0.00	121,875.00	0.00	121,875.00
Subtotal								0.00	281,452.15	10,005,000.00	10,286,452.15
Total								0.00	281,452.15	10,005,000.00	10,286,452.15



McAllen ISD
Purchases Report
 Sorted by Fund - Issuer
 July 1, 2023 - July 31, 2023

Meeder Public Funds
 901 S. MoPac
 Suite 300
 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
Plan 457 Fund													
999916	10021	PLAN457	LA2	FBPC	0.00	07/01/2023	08/01 - Monthly	0.00					0.00
				Subtotal	0.00			0.00	0.00				0.00
QSCB - Reserve Fund													
882521	10014	QSCB	LA1	BNYC	53,082.46	07/01/2023	04/01 - Monthly	53,082.46					2,585,407.46
				Subtotal	53,082.46			53,082.46	0.00				2,585,407.46
QSCB - Debt Service													
882520	10040	QSCBDS	LA1	BNYC	0.00	07/01/2023	03/01 - Monthly	0.00					0.00
				Subtotal	0.00			0.00	0.00				0.00
				Total Purchases	53,082.46			53,082.46	0.00				2,585,407.46



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

Meeder Public Funds
 901 S. MoPac
 Suite 300
 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
73358W4V3	10148	GEN	MC2	PORTNW	1,505,000.00	07/01/2023	10/15/2021	1.086	1,505,000.00	8,172.15	1,513,172.15	8,172.15
73358W4V3	10149	QSCB	MC2	PORTNW	2,500,000.00	07/01/2023	10/15/2021	1.086	2,500,000.00	13,575.00	2,513,575.00	13,575.00
953107AB5	10142	GEN	MC2	WESTHT	1,000,000.00	07/01/2023	07/08/2021	0.466	1,000,000.00	2,330.00	1,002,330.00	2,330.00
3133ENV98	10162	GEN	FAC	FFCBC	5,000,000.00	07/26/2023	10/31/2022	4.670	5,000,000.00	116,750.00	5,116,750.00	116,750.00
Total Maturities					10,005,000.00				10,005,000.00	140,827.15	10,145,827.15	140,827.15



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

Meeder Public Funds
 901 S. MoPac
 Suite 300
 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	Adjusted Interest Earnings			
									Annualized Yield	Interest Earned	Amortization/ Accretion	Adjusted Interest Earnings
Fund: Activity Fund												
999915	10020	ACT	LA2	2,015,797.89	2,043,542.38	2,015,797.89		4.840	4.328	7,512.52	0.00	7,512.52
			Subtotal	2,015,797.89	2,043,542.38	2,015,797.89			4.328	7,512.52	0.00	7,512.52
Fund: Clearing Fund												
999914	10019	CLEAR	LA2	3,261,141.77	3,760,530.74	3,261,141.77		4.840	3.266	10,431.26	0.00	10,431.26
			Subtotal	3,261,141.77	3,760,530.74	3,261,141.77			3.266	10,431.26	0.00	10,431.26
Fund: Capital Projects Fund												
108906G	10101	CP	RR2	401,008.12	399,207.86	401,008.12		5.310	5.310	1,800.26	0.00	1,800.26
108906I	10108	CP	RR2	4,673,608.41	4,652,627.08	4,673,608.41		5.310	5.310	20,981.33	0.00	20,981.33
999922	10103	CP	LA2	611,084.88	22,745.99	611,084.88		4.840	139.424	2,693.47	0.00	2,693.47
SYS10109	10109	CP	LA2	8,297.63	8,267.06	8,297.63		4.840	4.354	30.57	0.00	30.57
108906J	10113	CP	RR2	3,953,013.65	3,935,905.09	3,953,013.65		5.120	5.118	17,108.56	0.00	17,108.56
108906H	10102	CP	RR2	394,519.64	392,812.17	394,519.64		5.120	5.118	1,707.47	0.00	1,707.47
			Subtotal	10,041,532.33	9,411,565.25	10,041,532.33			5.545	44,321.66	0.00	44,321.66
Fund: Debt Service Fund												
108906B	10032	DS	RR2	1,992,011.49	1,933,481.24	1,992,011.49		5.310	5.382	8,837.19	0.00	8,837.19
999918	10023	DS	LA2	103,201.28	102,718.62	103,201.28		4.840	4.357	380.12	0.00	380.12
108906C	10089	DS	RR2	1,688,092.13	1,680,786.10	1,688,092.13		5.120	5.118	7,306.03	0.00	7,306.03
			Subtotal	3,783,304.90	3,716,985.96	3,783,304.90			5.234	16,523.34	0.00	16,523.34
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	11,029,835.68	10,982,045.30	11,029,835.68		5.124	5.124	47,790.38	0.00	47,790.38
108906	10003	GEN	RR2	26,164,538.53	29,123,297.18	26,164,538.53		5.310	4.676	115,655.28	0.00	115,655.28
999917	10022	GEN	LA2	15,346,341.76	7,377,897.42	15,346,341.76		4.840	4.949	31,009.10	0.00	31,009.10
999920	10034	GEN	RRP	11,114,158.84	11,063,796.09	11,114,158.84		5.360	5.360	50,362.75	0.00	50,362.75
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
3130APQU2	10151	GEN	FAC	2,000,000.00	2,000,000.00	2,000,000.00	11/22/2023	0.650	0.638	1,083.34	0.00	1,083.34
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

McAllen ISD
Interest Earnings
July 1, 2023 - July 31, 2023

CUSIP	Investment #	Fund	Security Type	Ending Par Value	Beginning Book Value	Ending Book Value	Maturity Date	Current Rate	Adjusted Interest Earnings			
									Annualized Yield	Interest Earned	Amortization/ Accretion	Adjusted Interest Earnings
Fund: General Fund												
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
3133ENV98	10162	GEN	FAC	0.00	4,999,905.66	0.00	07/26/2023	4.670	4.762	16,215.28	94.34	16,309.62
108906D	10090	GEN	RR2	16,709,452.37	16,637,142.46	16,709,452.37		5.120	5.117	72,309.91	0.00	72,309.91
953107AB5	10142	GEN	MC2	0.00	1,000,000.00	0.00	07/01/2023	0.466		0.00	0.00	0.00
678720KM4	10145	GEN	MC2	1,100,000.00	1,100,364.99	1,100,182.49	09/01/2023	0.500	0.295	458.34	-182.50	275.84
73358W4V3	10148	GEN	MC2	0.00	1,505,000.00	0.00	07/01/2023	1.086		0.00	0.00	0.00
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	2,955,951.67	2,968,713.33	10/16/2023	4.940	5.083	0.00	12,761.66	12,761.66
3135GAH20	10165	GEN	FAC	3,200,000.00	3,200,000.00	3,200,000.00	01/27/2025	5.250	5.151	14,000.00	0.00	14,000.00
476637AU7	10167	GEN	MC2	2,495,000.00	2,516,174.51	2,514,173.26	05/24/2024	6.500	5.598	13,965.07	-2,001.25	11,963.82
			Subtotal	109,559,327.18	111,861,575.28	109,547,396.26			4.432	397,620.28	10,672.25	408,292.53
Fund: Proprietary Fund												
108906A	10025	PROP	RR2	3,467,806.17	3,452,238.03	3,467,806.17		5.310	5.310	15,568.14	0.00	15,568.14
999919	10024	PROP	LA2	2,129,763.03	2,499,919.45	2,129,763.03		4.840	3.350	7,112.76	0.00	7,112.76
108906E	10091	PROP	RR2	3,459,417.92	3,444,445.63	3,459,417.92		5.120	5.118	14,972.29	0.00	14,972.29
			Subtotal	9,056,987.12	9,396,603.11	9,056,987.12			4.718	37,653.19	0.00	37,653.19
Fund: QSCB - Reserve Fund												
882521	10014	QSCB	LA1	2,585,407.46	0.00	2,585,407.46				0.00	0.00	0.00
3134GYQP0	10166	QSCB	FAC	2,542,000.00	2,542,000.00	2,542,000.00	05/01/2025	5.375	5.274	11,386.05	0.00	11,386.05
3130ANDP2	10144	QSCB	FAC	2,000,000.00	2,000,000.00	2,000,000.00	08/18/2023	0.250	0.245	416.67	0.00	416.67
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
678720KM4	10146	QSCB	MC2	2,000,000.00	2,000,663.61	2,000,331.81	09/01/2023	0.500	0.295	833.34	-331.80	501.54
73358W4V3	10149	QSCB	MC2	0.00	2,500,000.00	0.00	07/01/2023	1.086		0.00	0.00	0.00
578060EQ4	10161	QSCB	MC2	1,600,000.00	1,603,731.10	1,603,391.91	06/01/2024	3.300	2.981	4,400.00	-339.19	4,060.81
			Subtotal	13,727,407.46	13,646,394.71	13,731,131.18			2.034	20,161.06	-670.99	19,490.07
			Total	151,445,498.65	153,837,197.43	151,437,291.45			4.327	534,223.31	10,001.26	544,224.57



McAllen ISD
Amortization Schedule
July 1, 2023 - July 31, 2023
Sorted By Fund - Fund

Meeder Public Funds
 901 S. MoPac
 Suite 300
 Austin, TX 78746
 -

Investment #	Maturity Date	Beginning Par Value				Amounts Amortized				
Issuer	Fund	Amort. Date	Current Rate	Purchase Principal	Original Premium or Discount	Ending Book Value	And Unamortized As of 07/01/2023	Amount Amortized This Period	Amt Amortized Through 07/31/2023	Amount Unamortized Through 07/31/2023
General Fund										
10162	GEN	07/26/2023	5,000,000.00	4,999,000.00	-1,000.00	0.00	905.66	94.34	1,000.00	0.00
FFCB Call Note			4.670				-94.34			
10163	GEN	10/16/2023	3,000,000.00	2,892,143.33	-107,856.67	2,968,713.33	63,808.34	12,761.66	76,570.00	-31,286.67
ING Funding CP			4.940				-44,048.33			
10167	GEN	05/24/2024	2,495,000.00	2,518,627.65	23,627.65	2,514,173.26	-2,453.14	-2,001.25	-4,454.39	19,173.26
Jersey City NJ Redev Agency			6.500				21,174.51			
10145	GEN	09/01/2023	1,100,000.00	1,104,246.00	4,246.00	1,100,182.49	-3,881.01	-182.50	-4,063.51	182.49
Oklahoma County OK ISD			0.500				364.99			
			Subtotal	11,514,016.98	-80,983.02	6,583,069.08	58,379.85	10,672.25	69,052.10	-11,930.92
							-22,603.17			
QSCB - Reserve Fund										
10152	QSCB	01/28/2025	3,000,000.00	2,996,100.00	-3,900.00	3,000,000.00	3,900.00	0.00	3,900.00	0.00
FHLB Call Note		04/28/2022	1.250				0.00			
10161	QSCB	06/01/2024	1,600,000.00	1,607,824.00	7,824.00	1,603,391.91	-4,092.90	-339.19	-4,432.09	3,391.91
Mayes County OK ISD			3.300				3,731.10			
10146	QSCB	09/01/2023	2,000,000.00	2,007,720.00	7,720.00	2,000,331.81	-7,056.39	-331.80	-7,388.19	331.81
Oklahoma County OK ISD			0.500				663.61			
			Subtotal	6,611,644.00	11,644.00	6,603,723.72	-7,249.29	-670.99	-7,920.28	3,723.72
							4,394.71			
			Total	18,125,660.98	-69,339.02	13,186,792.80	51,130.56	10,001.26	61,131.82	-8,207.20
							-18,208.46			



McAllen ISD
Projected Cashflow Report
Sorted by Fund
For the Period August 1, 2023 - February 29, 2024

Meeder Public Funds
 901 S. MoPac
 Suite 300
 Austin, TX 78746
 -

Projected Trans. Date	Investment #	Fund	Security ID	Transaction Type	Issuer	Par Value	Original Cost	Principal	Interest	Total
General Fund										
08/07/2023	10153	GEN	3130AQLR2	Interest	FHLB Call Note	0.00	0.00	0.00	12,500.00	12,500.00
08/07/2023	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
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	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
08/22/2023	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
08/25/2023	10170	GEN	62479LEH4	Purchase	MUFG Bank CP	0.00	0.00	-2,876,310.00	0.00	-2,876,310.00
08/28/2023	10156	GEN	3130AQYM9	Interest	FHLB Step Note	0.00	0.00	0.00	56,250.00	56,250.00
08/28/2023	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
08/28/2023	10171	GEN	63307LCJ8	Purchase	Nat'l Bank of Canada CP	0.00	0.00	-1,936,506.11	0.00	-1,936,506.11
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
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
10/27/2023	10165	GEN	3135GAH20	Interest	FNMA Call Note	0.00	0.00	0.00	84,000.00	84,000.00
10/27/2023	10165	GEN	3135GAH20	Call	FNMA Call Note	3,200,000.00	3,200,000.00	3,200,000.00	0.00	3,200,000.00
11/18/2023	10150	GEN	3130APQM0	Interest	FHLB Call Note	0.00	0.00	0.00	15,000.00	15,000.00
11/22/2023	10151	GEN	3130APQU2	Maturity	FHLB Call Note	2,000,000.00	2,000,000.00	2,000,000.00	6,500.00	2,006,500.00
01/30/2024	10164	GEN	3130AUQC1	Maturity	FHLB Note	5,000,000.00	5,000,000.00	5,000,000.00	121,875.00	5,121,875.00
02/07/2024	10153	GEN	3130AQLR2	Maturity	FHLB Call Note	2,500,000.00	2,500,000.00	2,500,000.00	12,500.00	2,512,500.00
02/28/2024	10156	GEN	3130AQYM9	Interest	FHLB Step Note	0.00	0.00	0.00	56,250.00	56,250.00
Total for General Fund						31,200,000.00	31,096,389.33	26,387,183.89	370,625.00	26,757,808.89
QSCB - Reserve Fund										
08/01/2023	10166	QSCB	3134GYQP0	Call	FHLMC Call Note	2,542,000.00	2,542,000.00	2,542,000.00	0.00	2,542,000.00
08/03/2023	10168	QSCB	3130AKQX7	Purchase	FHLB Call Note	0.00	0.00	-2,559,663.60	-276.11	-2,559,939.71
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
08/25/2023	10169	QSCB	882669CQ5	Purchase	Texas St Public Fin Auth Rev	0.00	0.00	-1,883,754.95	-1,541.87	-1,885,296.82
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
10/28/2023	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
11/01/2023	10166	QSCB	3134GYQP0	Interest	FHLMC Call Note	0.00	0.00	0.00	68,316.25	68,316.25
12/01/2023	10161	QSCB	578060EQ4	Interest	Mayes County OK ISD	0.00	0.00	0.00	26,400.00	26,400.00
01/28/2024	10152	QSCB	3130AQJM6	Interest	FHLB Call Note	0.00	0.00	0.00	18,750.00	18,750.00
01/28/2024	10168	QSCB	3130AKQX7	Interest	FHLB Call Note	0.00	0.00	0.00	9,940.00	9,940.00
02/01/2024	10169	QSCB	882669CQ5	Interest	Texas St Public Fin Auth Rev	0.00	0.00	0.00	11,564.00	11,564.00
Total for QSCB - Reserve Fund						9,542,000.00	9,545,820.00	5,098,581.45	140,652.27	5,239,233.72
GRAND TOTALS:						40,742,000.00	40,642,209.33	31,485,765.34	511,277.27	31,997,042.61



Disclosures

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Meeder provides monthly statements for its investment management clients to provide information about the investment portfolio. The information should not be used for audit or confirmation purposes. Please review your custodial statements and report any inaccuracies or discrepancies.

Certain information and data have been supplied by unaffiliated third parties. Although Meeder believes the information is reliable, it cannot warrant the accuracy of information offered by third parties. Market value may reflect prices received from pricing vendors when current market quotations are not available. Prices may not reflect firm bids or offers and may differ from the value at which the security can be sold.

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

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Meeder Public Funds

Barton Oaks Plaza I
901 S. MoPac Expy
Suite 300
Austin, Texas
78746

866.633.3371

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

SUBMITTED BY: *Judith Escamilla*

SUPERVISOR: *[Signature]*

Approved for presentation to the Board of Education:

Rosalba De Hoyos

376 Interim Superintendent of Schools

**BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

**BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: _____

SUPERVISOR: 

Approved for presentation to the Board of Education:



Description	A	B	C		D	E
	Original Budget	Revised Budget 08/31/2023	Budget Amendments Under Consideration		Revised Budget 09/30/2023	
			Revisions	Transfers		
Unaudited Fund Balance	134,856,388	134,856,388				134,856,388
Revenues:						
Local:						
Property Taxes	87,833,337	87,833,337				87,833,337
Interest Income	3,960,000	3,960,000				3,960,000
Other Local Income	2,309,887	2,367,795				2,367,795
State:	123,728,809	123,728,809				123,728,809
Federal:	23,679,760	23,679,760	184,402			23,864,162
Other Sources:	0	0	5,160			5,160
Total Revenues	241,511,793	241,569,701	189,562	0		241,759,263
Expenditures:						
11 Instruction	131,841,014	133,199,710	75,000	11,533		133,286,243
12 Inst. Res. & Media Services	3,542,411	3,540,411		9,630		3,550,041
13 Curriculum Dev. & Inst. Staff Dev.	4,375,854	4,350,464		53,687		4,404,151
21 Inst. Leadership	3,680,515	3,256,204		(70,303)		3,185,901
23 School Leadership	13,525,111	13,544,721		(102,314)		13,442,407
31 Guid., Counseling & Eval. Ser.	10,227,481	9,889,689		(51,923)		9,837,766
32 Social Work Services	2,243,964	2,246,964		10,966		2,257,930
33 Health Services	2,996,732	2,997,055		233		2,997,288
34 Student (Pupil) Trans.	4,230,015	4,286,529	53,087			4,339,616
35 Food Services	20,250,856	20,297,147	277,462			20,574,609
36 Curricular/Extracurricular Act.	10,078,335	11,173,086	4,160	(178,762)		10,998,484
41 General Administration	8,239,431	8,443,485				8,443,485
51 Plant Maint. & Operations	19,371,239	21,636,519	83,851	30,035		21,750,405
52 Security and Monitoring Serv.	4,848,855	6,933,157		(997)		6,932,160
53 Data Processing Services	5,738,354	5,926,306	26,000			5,952,306
61 Community Services	112,825	113,585		3,459		117,044
71 Debt Service	4,477,486	4,693,408		112,356		4,805,764
81 Fac. Acquisition & Const.	15,142,749	16,991,375	1,089,443	172,400		18,253,218
95 Pmt. to Juv. Justice Alt. Ed. Prg.	40,000	40,000				40,000
99 Other Intergovernmental Charges	1,048,026	1,048,026				1,048,026
Other Uses	0	0	1,146,018			1,146,018
Total Expenditures	266,011,253	274,607,841	2,755,021	0		277,362,862
Preliminary Ending Fund Balance	110,356,928	101,818,248	(2,565,459)	0		99,252,789

GENERAL FUND
Revisions

REVENUES:

Federal			
- Increase to Food Service Fresh Fruit and Vegetable Program Grants - 6 Elementaries	\$ 151,552		
- Increase to Escandon Elementary All Inclusive Playscape with Synthetic Turf from the City of McAllen Community Development Block Grant	<u>32,850</u>		184,402
Other Sources			
- Transfer to Fund 199 General Fund from Fund 713 Safe and Secure for Sanchez Elementary School Subscription to 3-5 Grade TEKS Bundle	\$ 1,000		
- Transfer to Fund 199 General Fund from Fund 713 Safe and Secure for Sanchez Elementary School After School Chess Lessons for Students	<u>4,160</u>		5,160
		Grand Total	<u>\$ 189,562</u>

EXPENDITURES:

Function 11	- Increase for Sanchez Elementary School Subscription to 3-5 Grade TEKS Bundle	\$ 1,000	
	- Transfer from Fund Balance for Fund 157 Dyslexia - Purchase of Macbooks for Dyslexia Teachers	<u>74,000</u>	75,000
Function 34	- Assigned Fund Balance for Fund 199 General Fund - Mechanical Bus Lift Repairs	\$ 30,173	
	- Assigned Fund Balance for Fund 199 General Fund - Tires for Bus Fleet	<u>22,914</u>	53,087
Function 35	- Transfer from Fund Balance for Fund 101 Food Service - Ford Transit Cargo Van	\$ 125,910	
	- Increase to Food Service Fresh Fruit and Vegetable Program Grants - 6 Elementaries	<u>151,552</u>	277,462
Function 36	- Increase for After School Chess Lessons for Sanchez Elementary School Students	<u>\$ 4,160</u>	4,160
Function 51	- Carry Forward Purchase Order from 2022-2023 for Fund 194 ESSER Local Fund - Rowe Natatorium	\$ 51,001	
	- Increase for Escandon Elementary All Inclusive Playscape with Synthetic Turf - Community Development Block Grant	<u>32,850</u>	83,851
Function 53	- Assigned Fund Balance for Fund 199 General Fund - Chromebook Chargers	<u>\$ 26,000</u>	26,000
Function 81	- Carry Forward Purchase Order from 2022-2023 for Fund 194 ESSER Local Fund - HVAC, Black Boxes, Natatorium, McHi Sports Lighting, Baseball Turf, Network Operations Center	\$ 1,346,533	
	- Fund Balance Reversal for Fund 101 Food Service - Reverse July Amendment for Kitchen Renovations at Wilson, Rayburn, Roosevelt and Garza Elementary Schools	<u>(257,090)</u>	1,089,443
Other Uses	- Operating Transfer for UTRGV Collegiate Academy	<u>\$ 1,146,018</u>	1,146,018
		Grand Total	<u>\$ 2,755,021</u>

Description	A	B	C		D	E
	Original Budget	Revised Budget 07/31/2023	Budget Amendments Under Consideration		Revised Budget 09/30/2023	
			Revisions	Transfers		
Unaudited Fund Balance	16,504,258	16,504,258				16,504,258
Revenues:						
Local						
Interest Income		0				
Other Local Income	11,000,000	11,000,000	(1,414,369)			9,585,631
Other Sources	0	0	1,146,018			1,146,018
Total Revenues	11,000,000	11,000,000	(268,351)	0		10,731,649
Expenditures:						
36 Curricular/Extracurricular Act.		163,615				163,615
41 General Administration						
51 Plant Maint. & Operations	247,463	208,210	150,801	(8,150)		350,861
52 Security and Monitoring Serv.			313,861	(234,393)		79,468
81 Fac. Acquisition & Const.	11,994,868	12,034,121	13,965,714	242,543		26,242,378
Total Expenditures	12,242,331	12,405,946	14,430,376	0		26,836,322
Preliminary Ending Fund Balance	15,261,927	15,098,312	(14,698,727)	0		399,585

CAPITAL PROJECTS FUND

Revisions

REVENUES:

<u>Local</u>			
	Other Local Income	- Decrease UTRGV Reimbursement for the UTRGV Collegiate Academy	\$ (1,414,369)
			(1,414,369)
<u>Other Sources</u>			
		- Operating Transfer for UTRGV Collegiate Academy	\$ 1,146,018
			1,146,018
		Grand Total	<u>\$ (268,351)</u>

EXPENDITURES:

Function 51	- Carry Forward Purchase Orders from 2022-2023 for Fund 620 MTN20- HVAC and Safety (Door Locks, Strobe Lights)	\$ 150,801	
		\$	150,801
Function 52	- Carry Forward Purchase Orders from 2022-2023 for Fund 620 MTN20-Safety (Cameras, Door Locks, Strobe Lights)	\$ 313,861	
		\$	313,861
Function 81	- Carry Forward Purchase Orders from 2022-2023 for Fund 697 UTRGV Collegiate Academy	\$ 6,385,223	
	- Carry Forward Purchase Orders from 2022-2023 for Fund 619 MISD MTN20 - Pressbox	371,041	
	- Carry Forward Purchase Orders from 2022-2023 for Fund 698 MISD Capital Projects - Pressbox	852,828	
	- Carry Forward Balance for Ag Farm Escrow Balance	208,529	
	- Carry Forward Purchase Orders from 2022-2023 for Fund 620 MTN20 - Roof Repairs, HVAC, Paving, Fire Alarms, Restrooms and Safety	6,148,093	
		<u>13,965,714</u>	
	Grand Total		<u>\$ 14,430,376</u>

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: *Natalia Goza*

SUPERVISOR: *Debbie C Aliseda*
Debbie C Aliseda (Oct 11, 2023 16:53 CDT)

Approved for presentation to the Board of Education:

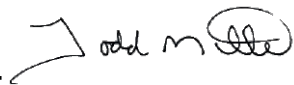
Rosalba DeHoya

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: _____

SUPERVISOR: 
Oct 11, 2023

Approved for presentation to the Board of Education:



384 _____

Interim Superintendent of Schools

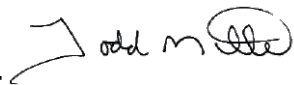
Oct 11, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: _____

SUPERVISOR: 

Oct 11, 2023

Approved for presentation to the Board of Education:



385

Interim Superintendent of Schools

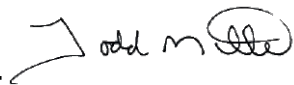
Oct 11, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

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SUPERVISOR: 
Oct 11, 2023

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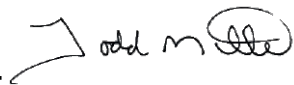
386 _____
Interim Superintendent of Schools
Oct 11, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: October 16, 2023

Attachment:

SUBMITTED BY: _____

SUPERVISOR: 
Oct 11, 2023

Approved for presentation to the Board of Education:



387 _____
Interim Superintendent of Schools
Oct 11, 2023