



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 Tuesday, August 27, 2024, beginning at 5:30 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. **PUBLIC HEARING** to Discuss the Proposed 2024 Tax Rate 7
Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations
Presenter: Dr. René Gutiérrez, Superintendent
6. **SUPERINTENDENT'S REPORT(S)**
Presenter: Dr. René Gutiérrez, Superintendent
 - A) Kids excited on first day of school
 - B) General Assembly welcomes back teachers, staff
 - C) Pre-kinder camp gets little kids ready for big year
7. **RECOGNITION(S)**
8. **PROCLAMATION(S)**
 - A) Discussion and Possible Action to Adopt the Proclamation Regarding 13
Deaf Awareness Month
Item Submitted: Dr. Rosalba De Hoyos, Associate Superintendent for Instructional Services
Presenter: Dr. René Gutiérrez, Superintendent

9. **DONATION(S)**

10. **CONSENT AGENDA ITEMS**

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Presenter: Dr. René Gutiérrez, Superintendent
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Presenter: Dr. René Gutiérrez, Superintendent
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Presenter: Dr. René Gutiérrez, Superintendent
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Presenter: Dr. René Gutiérrez, Superintendent
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Presenter: Dr. René Gutiérrez, Superintendent
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Presenter: Dr. René Gutiérrez, Superintendent
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Presenter: Dr. René Gutiérrez, Superintendent

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Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

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Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

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Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

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Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

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Presenter: Dr. René Gutiérrez, Superintendent

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Presenter: Dr. René Gutiérrez, Superintendent

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Presenter: Dr. René Gutiérrez, Superintendent

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Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

Presenter: Dr. René Gutiérrez, Superintendent

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Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

Presenter: Dr. René Gutiérrez, Superintendent

E) Board of Trustees Item(s)

1. Approval of Board of Education Meeting Minutes 387
a) Regular Board Meeting August 13, 2024
2. Discussion and Possible Action of Travel for Board of Trustees 388

12. 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) Human Resources Recommendation(s) for School Year 2024-2025
- B) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2024-2025
- C) Discussion of the Job Description for an Assistant Director for Emergency Management
- D) Discussion Regarding School Safety and Security
- E) Pending and/or Potential Litigation
- F) Possible Real Estate Acquisition

13. RECONVENE IN OPEN SESSION

14. ACTION ON ITEM(S) IN CLOSED SESSION

- A) Discussion and Possible Action of Human Resources Recommendation(s) for School Year 2024-2025 389
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer
Presenter: Dr. René Gutiérrez, Superintendent
- B) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2024-2025 390
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer
Presenter: Dr. René Gutiérrez, Superintendent
- C) Discussion and Possible Action on the Job Description for an Assistant Director for Emergency Management 391
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer
Presenter: Dr. René Gutiérrez, Superintendent
- D) Discussion Regarding School Safety and Security
- E) Pending and/or Potential Litigation
- F) Possible Real Estate Acquisition

15. SCHEDULE OF FUTURE MEETINGS

- A) Regular Board Meeting - Tuesday, September 10, 2024 - 5:30 PM Dr. Ricardo Chapa Board Room/Administration Building
- B) Regular Board Meeting - Tuesday, September 24, 2024 - 5:30 PM Dr. Ricardo Chapa Board Room/Administration Building

16. 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 August 23, 2024 by 3:00 P.M.
Natalia Goza
on behalf of the Board of Trustees*



Public Hearing August 27, 2024

Proposed 2024 Tax Rate

Lorena Garcia

Deputy Superintendent for Business and Operations

Board of Trustees

Lucia Regalado
Vice President



Debbie Crane Aliseda
Trustee



Aaron D. Rivera
Trustee



Sofia M. Peña
President



Erica de la Garza- Lopez
Secretary



Elizabeth (Lizzie) Kittleman
Trustee



Lucia Thompson
Trustee



Administrative Staff



Dr. René Gutiérrez
Superintendent



Lorena Garcia
Deputy Superintendent for Business & Operations



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



Jeanette Nino
Associate Superintendent for Instructional Leadership



Dr. Alberto Canales
Chief Human Resources Officer



Iris Luna, RTSBA
Chief Financial Officer

Vision

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

Mission

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

Public Notice

NOTICE OF PUBLIC MEETING TO DISCUSS PROPOSED TAX RATE

The MCALLEN ISD will hold a public meeting at 5:30 PM, August 27, 2024 in Dr. Ricardo Chapa Board Room/Administration Building 2000 North 23rd St. McAllen, TX. 78501. The purpose of this meeting is to discuss the school district's tax rate that will be adopted. Public participation in the discussion is invited.

In accordance with Texas Tax Code, Section 26.05(g), the chief appraiser(s) of the appraisal district(s) in which the school district participates has (have) certified to the assessor for the school district an estimate of the taxable value of property in the school district as provided by the Texas Tax Code, Section 26.01 (e).

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

Maintenance Tax	\$0.8350/\$100 (proposed rate for maintenance and operations)
School Debt Service Tax	
Approved by Local Voters	\$0.1616/\$100 (proposed rate to pay bonded indebtedness)

Total Appraised Value and Total Taxable Value (as calculated under Section 26.04, Tax Code)

	<u>Preceding Tax Year</u>	<u>Current Tax Year*</u>
Total appraised value** of all property	\$12,706,655,531	\$13,248,368,279
Total appraised value** of new property***	\$134,263,251	\$128,707,487
Total taxable value**** of all property	\$9,006,089,279	\$9,545,716,392
Total taxable value**** of new property***	\$123,428,740	\$114,758,338

*All values identified are based on estimate(s) of taxable value received pursuant to Section 26.01(e), Tax Code.

**Appraised value is the amount shown on the appraisal roll and defined by Section 1.04(8), Tax Code.

*** "New property" is defined by Section 26.012(17), Tax Code.

**** "Taxable value" is defined by Section 1.04(10), Tax Code.

Bonded Indebtedness

Total amount of outstanding and unpaid bonded indebtedness* \$26,800,000

*Outstanding principal.

Comparison of Proposed Rates with Last Year's Rates

	<u>Maintenance & Operations</u>	<u>Interest & Sinking Fund*</u>	<u>Total</u>	<u>Local Revenue Per Student</u>	<u>State Revenue Per Student</u>
Last Year's Rate	\$0.8448	\$0.1563	\$1.0011	\$4,843	\$7,287
Rate to Maintain Same Level of Maintenance & Operations Revenue & Pay Debt Service	\$0.8139	\$0.0722	\$0.8861	\$4,759	\$6,967
Proposed Rate	\$0.8350	\$0.1616	\$0.9966	\$5,065	\$7,184

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

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

	<u>Last Year</u>	<u>This Year</u>
Average Market Value of Residences	\$219,943	\$223,619
Average Taxable Value of Residences	\$119,943	\$123,619
Last Year's Rate Versus Proposed Rate per \$100	\$1.0011	\$0.9966
Taxes Due on Average Residence	\$1,200.75	\$1,231.99
Increase (Decrease) in Taxes		\$31.24

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

Notice of Voter-Approval Rate: The highest tax rate the district can adopt before requiring voter approval at an election is \$0.9966. This election will be automatically held if the district adopts a rate in excess of the voter-approval rate of \$0.9966.

Fund Balances

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

Maintenance and Operations Fund Balance(s)	\$118,122,996
Interest & Sinking Fund Balance(s)	\$3,318,706

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

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

The 86th Legislature modified the manner in which the voter-approval tax rate is calculated to limit the rate of growth of property taxes in the state.

McAllen ISD Tax Rate History

Budget Year	Tax Year	Maintenance & Operations	Interest & Sinking	Total Tax Rate
2008-2009	2008	1.0400	0.1050	1.1450
2009-2010	2009	1.0400	0.1250	1.1650
2010-2011	2010	1.0400	0.1250	1.1650
2011-2012	2011	1.1650	0.0000	1.1650
2012-2013	2012	1.0400	0.1250	1.1650
2013-2014	2013	1.0400	0.1250	1.1650
2014-2015	2014	1.0400	0.1250	1.1650
2015-2016	2015	1.0400	0.1150	1.1550
2016-2017	2016	1.1550	0.0000	1.1550
2017-2018	2017	1.1550	0.0000	1.1550
2018-2019	2018	1.1550	0.0000	1.1550
2019-2020	2019	1.0586	0.0942	1.1528
2020-2021	2020	1.0450	0.0936	1.1386
2021-2022	2021	1.0486	0.0884	1.1370
2022-2023	2022	1.0206	0.0758	1.0964
2023-2024	2023	0.8448	0.1563	1.0011
Proposed* 2024-2025	2024	0.8350	0.1616	0.9966

Every penny generates
approximately
\$875,431

Proposed*

*Proposed 2024 Total Tax Rate decreased by \$0.0045

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Public Hearing Comments

McAllen ISD thanks you for your continued support!

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

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

REFERENCE: Goal 1: Student Achievement/ Student Focus

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District proclaims September as Deaf Awareness Month. To recognize, support, and celebrate the many unique and individual achievements of our students who are Deaf and Hard of Hearing.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS: N/A

LEGAL REVIEW: None required

BUDGETARY CONSIDERATIONS: None required

RECOMMENDED BOARD ACTION: That the Board of Trustees approve the Proclamation Regarding Deaf Awareness Month.

SUBMITTED BY: 
Liza Lara (Aug 20, 2024 15:29 CDT)

For further information contact:
Name: Liza Lara
Office: 956-971-4500
eMail: liza.lara@mcallenisd.net

SUPERVISOR: 

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 21, 2024 08:19 CDT)



Proclamation

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



Whereas, the deaf population includes a wide range of individuals from those that are born profoundly deaf and use sign language as a primary means of communication, to those with a degree of hearing loss who use hearing aids or other forms of amplification and communication modes and;

Whereas, the purpose of Deaf Awareness Month is to raise awareness of the issues and the culture of people who are deaf and hard of hearing and to promote equal access to information, educational programs, resources, and services for deaf individuals; and

Whereas, we celebrate the many unique and individual achievements of people who are deaf and hard of hearing and we thank the many professionals and educators dedicated to assisting and educating individuals who are deaf and hard of hearing.

Now Therefore, I, Sofia M. Peña, Member, Board of Trustees of the McAllen Independent School District, do hereby proclaim that the month of September 2024 be observed as

“Deaf Awareness Month”

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 27th day of August 2024.

Sofia M. Peña, President, Board of Trustees
McAllen Independent School District

Attest:

Erica de la Garza-Lopez, Secretary, Board of Trustees
McAllen Independent School District

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on Interlocal Cooperation Contract No. 2025-090 Environmental Science and Aquatic Science with City of McAllen's Quinta Mazatlan

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Interlocal Cooperation Contract with the City of McAllen's Quinta Mazatlan provides McAllen Independent School District ("District") students the ability to connect science learning in the classroom with their local environment. The field trips, hosted at Quinta Mazatlan, provide students the opportunity to learn about local habitats and conserving these local eco-systems. Student trips begin with third grade and continue through high school.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Approximately 3,880 students 3rd - 12th grade visit Quinta Mazatlan each year. All field trips are aligned with the Texas Essential Knowledge and Skills ("TEKS").

LEGAL REVIEW:

The Agreement has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

Funds for these fees are budgeted through General Fund. The anticipated expenditures for Quinta Mazatlan services for the 2024-2025 school year are \$27,160.00, at a rate of \$7.00 per student.

RECOMMENDED BOARD ACTION:

Administration is recommending that the Board of Trustees approve Interlocal Cooperation Contract No. 2025-090 Environmental Science and Aquatic Science with City of McAllen's Quinta Mazatlan for a term of nine (9) months, beginning September 1, 2024 through May 31, 2025.

Attachment: ☒

SUBMITTED BY: 

For further information contact:
Name: Mrs. Celeste F. Garza, Secondary Science Coordinator
Office: 956-632-2906
eMail: celeste.garza@mcallenisd.net

SUPERVISOR: 

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 21, 2024 10:34 CDT)

INTERLOCAL COOPERATION CONTRACT

This Interlocal Cooperation Contract (this “Contract”) is entered into effective September 1st, 2024 (“Effective Date”), by and between the Contracting Parties shown below pursuant to authority granted in and in compliance with Chapter 791, Texas Government Code.

CONTRACTING PARTIES:

Receiving Parties: McAllen Independent School District, sometimes referred to as (“MISD”), a local school district authorized by the State of Texas.

Performing Party City of McAllen, Quinta Mazatlán, sometimes referred to as (“City”), a home rule municipal corporation.

PURPOSE:

The purpose of this contract is to provide services to MISD by the City. The services include educational driven programs through its center facility to Receiving Party. This Contract will increase the efficiency and effectiveness of the Contracting Parties.

STATEMENT OF SERVICES TO BE PERFORMED:

City will perform the following work and services described on Exhibits shown below and comply with all the terms and conditions of the Contract (the “Contract Documents”).

- Exhibit “A” for 3rd Grade
- Exhibit “B” for 5th Grade
- Exhibit “C” for 7th Grade
- Exhibit “D” for AP Environmental Science and Aquatic Science

City will provide environmental programs, guided tours and curriculum materials for teachers and students services.

WARRANTIES:

Receiving Party warrants that (1) the services are necessary and authorized for activities that are properly within its statutory functions and programs; (2) it has the authority to contract for the services under authority granted in Chapter 11, Texas Education Code, and Chapter 791, Texas Government Code; (3) it has all necessary power and has received all necessary approvals to

execute and deliver this Contract, and (4) the representative signing this Contract on its behalf is authorized by its governing body to sign this Contract.

Performing Party warrants that (1) it has authority to perform the services; (2) it has all necessary power and has received all necessary approvals to execute and deliver this Contract, and (3) the representative signing the Contract on its behalf is authorized by its governing body to sign this Contract.

CONTRACT AMOUNT: The total amount of this Contract shall not exceed:

- Exhibit “A” for 3rd Grade – shall not exceed \$9,240
- Exhibit “B” for 5th Grade – shall not exceed \$9,800
- Exhibit “C” for 7th Grade – shall not exceed \$2,520.00
- Exhibit “D” for AP Environmental Science & Aquatic Science – shall not exceed \$5,600

PAYMENT:

Receiving Party will remit payments to Performing Party for services satisfactory performed under this Contract.

Payments made under this Contract (1) are based on cost recovery, (2) will fairly compensate Performing Party for the services performed under this Contract, and (3) will be made from current revenues available to Receiving Party.

TERM:

The term of this Contract:

- Exhibit “A” for 3rd Grade – September 1st, 2024 – May 31, 2025
- Exhibit “B” for 5th Grade – September 1st, 2024 – May 31, 2025
- Exhibit “C” for 7th Grade – September 1st, 2024 – May 31, 2025
- Exhibit “D” for Environmental Science & Aquatic Science – September 1st, 2024– May 31, 2025

NOTICES:

Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitting to be given under any of the provisions of this Contract will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mailed, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to Performing Party: City of McAllen
 Attn: Quinta Mazatlán
 600 Sunset Drive
 McAllen, Texas 78503

If to Receiving Party: McAllen ISD
 2000 N. 23rd St.
 McAllen, Texas 78501
 Phone: (956) 657-4480
 Fax: (956) 657-4481

or such other person or address as may be given in writing by either party to the other in accordance with this Section.

Notwithstanding any other requirements for notices given by a party under this Contract, if Receiving Party intends to deliver written notice to Performing Party pursuant to Section 2251.054, Texas Government Code, then Receiving Party will send that notice to Performing Party as follows:

City of McAllen
Attn: Quinta Mazatlán
600 Sunset Drive
McAllen, TX 78503

or other person or address as may be given in writing by Receiving Party to Performing Party in accordance with this Section.

TERMINATION:

Either party may terminate this Contract upon thirty (30) days advance written notice of termination to the other party.

OTHER PROVISIONS:

Venue; Governing Law. Hidalgo County, Texas shall be the proper place of venue for suit on or in respect of this Contract. This Contract and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

Entire Agreement; Modifications. This Contract supersedes all prior agreements, written or oral, between Performing Party and Receiving Party and shall constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Contract and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Receiving Party and Performing Party.

Assignment. This Contract is not transferable or assignable except upon written approval by Receiving Party and Performing Party.

Severability. If anyone or more of the provisions contained in the Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained therein.

Public Records. It shall be the independent responsibility of Receiving Party and Performing Party to comply with the provisions of Chapter 552, Texas Government Code (the "Public Information Act"), as those provisions apply to the parties' respective information. Receiving Party is not authorized to receive public information requests or take any action under the Public Information Act on behalf of Performing Party. Likewise, Performing Party is not authorized to receive public information requests or take any other action under the Public Information Act on behalf of Receiving Party.

Executed effective as of the Effective Date by the following duly authorized representatives of the Contracting Parties:

RECEIVING PARTY:
McAllen Independent School District

PERFORMING PARTY:
Name: City of McAllen, Quinta Mazatlán

By: _____

Sofia M. Peña
Board President

Approved as to form:

By:  _____
[JOHNATHAN BALL \(Aug 19, 2024 16:46 CDT\)](#)
John Ball, MISD Attorney

By: _____

Roel "Roy" Rodriguez
City Manager

Approved as to form:

By: _____
Isaac Tawil, City Attorney

EXHIBIT "A" "3RD GRADE CONTRACT"
DEFINITION OF SERVICES

Contractor shall provide the following services to District at a rate of
\$7.00 per student, not to exceed \$9,240 during this Contract term:

- Environmental Education Program titled:

HABITATS, ADAPTATIONS & LIFE CYCLES

The program is for all District students in Grade Three (3) and will include a hands on classroom lesson and guided interpretative tour on the trails.

- Schedule is as follows:

Departure from School Campus	8:15 am
Arrival at Quinta Mazatlán	8:45 am - 8:55 am
Program begins at Quinta Mazatlán	9:00 am
Departure from Quinta Mazatlán	1:00 pm

NOTE: The children have lunch at Quinta Mazatlán following their educational program. Lunch is the responsibility of the school. School is to pack lunches in igloos that can be carried off the bus by MISD staff. Quinta Mazatlán provides tables, chairs and recycling bins for the lunch.

- If inclement weather prohibits outside time on the trails, Quinta Mazatlán has designed equivalent lesson for indoor and patio delivery of the program.
- All hands-on materials for the on sight environmental program are provided by the Contractor.
- Contractor asks District to provide 1 Adult Chaperone (teacher OR parent) for every 10 students.
- Contractor asks for the MISD teachers to please complete a short Evaluation Form, prior to leaving Quinta Mazatlán.

EXHIBIT "B" "5TH GRADE CONTRACT"
DEFINITION OF SERVICES

Contractor shall provide the following services to District at a rate of
\$7.00 per student, not to exceed \$9,800 during this Contract term:

- Environmental Education Program titled:

CONNECTIONS IN THE ECOSYSTEM

The program is for all District students in Grade Five (5) and will include a hands on classroom lesson and guided interpretive tour on the trails.

- Schedule is as follows:

Departure from School Campus	8:15 am
Arrival at Quinta Mazatlán	8:45 am - 8:55 am
Program begins at Quinta Mazatlán	9:00 am
Departure from Quinta Mazatlán	1:00 pm

NOTE: The children have lunch at Quinta Mazatlán following their educational program. Lunch is the responsibility of the school. School is to pack lunches in igloos that can be carried off the bus by MISD staff. Quinta Mazatlán provides tables, chairs and recycling bins for the lunch.

- If inclement weather prohibits outside time on the trails, Quinta Mazatlán has designed equivalent lesson for indoor and patio delivery of the program.
- All hands-on materials for the on sight environmental program are provided by the Contractor.
- Contractor asks District to provide 1 Adult Chaperone (teacher OR parent) for every 10 students.
- Contractor asks for the MISD teachers to please complete a short Evaluation Form, prior to leaving Quinta Mazatlán.

EXHIBIT "C" "7th GRADE CONTRACT"
DEFINITION OF SERVICES

Contractor shall provide the following services to District at a rate of
\$7.00 per student, not to exceed \$2,520 during this Contract term:

- Environmental Education Program titled:

SAVE THE BIOME!

The program is for all District students in Grade Seven (7) and will include a hands-on classroom lesson and guided interpretive tour on the trails.

- Schedule is as follows:

Departure from School Campus	8:15 am
Arrival at Quinta Mazatlán	8:45 am - 8:55 am
Program begins at Quinta Mazatlán	9:00 am
Departure from Quinta Mazatlán	1:00 pm

NOTE: The children have lunch at Quinta Mazatlán following their educational program. Lunch is the responsibility of the school. School is to pack lunches in igloos that can be carried off the bus by MISD staff. Quinta Mazatlán provides tables, chairs and recycling bins for the lunch.

- If inclement weather prohibits outside time on the trails, Quinta Mazatlán has designed equivalent lesson for indoor and patio delivery of the program.
- All hands- on materials for the on sight environmental program are provided by the Contractor.
- Contractor asks District to provide 1 Adult Chaperone (teacher OR parent) for every 10 students.
- Contractor asks for the MISD teachers to please complete a short Evaluation Form, prior to leaving Quinta Mazatlán.

EXHIBIT "D" "HIGH SCHOOL AP ENVIRONMENTAL SCIENCE AND AQUATIC
SCIENCE CONTRACT"

DEFINITION OF SERVICES

Contractor shall provide the following services to District at a rate of
\$7.00 per student, not to exceed \$5,600 during this Contract term:

- Environmental Education Program titled:

AQUATIC FIELD SCIENCE DAY

The program is for all District students in High School AP Environmental Science and Aquatic Science and will include a hands-on classroom lesson and guided interpretive tour on the trails.

- Schedule is as follows:

Departure from School Campus	8:15 am
Arrival at Quinta Mazatlán	8:45 am - 8:55 am
Program begins at Quinta Mazatlán	9:00 am
Departure from Quinta Mazatlán	1:00 pm

NOTE: The children have lunch at Quinta Mazatlán following their educational program. Lunch is the responsibility of the school. School is to pack lunches in igloos that can be carried off the bus by MISD staff. Quinta Mazatlán provides tables, chairs and recycling bins for the lunch.

- If inclement weather prohibits outside time on the trails, Quinta Mazatlán has designed equivalent lesson for indoor and patio delivery of the program.
- All hands- on materials for the on sight environmental program are provided by the Contractor.
- Contractor asks District to provide 1 Adult Chaperone (teacher OR parent) for every 10 students.
- Contractor asks for the MISD teachers to please complete a short Evaluation Form, prior to leaving Quinta Mazatlán.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on Interlocal Cooperation Contract No. 2025-091 Texas Work Study Mentorship Program Collegiate G-Force with University of Texas Rio Grande Valley

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Texas Work Study Student Mentorship Program Collegiate G-Force Mentorship ("Program"), through The University of Texas Rio Grande Valley ("UTRGV"), assists in generating a college culture among high school students. UTRGV and the District have been collaborating on this program since 2009.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

UTRGV students ("Members") will work alongside the College Admissions Scholarship Specialists ("CASS") to get students in 9th through 11th grade college ready. Members will provide mentoring and/or tutoring services to high school students and their parents with college, career, and financial aid information.

LEGAL REVIEW:

Agreement has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

Administration is recommending that the Board of Trustees approve Interlocal Cooperation Contract No. 2025-091 Texas Work Study Mentorship Program Collegiate G-Force with University of Texas Rio Grande Valley for a term of one (1) year, beginning September 1, 2024 through August 31, 2025.

Attachment: ☒

SUBMITTED BY: 
Norma Cabrera (Aug 19, 2024 11:16 CDT)

For further information contact:
Name: Ms. Norma Cabrera, Director of College,
Career, and Counseling
Office: 956-618-6098
eMail: norma.cabrera@mcallenisd.net

SUPERVISOR: 

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 21, 2024 10:31 CDT)

25

Superintendent of Schools

INSTRUCTIONS FOR INTERLOCAL COOPERATION CONTRACT

1. Please complete the required information in the blank areas.
2. Please sign and return **a scanned copy** of the document to the following e-mail address:

UTRGV G-Force Program
Attn: Dr. Cynthia Walls, Director for P-16 Outreach and Testing
Services cynthia.walls01@utrgv.edu
Nallely Salinas, Program Coordinator,
nalleli.salinasloredo@utrgv.edu

*in efforts to go paperless as well as to expedite your contract, we accept scanned copies. If you would like to mail your agreement, you are welcome to mail it to the following address:

UTRGV P-16 Outreach & Testing Services
(G-Force Program)
Attn: Dr. Cynthia Walls/Nallely Salinas
The University of Texas Rio Grande Valley
1201 W. University Dr., EMLH 2.204
Edinburg, TX 78539

3. Once the copy has been signed at UTRGV, we will return the completed copy to your office for your records.
4. If you have any questions, please contact Nallely Salinas at 956-665-7598 or via e-mail at nalleli.salinasloredo@utrgv.edu respectively.

**2024-2025 Texas Work Study Mentorship Program
Collegiate G-Force**

Interlocal Cooperation Contract

District: McAllen Independent School District

Address: 2000 N. 23rd Street
McAllen, TX 78501

Contact: Norma Cabrera

Phone: 956-618-6098

E-mail: norma.cabrera@mcallenisd.net

Submit to:

UTRGV P-16 Outreach and Testing Services
College Access and K-12 Partnerships
Attn: Dr. Cynthia Walls/ Mrs. Nallely Salinas
1201 W. University Dr. Emilia Hall 2.204
Edinburg, TX 78539
(956)665-7598

INTERLOCAL COOPERATION CONTRACT

This **Interlocal Cooperation Contract** (this “**Contract**”) is entered into effective **September 1, 2024** (“**Effective Date**”) by and between the Contracting Parties shown below pursuant to authority granted in and in compliance with Chapter 791, *Texas Government Code*.

CONTRACTING PARTIES:

This proposed **Interlocal Cooperation Contract** is between **The University of Texas Rio Grande Valley (“Performing Party”)** and high schools within the **McAllen Independent School District** “Receiving Party”.
Name of School District

PURPOSE:

The purpose of this contract is to implement the Texas Work Study Student Mentorship Program (Collegiate G-Force Mentorship) at local high schools. The program's goal is to assist in generating a college-going culture among high school students and the community at large. The program is designed to provide access to college, career, and financial aid information for students in the South Texas Region. Eligible college students work at participating eligible institutions to mentor high school students to help create a college-going culture. College students provide mentoring and/or tutoring services to high school students or college students on their college campus. This initiative is in line with the goals of The Texas Higher Education Coordinating Board (THECB) 60X30TX strategic plan.

STATEMENT OF SERVICES TO BE PERFORMED:

The Performing Party will perform the following services (“services”):
Receiving Party and Performing Party working with the Texas Higher Education Coordinating Board (THECB) will support the following common goals:

- To encourage students to pursue post-secondary education.
- To provide students and parents with the career, college access, and financial aid information they need to plan and prepare for college.
- To provide information to best serve students and parents and to demonstrate the effectiveness of the Performing Arts Program.

Performing
Party will perform the following services:

- Appoint a Program Coordinator to serve as the communication liaison between the Receiving Party, Performing Party, and THECB.
- Ensure University Staff and Collegiate G-Force (C.G.F.) complete a criminal background check.
- Recruit, screen, deploy and monitor C.G.F. mentors to mentor students through the partnering agencies via funds from the program.
- Provide assistance to the Receiving Party concerning the respective roles of the appointed Site Supervisor and provide C.G.F. mentors to help facilitate activities via in-person, virtual, or a hybrid model.
- Provide training for Site Supervisor and Collegiate and High School G-Force on how to spread

the college-going message among students and parents that college is affordable, possible, and desirable.

- Assign C.G.F. mentors for the term of this agreement (**or as funding allows**) to designated partnering agencies for academic engagement activities to promote college awareness and participation among students and parents.
- Provide services to high school students via in-person, virtual, or hybrid models, a general overview of the college experience, college and course selection, test preparation, financial literacy, completion of financial aid, and admission application submission.
- Work with Receiving Party's designated sponsor to develop a schedule indicating their hours of operation.
- Monitor project activities through annual reports from mentors and Receiving Party to report to THECB.
- Provide a report to the THECB summarizing how and to what extent the Performing Party C.G.F. mentors assisted at their respective partnering agencies.
- Provide a minimum of 1 mentor per designated partnering agency, for a min of 8 hours a week, contingent on funding and student availability.

Receiving Party will perform the following services:

- Participate in a mandatory school partner training hosted at UTRGV
- Designate a space to serve as the work site for the mentor at school; a physical location with computer and internet access is required for in-person services. The location must display college readiness materials, including information about Free Application for Federal Student Aid (FAFSA), Apply Texas, and other college-going materials.
- Designate an approved school district room and/or virtual platform to serve as the "site" and provide links for the performing Party to access.
- Designate/appoint a school employee or individual authorized by the school to serve as Counselor or liaison and to provide supervision of the G-Force Mentors. This individual will serve as the main point of communication for the university managing the program (UTRGV P-16 Outreach & Testing Services)
- Encourage the establishment of a peer-led center with the partnering agency to maximize a college-going culture. Encourage teachers and high school staff to utilize the center site and reinforce the importance of the location on campus.
- Collaborate with Collegiate G-Force mentor to establish a set schedule and maximize time at the high school campus. Also, scheduling meetings/sessions with students as mentors will be required to conduct presentations and sessions at their assigned campus.
- **Require that all students visiting sign in and check off any activities completed during their visit to the center.**
- **Submit monthly reports by the 5th of each month** (if this falls on a weekend, reports are due the next business day). Forms and training will be provided by Performing Party.
- **Assigned counselor/personnel shall provide the following aggregate supporting data for the Work Study Mentorship Program: number of students who graduate & applied to a 4-yr institution, number of students who graduate & applied to a 2-yr institution, number of students who graduate & applied to a technical college, 2024-2025 graduation class numbers, scholarship awards, university scholarships, financial aid awards, local scholarship amount award, major scholarships amount award. Collected data is needed by June 10, 2025**
- Utilize a tracking system provided and maintained by the Institution of Higher Education; encourage teachers and students to use the program facilities and foster an expectation of college attendance (i.e., reinforcing the knowledge that post-secondary education is affordable and possible, and the belief that it is desirable).

Both Parties will:

- Work to meet the goals of the 60x30TX plan.
- Inform the partner(s) of any scheduling changes that may impact service delivery.
- Develop a method of communicating needs and challenges.
- Remain in compliance with the Family Educational Rights and Privacy Act (FERPA): The Family Educational Right and Privacy Act, FERPA, 20 U.S.C. Section 1232g, and the implementing federal regulations, 34 CFR Part 99, is a federal law regarding the privacy of student records and the obligations of the institution, primarily in the areas of release of the records and the access provided to these records; and
- Collaborate to encourage students to pursue post-secondary education.

WARRANTIES:

Receiving Party warrants that (1) the services are necessary and authorized for activities that are properly within its statutory functions and programs; (2) it has the authority to contract for the services under authority granted in Section 11, *Texas Education Code*, and Chapter 791, *Texas Government Code*; (3) it has all necessary power and has received all necessary approvals to execute and deliver this contract, and (4) the representative signing this contract on its behalf is authorized by its governing body to sign this contract.

Performing Party warrants that (1) it has authority to perform the services under authority granted in Section 79, *Texas Education Code* and Chapter 791, *Texas Government Code*; (2) it has all necessary power and has received all necessary approvals to execute and deliver this contract, and (3) the representative signing this contract on its behalf is authorized by its governing body to sign this contract.

Both parties will remain in compliance with the Family Educational Rights and Privacy Act (FERPA): The Family Educational Rights and Privacy Act, FERPA, 20 U.S.C. Section 1232g, and the implementing federal regulations, 34 CFR Part 99, is a federal law regarding the privacy of student records and the obligations of the institution, primarily in the areas of release of the records and the access provided to these records.

TERM:

The term of this contract begins on the Effective Date and expires on **August 31, 2025**.

NOTICES:

Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests, or other communications provided for or permitted to be given under any of the provisions of this contract will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile-transmission (to the extent a facsimile number is set forth below), or e-mail (to the extent an e-mail address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or e-mail (to the extent an e-mail address is set forth below), when received:

If to Receiving Party:

District Name: McAllen Independent School District
Attention: Dr. René Gutiérrez (District Office Contact)
Title: Superintendent
Secretary: Marta I. Garza
Phone: 956-618-6000
Fax: N/A
Email: rene.gutierrez@mcallenisd.net

with a copy to:

School Name(s): Lamar Academy
Attention: Nora Sanchez (School Principal)
Title: Principal
Secretary: Francelia Martinez
Phone: 956-632-3222
Fax: 956-657-3662
Email: nora.sanchez@mcallenisd.net

and:

School Name(s): Lamar Academy
Attention: Aimee Nunez (Counselor or designee)
Title: College Admission & Scholarship Specialist
Secretary: N/A
Phone: 956-632-3222
Fax: 956-657-3662
Email: aimee.nunez@mcallenisd.net

If to Performing Party: The University of Texas Rio Grande Valley
1201 W. University Drive
Edinburg, TX 78539 E-
mail: evpfa@utrgv.edu
Fax: (956) 665-2307
Attention: Michael Muller
Executive Vice President for Finance and Business Affairs and CFO

with a copy to: The University of Texas Rio Grande Valley
1201 W. University Drive
Edinburg, TX 78539
Email: alex.valdez@utrgv.edu
Fax: (956) 665-2164
Attention: Alex Valdez
Chief Procurement Officer

or other person or address as may be given in writing by either Party to the other by this Section.

Notwithstanding any other requirements for notices given by a Party under this contract, if Performing Party intends to deliver written notice to Receiving Party pursuant to Section 2251.054, *Texas Government Code*, then Performing Party will send that notice to Receiving Party as indicated in above contact information.

TERMINATION:

In the event of a material failure by a Contracting Party to perform its duties and obligations in accordance with the terms of this contract, the other Party may terminate this contract upon thirty (30) days advance written notice of termination setting forth the nature of the material failure; provided that, the material failure is through no fault of the terminating Party. The termination will not be effective if the material failure is fully cured prior to the end of the thirty-day period.

OTHER PROVISIONS:

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

Venue; Governing Law. Hidalgo County, Texas shall be the proper place of venue for suit on or in respect of this contract. This contract and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas.

Entire Agreement; Modifications. This contract supersedes all prior agreements, written or oral, between the Performing Party and Receiving Party and shall constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This contract and each of its provisions shall be binding upon the parties and may not be waived, modified, amended, or altered except by a writing signed by Receiving Party and Performing Party.

Loss of Funding. Performance by a Contracting Party of its duties and obligations under this contract

may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by that Contracting Party's governing board. If the Legislature fails to appropriate or allot the necessary funds to a Contracting Party, or a Contracting Party's governing board fails to allocate the necessary funds, then the Contracting Party that loses funding may terminate this contract without further duty or obligation under this contract.

State Auditor's Office. The Contracting Parties understand that acceptance of funds under this contract constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. The Contracting Parties agree to cooperate with the Auditor in the conduct of the audit or investigation, including, without limitation, providing all records requested. The Contracting Parties will include this provision in all contracts with permitted subcontractors.

Assignment. This contract is not transferable or assignable except upon written approval by Receiving Party and Performing Party.

Severability. If any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained therein.

Public Records. It shall be the independent responsibility of Receiving Party and Performing Party to comply with the provisions of Chapter 552, *Texas Government Code* (the "*Public Information Act*"), as those provisions apply to the parties' respective information. Receiving Party is not authorized to receive public information requests or take any action under the *Public Information Act* on behalf of the Performing Party. Likewise, Performing Party is not authorized to receive public information requests or take any other action under the *Public Information Act* on behalf of Receiving Party.

The participating parties agree to the terms outlined above for the
2024-2025 **academic year, with plans to review these terms at the conclusion of noted**
academic year.

RECEIVING PARTY:

McAllen Independent School District **(District)**

By: _____

Name: Sofia M. Peña

Title: Board of Trustees President

Date: _____

Approved as to form:

by  _____
JOHNATHAN BALL (Aug 14, 2024 08:42 CDT)
Johnathan Ball, Staff Attorney

PERFORMING PARTY:

The University of Texas Rio Grande Valley

By: _____

Dr. Maggie Hinojosa

Sr. VP Strategic Enrollment and Student Affairs

The University of Texas Rio Grande Valley

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2024-1018 Library Books, Audiovisual Supplies & Equipment, Software and Related Products and Services (Round 6 and Round 7)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The McAllen Independent School District solicited proposals for library books, audiovisual supplies & equipment, software and related products and services. This Request for Proposal is an extended response period, multiple award contract, solicited in accordance with the Financial Accountability System Resource Guide ("FASRG"), section 5.16, titled "Multiple/Catalog/Discount-from-List Contract Awards". This allows vendors to submit responses throughout the year through the contract term. Vendors are awarded on an incremental basis, upon the Board of Trustees approval. Sixty five (65) vendors were previously awarded through this RFP.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Four hundred eighty-three (483) vendors were invited to submit proposals, and twenty-five (25) vendors responded, including eleven (11) no bid responses, two (2) duplicate, and one (1) non-responsive. The evaluation committee, comprised of Jenny Ann Vega, Director of Digital Learning and Library Services; Laura Williams, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Graciela Garza, Senior Buyer, evaluated the proposals. Administration is recommending that the thirty (30) vendors listed on the attached list be awarded.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

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

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2024-1018 Library Books, Audiovisual Supplies & Equipment, Software and Related Products and Services (Round 6 and Round 7), and approve the companies on the attached list as qualified vendors, for a coterminous term through June 30, 2027.

Attachment: ☒

SUBMITTED BY: Jenny Ann Vega

For further information contact:
Name: Ms. Jenny Ann Vega, Director of Digital
Learning and Library Services
Office: 956-972-5600
eMail: jennyann.vega@mcallenisd.net

SUPERVISOR: Rosalia De Herrera

Approved for presentation to the Board of Education:

Rene Gutierrez
RENE GUTIERREZ (Aug 21, 2024 10:33 CDT)

**Request for Proposal No. 2024-1018 Professional Development Library Books, Audiovisual Supplies Equipment,
Software and Related Products and Services (Round 6 Round 7)**

No.	Responding Supplier	City	State	Recommendation
1	Complete Book and Media Supply, LLC	Cedar Park	TX	Qualified
2	JAYCO INK, LLC	McAllen	TX	Qualified
3	Lehrbook, LLC	Monsey	NY	Qualified
4	MGM Printing (Martin O. Macias)	McAllen	TX	Qualified
5	OverDrive, Inc.	Cleveland	OH	Qualified
6	Proforma Diversified Corporate Solutions (Ostos LLC)	Austin	TX	Qualified
7	Rolling Hills Publishing, LLC (Michael Edmond Gray)	Ozark	MO	Qualified
8	Sirius Education Solutions (Sirius Education Solutions LLC)	Austin	TX	Qualified
9	Studies Weekly, Inc.	Orem	UT	Qualified
10	Teaching Strategies LLC (UTJ Holdco Inc.)	Bethesda	MD	Qualified
11	Zoobean Inc	Arlington	VA	Qualified

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on Memorandum of Agreement No. 2025-008 Texas Dual Language Project with Ensemble Learning

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Ensemble Learning in collaboration with Texas Education Agency ("TEA") lead the Texas Dual Language Project to support schools in the State of Texas with professional learning to support the implementation of the TEA Texas Dual Language Framework at no cost to the district. Andrew Jackson Elementary and Ben Milam Elementary campuses will participate during the 2024-2025 school year in the project and receive professional learning for staff and campus administrators to support the Dual Language program implementation.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The work will focus on increasing the capacity of the school to support dual language instruction, improving reading outcomes for emergent bilingual students, increasing school leaders' capacity to use data to drive instruction around literacy, and increasing teachers' expertise around teaching literacy and growing biliterate students.

LEGAL REVIEW:

Memorandum of Understanding and Data Sharing Agreement have been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

None

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Agreement No. 2025-008 Texas Dual Language Project with Ensemble Learning for a period of one (1) year, beginning September 1, 2024 through August 31, 2025.

Attachment: ☒

SUBMITTED BY: _____

For further information contact:
Name: Jeanette Nino, Associate Superintendent for Instructional Leadership
Office: 956-618-6053
Email: jeanette.nino@mcallenisd.net


SUPERVISOR: Jeanette Nino (Aug 20, 2024 17:02 CDT)

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 21, 2024 08:17 CDT)



MISD Contract
2025-008

Memorandum of Understanding (MOU): Texas Dual Language Project 24-25 Term: September 1, 2024 - August 31, 2025

Welcome to the Texas Dual Language Project, a project led by Ensemble Learning in conjunction with TEA to further develop Texas schools' expertise with Dual Language Instruction. We are excited to partner with you on this project! This project is funded by a US Department of Education "National Professional Development" (NPD) Grant, and as a result, an additional task of this project is to examine the impact on school climate, teachers' instruction, and student achievement. In coordination with our evaluation partners at the American Institutes for Research (AIR), we wanted to make sure you were informed about the project overview and requirements, as well as have the opportunity to ask questions, before confirming your participation.

This document contains an overview of the project, followed by a description of the roles and responsibilities for your school. Please review the contents of this document and sign the last page to indicate your formal agreement to participate.

Overview

Ensemble Learning's program is focused on supporting the implementation of the new Texas Dual Language Framework. The work will focus on increasing the capacity of the school to support dual language instruction, improving reading outcomes for emergent bilingual students, increasing school leaders' capacity to use data to drive instruction around literacy, and increasing teachers' expertise around teaching literacy and growing biliterate students.

The program will include:

- **Training:** two days of training over the summer that build upon the biliteracy reading academy and focus on how to implement skills and best practices. This will include a focus on building student literacy and using data to drive instruction.
- **Instructional Coaching:** 15 hours of instructional coaching per month to be allotted by the school leader to support teachers shoulder to shoulder as they practice what they have learned and refine their instruction.
- **Credentialing Support:** all teachers will have access to training modules to support biliteracy certification in Texas. Additionally, Ensemble Learning will reimburse teachers for the testing fees to support credentialing.
- **Leader support:** three to four school walkthroughs with the school leader and one of Ensemble Learning's leadership coaches to help school leaders identify what to look for in a dual language classroom and how to support their teachers as they implement dual language instruction.
- **Resources:** Tasks, tools, and templates for your school's teachers and leaders to utilize to create targeted goals and action plans to increase equity for ELs on your campus.

Roles and Responsibilities

We look forward to partnering with your school for this exciting project! Please note that your school's participation in this project is voluntary. Your school and staff will not be penalized in any way for not participating and you may discontinue participation at any time without penalty.

We would expect the following of all schools who agree to participate:

- **Maintain a sustained commitment to participate in the project.** All schools are expected to participate in the Texas Dual Language project as designed. This includes participating fully in trainings, instructional coaching, school walkthroughs, and applying the learnings at your school.
- **Participate in all data collection activities.** Participating schools should participate in all the study's data collection activities. For all schools, these include:
 - Completing all post-webinar or post-event surveys to provide feedback to Ensemble Learning and data for program evaluation.
 - Providing the AIR study team with student demographic data (the categories of which are described in Exhibit A) and available standardized test score data (TELPAS and STAAR) for the 2024-25 school year, coaching logs, and program documents and records.
 - Encouraging all teachers in your school to participate in a school culture survey in the beginning and end of the cohort period.
 - Additionally, we will ask that schools also participate in the following:
 - One annual teacher focus group to be scheduled according to school needs
 - Annual teacher survey

Benefits to Participation: There are many benefits of participation for your school. This project will provide school teachers and leaders with job-embedded, research-based training. Participating schools will receive two days of training, one-on-one instructional coaching, and support for getting more teachers credentialed. All of these will be provided at no cost to the school or district.

Risks to Participation: The risks to participating in this project are minimal. The AIR research team will maintain the confidentiality of all staff- and student-level data they receive in accordance with FERPA and state privacy laws and standards. Schools, students, and staff members will not be identified by name in any reports that result from this project and AIR will ensure that no schools, students, or staff can be reasonably identified based on disclosed data. Participants' information collected as part of the research, even if identifiers are removed, will not be used or distributed for future research studies.

Term and Termination: This agreement shall be for a term of one year effective the date of signature.. Both Parties may agree to renew for successive one year terms. Either Party may terminate this agreement for convenience with 30 day written notice.

Questions or Comments: If you have any questions or comments about the Texas Dual Language Project programming, please contact Ensemble Director of Research, Leigh Mingle at 409-728-0741 or lmingle@ensemblelearning.org. If you have questions about the research study or data collection, please feel free to contact Ryan Eisner at AIR at 312-283-2300 or reisner@air.org).

If you have concerns or questions about your rights as a research participant, contact AIR's Institutional Review Board (IRB), which is responsible for the protection of project participants, at IRB@air.org, toll free at 1-800-634-0797, or c/o IRB, American Institutes for Research, 1400 Crystal Drive, 10th floor, Arlington, VA

22202-3289. Please sign below to agree that you have read this document and agree to participate. Return a scanned, signed copy to lmingle@ensemblelearning.org or by mail to Leigh Mingle, 9705 Curlew Dr., Austin, TX 78748.

Signature of School Official:

Printed Name: Sofia M. Peña

Title: Board of Trustee Pressident

School(s): Jackson Elementary School; Milam Elementary School

Date:

Bilingual Department

by: *Rocio Nava*
Rocio Nava, Director

Approved as to form:

by: *[Signature]*
Johnathan Ball, Staff Attorney

Exhibit A

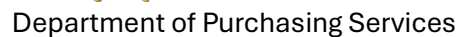
Student Demographic Data Categories:

1. Blinded Student ID (or other number that is able to be matched to TELPAS and STAAR Data)
2. Grade Level
3. Emergent Bilingual Identification
4. New to country (if available)
5. Gifted and Talented Identification
6. Special Education Identification
7. Free/Reduced Lunch

Student Testing Data:

1. TELPAS
 - a. Listening Designation
 - b. Speaking Designation
 - c. Reading Designation
 - d. Listening Designation
 - e. Composite Designation
 - f. Scale scores for each domain (if available)
2. STAAR (Mathematics and ELA when grade appropriate)
 - a. Language of Assessment
 - b. Scale Score
 - c. Performance Level

It is preferred that data be provided raw at the student level, but if there are privacy concerns (especially due to a small school or subpopulation), we are happy to collect subgroup aggregated data.



**Contract Coversheet and Signature Form
for
Forms/Contracts Requiring Superintendent Approval**

Date

DATA SHARING AGREEMENT
Between The McAllen Independent School District and
American Institutes for Research in the Behavioral Sciences
dba American Institutes for Research

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 American Institutes for Research in the Behavioral Sciences dba American Institutes for Research (“Contractor”) who, as parties to the DSA, elect to accept its terms.

PREAMBLE

The mission of the Contractor is to provide implementation of the new Texas Dual Language Framework.

To that end, data is being requested in furtherance of the organization’s mission which aligns with the goals of MISD.

To the extent permitted by law, MISD grants Contractor license to use data received pursuant to this DSA 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 providing implementation of the new Texas Dual Language Framework.

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

1. Data Sharing

This data shall be provided by MISD to Contractor. Contractor agrees that the data transferred from MISD to Contractor is and shall remain the sole and exclusive property of MISD. 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 data obtained from MISD as a part of this DSA. Data that is provided by MISD must be maintained and used consistent with the Family Education Rights and Privacy Act (FERPA), HIPAA, if applicable, all state and federal laws and regulations applicable to the released data, and MISD’s policies for managing student education records, confidential employee information, and other confidential information.

Contractor acknowledges that individually identifiable health information that falls under the protection of the Health Insurance Portability and Accountability Act (“HIPAA”), data that deals with confidentiality provisions of the Patient Safety Rule, and social security numbers will not be released under this DSA. Notwithstanding the foregoing, if Contractor comes into knowledge or possession of any protected health information (“PHI”), social security

numbers, or other confidential information it will maintain the confidentiality of any such PHI or other confidential information in accordance with laws and regulations as applicable to that information, including without limitation HIPAA, and not use or disclose any such information in any manner that would constitute a violation of any applicable laws or regulation.

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. Data Breach

Should Contractor reasonably suspect and/or become aware of an unauthorized disclosure or security breach concerning any Data covered by this Agreement, Contractor shall notify MISD within 24 hours. Contractor shall take immediate steps to limit and mitigate the damage of such security breach to the greatest extent possible. If the incident involves criminal intent, then the Contractor will follow direction from the Law Enforcement Agencies involved in the case.

- a. The security breach notification to MISD shall be written in plain language, and address the following:
 - i. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 - ii. A description of the circumstances surrounding the disclosure or breach, including the actual or estimated, time and date of the breach, and whether the notification was delayed as a result of a law enforcement investigation.
- b. Contractor agrees to adhere to all requirements in applicable state and federal law with respect to a Data breach or disclosure, including any required responsibilities and procedures for notification or mitigation and immediate reporting to federal, state and local law enforcement.
- c. In the event of a breach or unauthorized disclosure, Contractor shall cooperate fully with Sponsor, including, but not limited to providing appropriate notification to individuals impacted by the breach or disclosure. Contractor will reimburse Sponsor in full for all costs incurred by the MISD in investigation and remediation of any security breach caused in whole or in part by Contractor or Contractor's subcontractor's, including but not limited to costs of providing notification and providing one year's credit monitoring to affected individuals if personally identified information is exposed during the breach could be used to commit financial identity theft.
- d. Contractor's obligations under section shall survive termination of this Agreement.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. Term of this DSA

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

13. Governing Law

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

EXECUTED _____.
Date

Approved as to form:

by: 
JOHNATHAN BALL (Aug 20, 2024 11:48 CDT)
Johnathan Ball, Staff Attorney

DISTRICT:

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____
Ms. Sofia M. Peña, Board President

CONTRACTOR:

American Institutes for Research in the Behavioral
Sciences dba American Institutes for Research

By: _____
Kate Haaf, Senior Director of Contracts
khaaf@air.org

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on Agreement No. 2025-066 Adult Education and Literacy Program with Region One Education Service Center

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Region One Education Service Center's Adult Education Program ("ESC") will provide adult education and literacy instructional program for eligible participants. McAllen Independent School District ("District") parent will be able to take classes, including English as a Second Language (ESL), Citizenship Class, GED in Spanish, technology classes, and other job-skill classes.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District has partnered with ESC to provide an adult education and literacy program for eligible participants under provisions of the Adult Education and Family Literacy Act, Title II of the Workforce Innovation and Opportunity Act.

LEGAL REVIEW:

The Memorandum of Understanding has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Agreement No. 2025-066 Adult Education and Literacy Program with Region One ESC through June 30, 2025.

Attachment: ☒

SUBMITTED BY: *Dr. Cynthia Olivarez*
Dr. Cynthia Olivarez (Aug 21, 2024 09:55 CDT)

SUPERVISOR: *Rodolfo De Herrera*

For further information contact:
Name: Dr. Cynthia Olivarez, Director of State & Federal Programs
Office: (956) 632-3232
eMail: Cynthia.Olivarez@mcallenisd.net

Approved for presentation to the Board of Education:

Rene Gutierrez
RENE GUTIERREZ (Aug 21, 2024 10:20 CDT)



Memorandum of Understanding

**Region One Education Service Center
Office of Adult Education and McAllen Independent School District**

This Agreement is entered into between the Region One Education Service Center's Adult Education Program, hereinafter as "Region One ESC" and the **McAllen ISD-Navarro Campus** a nonprofit organization hereinafter referred to as "**McAllen ISD-Navarro Campus**" to establish an adult education and literacy program for eligible participants under provisions of the Adult Education and Family Literacy Act, Title II of the Workforce Innovation and Opportunity Act for a period beginning September 1, 2024, and ending June 30, 2025.

I. SCOPE OF SERVICES

Region One ESC agrees to provide:

- Qualified instructional and administrative personnel to provide a well-designed adult education and literacy instructional program.
- Professional development for adult education personnel.
- Instructional materials for adult education courses.
- Instructional supplies as appropriate based on course offerings.
- Assessment instruments to establish academic functional levels and/or progress of participants.
- Will ensure fiscal accountability and provide end-of-year programmatic performance reports.

McAllen ISD-Navarro Campus agrees to provide:

- Safe and secure facilities for the implementation of instructional services to adult learners.
- Fire escape routes posted on the wall, visible to students.
- Contact local police department or school district police department to request patrol for evening classes.
- "Incase of emergency DIAL 911" signs visible in the classroom.
- Assistance to Region One staff with recruitment of adult learners, within and outside of their service area. If program is housed at a school system facility, adult learners are not required to reside and/or be zoned to the system to attend adult classes provided by Region One.
- Access to Internet services and facilities as deemed necessary for the program.

**Facility to be used: McAllen ISD-Navarro Campus
100 W. Hackberry Ave. McAllen, TX 8501**

Dates available: September 2024 – June 2025

II. CIVIL RIGHTS STATEMENT

The parties to this agreement shall: Comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), The American Disabilities Act of 1990 (P.L. 101-336), and all amendments to each, and all requirements imposed by the regulations issued pursuant to these acts. In addition, the parties agree to comply with Title 40, Chapter 73, of the Texas Administrative Code. These provide in part that no person shall, on the grounds of race, color, national origin, sex, age, disability, political, or religious beliefs be excluded from participation in, or denied, any

aid, care, service or other benefits provided by federal and/or state funding, or otherwise be subjected to discrimination and the Texas Revised Civil Statutes Article 4419b-4, Section 5.03 and 5.04 (relating to workplace and confidentiality guidelines regarding AIDS and HIV).

III. TERMINATION OF MEMORANDUM OF UNDERSTANDING

During the term of this Agreement, if either party becomes unable or fails to satisfactorily provide the services under this Agreement or decides to terminate for no cause, the Agreement may be terminated by either party with a thirty (30) day written notice.

The validity of this agreement and of any of its terms and provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Texas.

Executed this 7th day of August 2024

Grantor: **McAllen ISD-Navarro Campus**
Address: 2100 W Hackberry Ave.
City/St/Zip: McAllen, TX 78501

Region One Education Service Center
1900 W. Schunior
Edinburg, TX 78541

Sofia M. Peña, Superintendent
McAllen Independent School District


Daniel P. King, 24, 2024 04:58 CDT

Dr. Daniel P. King, Executive Director
Region One Education Service Center

Approved as to form:

by: 

JOHNATHAN BALL (Aug 20, 2024 17:48 CDT)

Johnathan Ball, Staff Attorney

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action of the 2024-2025 List of Certified Texas Teacher Evaluation and Support System (T-TESS) Appraisers

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Board Policy DNA(LOCAL) and (LEGAL) -Performance Appraisal: Evaluation of Teachers Chapter 150. Commissioner's Rules Concerning Educator Appraisal Sub-chapter AA. Teacher Appraisal Texas Education Code, 21.351.356. Under the existing T-TESS guidelines, the District Board of Trustees is required to approve annually the list of certified teacher appraisers.

Please note that the names of additional T-TESS appraisers will be forwarded to the Board of Trustees for approval as they become certified during the 2024-2025 school year.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The T-TESS support system currently in place includes, but is not limited to TEA, SBEC, TASB, Region I and Region XIII. Required materials and training have been budgeted within the Division of Curriculum and Instruction. The teacher appraisers have been verified by Human Resources and identified under separate cover.

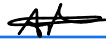
LEGAL REVIEW: None

BUDGETARY CONSIDERATIONS: Budgeted

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the 2024-2025 list of Certified Texas Teacher Evaluation and Support System (T-TESS) Appraisers.

Attachment: ☐

SUBMITTED BY: 
Alberto Canales (Aug 20, 2024 15:50 CDT)

For further information contact:
Name: Dr. Albert Canales
Office: Human Resources (956) 618-6009
eMail: alberto.canales@mcallenisd.net

SUPERVISOR: 

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 21, 2024 08:18 CDT)

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2024-1020 Professional Development, Site Licenses, Supplemental Materials, & Other Related Products and Services (Round 10)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The McAllen Independent School District solicited proposals for Professional Development, Site Licenses, Supplemental Materials, & Other Related Products and Services. This Request for Proposal ("RFP") is an extended response period, multiple award contract, solicited in accordance with the Financial Accountability System Resource Guide ("FASRG"), section 5.16, titled "Multiple/Catalog/Discount-from-List Contract Awards." This allows vendors to submit responses throughout the year through the contract term. Vendors are awarded on an incremental basis upon the Board of Trustees' approval. One hundred thirty-two (132) vendors were previously awarded through this RFP.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Nine hundred fifty-three (953) vendors were invited to submit proposals, and forty-one (41) vendors responded, including eleven (11) no-bid responses, and five (5) non-responsive. The evaluation committee, comprised of Laura Williams, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Sandra Pulido, Buyer, evaluated the proposals. Administration is recommending that the twenty-five (25) companies listed on the attached list be awarded as qualified vendors, for a total of one hundred fifty-seven (157) vendors.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

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

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2024-1020 Professional Development, Site Licenses, Supplemental Materials, & Other Related Products and Services (Round 10), and approve the companies on the attached list as qualified vendors, for a coterminous term through June 30, 2027.

Attachment: ☒

SUBMITTED BY: *Laura Williams*
Laura Williams (Aug 19, 2024 10:48 CDT)

For further information contact:
Name: Ms. Laura Williams
Director of Purchasing Services
Office: 956-657-4480
eMail: laura.williams@mcallenisd.net

SUPERVISOR: *Lorena Garcia*

Approved for presentation to the Board of Education:

Rene Gutierrez
RENE GUTIERREZ (Aug 19, 2024 14:22 CDT)

RFP 2024-1020 Professional Development, Site Licenses, Supplemental Materials, & Other Related Products and Services (Round 10)

No.	Responding Supplier	City	State	Recommendation
1	Accelerated Solutions LLC	Alexandria	VA	Qualified
2	Amira Learning, Inc.	San Francisco	CA	Qualified
3	ASCD (Robin Merger Corporation, Inc)	Arlington	VA	Qualified
4	Barnes & Noble Booksellers, Inc.	New York	NY	Qualified
5	Discovery Education, Inc.	Charlotte	NC	Qualified
6	Harrah LLC	Plano	TX	Qualified
7	Harry K. Wong Publications, Inc.	Mountain View	CA	Qualified
8	iDismiss LLC	Dallas	TX	Qualified
9	Kami (Notable Inc)	West Hollywood	CA	Qualified
10	Learnics LLC	Bethlehem	PA	Qualified
11	Level Up Teaching Solutions, LLC	Laredo	TX	Qualified
12	Nasco Education LLC	Fort Atkinson	WI	Qualified
13	Nystrom Education; Good Year Books; The Center for Learning; MindSparks; The Writing Company (Social Studies School Service)	Culver City	CA	Qualified
14	Perfection Learning Corporation	Logan	IA	Qualified
15	Rolling Hills Publishing, LLC (Michael Edmond Gray)	Ozark	MO	Qualified
16	SanJae Educational Resources, Inc.	Loxahatchee	FL	Qualified
17	Sirius Education Solutions (Sirius Education Solutions LLC)	Austin	TX	Qualified
18	Studies Weekly, Inc.	Orem	UT	Qualified
19	Super Duper Publications (Super Duper Inc.)	Greenville	SC	Qualified
20	The Algebros LLC	San Antonio	TX	Qualified
21	The Responsive Classroom (Pressing Onward LLC)	Mansfield	TX	Qualified
22	Translation & Interpretation Network, LLC	Fort Worth	TX	Qualified
23	VIS Enterprises (Velma I Sandell)	Plano	TX	Qualified
24	WestEd	San Francisco	CA	Qualified
25	Winward Academy, Inc.	San Diego	CA	Qualified

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2024-1021 Apparel, Awards, Incentives, Printing, and Related Products and Services (Round 9)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The McAllen Independent School District solicited proposals for apparel, awards, incentives, printing, and related products and services. This Request for Proposal ("RFP") is an extended response period, multiple award contract, solicited in accordance with the Financial Accountability System Resource Guide ("FASRG"), section 5.16, titled "Multiple/Catalog/Discount-from-List Contract Awards." This allows vendors to submit responses throughout the year through the contract term. Vendors are awarded on an incremental basis upon the Board of Trustees' approval. Sixty-eight (68) vendors were previously awarded through this RFP.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Three hundred seventy-four (374) vendors were invited to submit proposals, seventeen (17) vendors responded, including three (3) no-bid response, one (1) non-responsive, and eight (8) previously awarded (with no changes). The evaluation committee, comprised of Laura Williams, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Carol Quintanilla, Senior Buyer, evaluated the proposals. Administration is recommending that the five (5) companies listed on the attached list be approved as qualified vendors, for a total of seventy-three (73) vendors.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

Funds for these services have been budgeted through local, state, federal, and grant funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2024-1021 Apparel, Awards, Incentives, Printing, and Related Products and Services (Round 9), and approve the companies on the attached list as qualified vendors, for a coterminous term through June 30, 2027.

Attachment: ☒

SUBMITTED BY: *Laura Williams*
Laura Williams (Aug 19, 2024 08:47 CDT)

For further information contact:
Name: Ms. Laura Williams,
Director of Purchasing Services
Office: (956) 657-4480
eMail: laura.williams@mcallenisd.net

SUPERVISOR: *Lorena Garcia*

Approved for presentation to the Board of Education:

Rene Gutierrez
RENE GUTIERREZ (Aug 19, 2024 14:26 CDT)

RECOMMENDED VENDORS

Request for Proposal ("RFP") 2024-1021

Apparel, Awards, Incentives, Printing, and Related Products and Services (Round 9)

No.	Responding Supplier	City	State	Recommendation
1	Brand Boosters Co LLC	McAllen	TX	Qualified
2	Buffalo Specialities Inc.	Houston	TX	Qualified
3	Cheerleading Company, Inc	DALLAS	TX	Qualified
4	Doylene & Assocoiates, Inc (Doylene & Associates, Inc)	Willis	TX	Qualified
5	Premier Awards & Gifts (Premier Awards, Inc)	McAllen	TX	Qualified

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Report Regarding No. 2025-069 Library Services & Instructional Resources District/Charter Commitment Form with Region One Education Service Center

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Region One ESC Library Services & Instructional Resources Cooperative ("Agency") provides member districts with high-quality instructional resources and services that help students develop twenty-first century skills. The Agency was created in accordance with Section 791.001 of the Texas Government Code. Its purpose is to provide efficiencies for members of a cooperative, to comply with state bidding requirements, and to identify qualified vendors of commodities, goods, and services.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District utilizes the cooperative to provide high quality instructional resources and cost effective solutions. The District realizes the financial benefits from volume purchasing discounts provided through the cooperative. Additionally, in accordance with Texas Education Code, Chapter 44, Section 44.033, Management Fees Under Certain Cooperative Purchasing Contracts, a school district is required to report the fees paid for purchases through interlocal cooperative agreements. The membership fees charged by Region One are to cover administrative costs to provide the District with instructional resources and services to students.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

The District's membership fees for the 2024-2025 school year will be \$67,318.25, using budgeted funds.

RECOMMENDED BOARD ACTION:

This item is for informational purposes.

Attachment: ☒

SUBMITTED BY: *Laura Williams*
Laura Williams (Aug 19, 2024 08:47 CDT)

For further information contact:
Name: Ms. Laura Williams, Director of Purchasing Services
Office: 956-657-4484
email: Laura.Williams@mcallenisd.net

SUPERVISOR: *Lorena Garcia*

Approved for presentation to the Board of Education:

Rene Gutierrez
RENE GUTIERREZ (Aug 19, 2024 14:23 CDT)



Daniel P. King, Ph.D.
Executive Director

Region One Education Service Center

1900 W. Schunior, Edinburg, TX 78541 ♦ Ph (956) 984-6000 ♦ Fax (956) 984-7655

July 16, 2024

Dear Dr. Rene Gutierrez

The Region One Education Service Center appreciates your district's participation in the Library Services and Instructional Resources Virtual Library Cooperative. We impact student achievement by providing high-quality instructional resources and services that help students develop twenty-first century skills. In addition, district and charter schools realize financial benefits from volume purchasing discounts provided through cooperative membership.

The Region One ESC Library Services and Instructional Resources Cooperative District/Charter Commitment Form for 2024-2025 is enclosed. Membership in the Region One ESC Library Services and Instructional Resources Cooperative delivers many instructional resources/services to your campuses. (See Attachment A) We list of resource subscriptions is listed on Attachment A.

The cost of cooperative membership will be \$3.35 per student enrollment for the 2024-2025 school year. The enclosed Cost Benefits Analysis indicates district level savings. The new Innovative Library Services Professional Development package is included in commitment total. Cost benefit analysis is enclosed for professional development package.

Please return the enclosed District/Charter Commitment Form to Region One Education Service Center, ATTN: Library Services and Instructional Resources Cooperative before **August 8, 2024**. Thank you for your assistance.

Sincerely,

Library Services and Instructional Resources Department
Technology Solutions Division

VG:AS Attachment A
 Cost Benefits Analysis
 ILPD

Enclosure: District/Charter Commitment Form

Region One Education Service Center

1900 West Schunior ♦ Edinburg, TX 78541 ♦ Phone (956) 984-6000 Fax (956) 984-7655

DISTRICT/CHARTER COMMITMENT FORM
LIBRARY SERVICES & INSTRUCTIONAL RESOURCES COOPERATIVE
2024-2025 School Year

McAllen ISD

School District Name

1. Membership Rate Per Student	\$3.35
2. Total Enrollment (PEIMS 2022-2023 Enrollment)	20,095
3. District's Participation Commitment	\$67,318.25
4. Innovative Library Professional Development Package	
5. Total	\$67,318.25

NOTE: **DO NOT SEND A PURCHASE ORDER BEFORE September 1, 2024.**
Please email a purchase order *after September 1, 2024*, to asepeda@esc1.net for the district's participation commitment.

Committing to the Library Services & Instructional Resources Cooperative ensures that your district will continue to receive services for the 2024-2025 school year.

Please return this commitment form to confirm participation in the Library Services & Instructional Resources cooperative for the 2024-25 school year before August 1, 2024.
Signed form can be emailed to asepeda@esc1.net.

AUTHORIZATION	
Region One ESC	Participating District McAllen ISD
Signature	Signature
Dr. Daniel P. King Executive Director	 RENE GUTIERREZ Jul 30, 2024 14:39 CDT Dr. Rene Gutierrez, Superintendent Superintendent or Designee
Date:	Date: 07/29/2024
Email: dking@esc1.net	Email: contracts@mcallenisd.net
Phone: 956.984.6000	Phone: 956-618-6000

Department:

J. Ann Vega, Director
of Digital Learning and Libraries

Approved as to form:
by: 
Johnathan Ball, Staff Attorney

Region One Education Service Center

1900 W. Schunior ♦ Edinburg, TX 78541 ♦ Phone (956) 984-6000 Fax (956) 984-7655

ATTACHMENT A

2024-2025 Library Services and Instructional Resources Cooperative

MackinVIA: an eResource Management System that contains all the digital resources students and staff will utilize in their schools. MackinVIA will house our shared eBooks and databases.

eBooks: The MackinVIA regionally shared eBook library will continue to be added to and will be co-owned by all participating districts/charters. Members from previous years will see their collection grow this year.

Virtual Library Databases:

Resource Type	Resource Title	Description
Video	Pending cooperative decision	Pending cooperative decision
College & Career Reference Center	GALE Presents: Peterson's Test Prep w/Career Module	College and Career Testing and Education Reference Center
News Articles, etc.	News-O-Matic	Non-fiction stories to keep students reading and build key literacy skills
	TexQuest Partners (* listed below)	
Database	* Britannica School * Britannica Fundamentals	Multi-level Encyclopedia & Resources
Database	* Britannica Escolar * Britannica Moderna	Spanish Multi-Level Encyclopedia & Resources
Database College & Career Reference Learning	* EBSCO Learning Express	Selected Resources for All Levels
Database	* Gale Cengage Learning	Selected Resources for All Levels
Video	* Learn360	over 12,000 videos from 50+ publishers for students in grades K-12
Database	* ProQuest SIRS Discoverer	Articles and Websites for K-8
Database	* TeachingBooks	Resources about Books and Authors

Region One Education Service Center

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Professional Development:

- Professional Development sessions specifically for librarians at Region One at cost
- Fall and Spring workshops
- MegaBYTE membership for librarians only. Professional learning opportunities related to effective technology use.
- Monthly Library Leadership Network meetings for district library contacts

Library and Technology Purchasing Cooperative:

Membership in Region One's Library Services and Instructional Resources Virtual Library Cooperative allows the member to participate in the Library and Technology Purchasing Cooperative for School Purchases from the following categories:

1. **Audio Visual Equipment** – includes audio visual equipment, multi-media projectors, mobile devices, eReaders, smartboards, etc.
2. **Consultants** - includes authors, illustrators, storytellers, trainers, and other presenters
3. **Instructional Software/Applications** - includes library automation, instructional resources/databases, etc.
4. **Library Books** – includes eBooks, digital, audio, and print to include cataloging and processing
5. **Library Furniture** – includes shelving, workstations, stands, tables, chairs, desks, stools, etc.
6. **Library Supplies** – includes book care, protection and repair supplies, book jackets, spine labels, organization and packaging, etc.
7. **Magazine Subscriptions** – includes print and digital magazines, periodicals, journals, etc.
8. **Technology Hardware** – includes computer, monitor, keyboard, mouse, hard disk drive, motherboard, video card, etc.
9. **Technology Equipment** – includes electronic data management or analysis devices, associated peripherals, accessories, etc.
10. **Other Library and Technology Resources/Services** – includes resources or services that do NOT fall under the categories listed above.

Region One Education Service Center

1900 West Schunior ♦ Edinburg, TX 78541 ♦ Phone (956) 984-6000 Fax (956) 984-7655

Library Services and Instructional Resources Cooperative 2024-2025 Cost Benefit Analysis

District: McAllen ISD

The Region One ESC Library Services and Instructional Resources Virtual Library Cooperative makes every effort to provide the highest quality resources and most cost-effective solutions to school districts. We provide resources and services that support the educational needs of today's students by providing resources that support the skills necessary in the twenty first century and resources that better support the state assessments.

The Region One ESC Library Services and Instructional Resources Virtual Library Cooperative is able to provide resources at a reasonable cost to school districts due to volume purchasing. Below is a cost comparison of the Co-op versus the cost of the resources purchased separately.

Service	# Students	Co-op Membership Cost (\$3.30 per student)	Cost for district to purchase directly from vendor		
			Cost	Student/ Campus/ District	Total
Discovery Education	20,095	Included in Coop	\$ 2.50	/campus	\$ \$50,237.50
News-O-Matic	20,095	Included in Coop	\$ 2.50	/student	\$ \$50,237.50
MackinVia eResource Management System	20,095	Included in Coop	\$ 20,000.00	/district	\$ 20,000.00
TexQuest (State Funded Databases including Britannica, EBSCO, Gale, Learn360, ProQuest, and Teachingbooks.net))	20,095	Included in Coop	\$ 32.00	/student	\$ \$643,040.00
Gale Presents Peterson's Test Prep	20,095	Included in Coop	\$ 2,231.00	/campus	\$ \$64,699.00
MegaBYTE: Professional Development provided by MegaBYTE for LIBRARIANS ONLY	6 days @ \$1,200 per day	Included in Coop	\$3,000 per district	per day	\$ 18,000.00
Professional Development sessions for librarians at Region One at no cost. Non-members pay from \$150 per workshop. (Estimate based on number of librarians)	participants @ \$150 per workshop	Included in Coop	participants @ \$500 per workshop	per workshop	\$ \$500.00
Membership in Region One's Library Purchasing Co-op for	Amount of savings	Included in Coop	Not available		\$ -
Total		\$ \$67,318.25			\$ \$933,214.00

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Report Regarding Interlocal No. 2020-041 ESC Personnel Services Commitment Form with Region One Education Service Center

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Region One ESC Personnel Services Cooperative ("Agency") provides member districts with a comprehensive set of services designed to assist districts to recruit and retain highly qualified, certified, and caring teachers and staff in their districts. The Agency was created in accordance with Section 791.001 of the Texas Government Code. Its purpose is to provide efficiencies for members of a cooperative, to comply with state bidding requirements, and to identify qualified vendors of commodities, goods, and services.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District utilizes the comprehensive set of services to assist with recruitment and retention of teachers and staff. Additionally, in accordance with Texas Education Code, Chapter 44, Section 44.033, Management Fees Under Certain Cooperative Purchasing Contracts, a school district is required to report the fees paid for purchases through Interlocal Cooperative Agreements. The membership fees charged by Region One are to cover administrative costs to provide the District with personnel recruitment and retention resources.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

The District's membership fees for the 2024-2025 school year will be \$12,137.27, using budgeted funds.

RECOMMENDED BOARD ACTION:

This item is for informational purposes.

Attachment: ☒

SUBMITTED BY: *Laura Williams*
Laura Williams (Aug 19, 2024 08:41 CDT)

For further information contact:
Name: Ms. Laura Williams, Director of Purchasing Services
Office: 956-657-4484
email: Laura.Williams@mcallsisd.net

SUPERVISOR: *Lorena Garcia*

Approved for presentation to the Board of Education:

Rene Gutierrez
RENE GUTIERREZ (Aug 19, 2024 14:22 CDT)



**REGION ONE EDUCATION SERVICE CENTER
PERSONNEL SERVICES COOPERATIVE
SCHOOL DISTRICT COMMITMENT FORM
2024-2025**

McAllen ISD agrees to participate in the Personnel Services Cooperative for the 2024–2025 school year in accordance with the attached description of cooperative services and following fee schedule.

2024-2025		
Region One Personnel Services Cooperative 2024-2025 fees are based on fall snapshot on the 2023-2024 ADA as follows:		
#Students	Annual Fees for New Districts	Annual Renewal Fees for Continuing Members
0-500	\$2,002.31	\$1,601.56
501-1000	\$2,665.87	\$2,266.33
1001-2000	\$4,668.18	\$4,107.71
2001-3000	\$7,003.00	\$5,601.82
3001-5000	\$8,669.89	\$6,936.20
5001-7000	\$10,669.30	\$8,534.86
7001-9000	\$12,671.60	\$8,870.27
9001-12000	\$14,672.46	\$9,536.74
12001-15000	\$16,805.45	\$10,923.40
15001-20000	\$17,341.24	\$11,271.88
20001-30000	\$18,672.72	\$12,137.27
30,000+	\$19,503.26	\$12,677.41

Region One Personnel Services Cooperative fees are based on the 2023-2024 ADA as follows:

District 2023-2024 reported RADA: 20095

2024-2025 PSS Cost: \$12,137.27


RENE GUTIERREZ (Aug 1, 2024 10:05 CDT)

Signature

Dr. René Gutiérrez,

Typed Name of Authorized Administrator

August 1, 2024

Date

Superintendent

Title

Please return a signed copy of this form with a check or purchase order by Dec. 2024

☐ Invoice district in Sept. 2024

☐ Check

☐ Purchase Order

Please email or fax this form to:

Brenda Mora- Administrator

bmora@esc1.net

Fax: 956.984.7653

Approved as to form:

By: 
JOHNATHAN BALL (Aug 1, 2024 08:15 CDT)

Johnathan Ball, Staff Attorney

You may contact Brenda Mora at 956.984.6100 or email bmora@esc1.net if you have any questions or would like additional information about this cooperative.



Region One Education Service Center PERSONNEL SERVICES COOPERATIVE

Description of Services 2024-2025

The Region One ESC Personnel Services Cooperative provides member districts with a comprehensive set of services designed to assist districts to recruit and retain highly qualified, certified, and caring teachers and staff in their districts.

The Region One Office of Personnel Support Services will provide **Personnel Services Cooperative Districts the services listed below in bold italics** in addition to the services received by all Region One ESC districts listed below each section:

I. RECRUITMENT

1.1 To assist Personnel Services Cooperative Districts to recruit certified and highly qualified in and out of Region teachers and staff, Region One ESC will

- (a) Provide Quarterly training on hiring, selection, recruitment, and retention***
- (b) Provide Job Fair representation to 5 job fairs regionally and out of region each semester***
- (c) Provide opportunities to create candidate pools for hard to fill vacancies***
- (d) Disseminate information about Cooperative districts and vacancies through e- mail outs, websites and job fairs***
- (e) Provide registration to the Annual Region One ESC Educator Job Fair or the Region One ESC Paraprofessional/Auxiliary Job Fair at no cost to district for up to 2 recruiters***
- (f) Provide districts the opportunity to join the Omnihire consortium for a fee***
- (g) Provide LEAs the opportunity to access the Small District Support services for a fee***

For all districts, Region One ESC will

- (a) Respond to inquiries about teaching in Region One
- (b) Coordinate the Annual Region One ESC Educator Job Fair
- (c) Market the need for teachers and staff for the Region One area
- (d) Collect data, analyze and evaluate regional recruitment efforts
- (e) In partnership with ILP3 create a candidate pool of principals

1.2 To assist Personnel Services Cooperative districts recruit and develop paraprofessionals into the teaching profession, Region One ESC will

- (a) Provide on-site assistance and presentations in the areas of financial aid, degree plans, admission requirements and certification in partnership with our Alternative Certification Program**
- (b) Partner with districts on a “Grow Your Own” Educator model**

2. ASSISTANCE

2.1 To assist Personnel Services Cooperative districts operate efficiently and effectively, Region One ESC will

- (a) Provide on-site assistance for certification and teacher records review, personnel office procedures and other personnel issues**
- (b) Provide districts opportunities to participate in special programs and grants sponsored by Region One ESC**
- (c) Provide access to our PSS Coop website focused on up-to-date staffing trends, procedures and legislative updates**
- (d) Provide access to support on service records and creditable years of service for salary increment purposes**
- (e) Promote district job fairs on Region One ESC Job Fair website**

For all districts, Region One ESC will

- (a) Offer centralized training and technical assistance on certification and assignment requirements to personnel directors and staff
- (b) Provide technical assistance to personnel directors on personnel issues
- (c) Disseminate information and offer staff development on personnel issues and concerns
- (d) Provide an array of personnel related services to include FMLA training, staffing efficiency reviews, school leadership search services and substitute teacher trainings each for a fee

Each district enrolling in the Personnel Services Cooperative will provide a current list of their district HR staff who will be the designated PSS COOP members (up to 3 per district for RADA 0-9000; up to 6 members for RADA 9001-above).

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2022-1031 Athletic Equipment, Supplies, Reconditioning Services, and Related Products and Services (Round 16)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The McAllen Independent School District solicited proposals for Athletic Equipment, Supplies, Reconditioning Services, and Related Products and Services. This Request for Proposal ("RFP") is an extended response period, multiple award contract, solicited in accordance with the Financial Accountability System Resource Guide ("FASRG"), section 5.16, titled "Multiple/Catalog/Discount-from-List Contract Awards." This allows vendors to submit responses throughout the year through the contract term. Vendors are awarded on an incremental basis upon the Board of Trustees' approval. Seventy-one (71) vendors were previously awarded through this RFP.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Four hundred ninety-eight (498) vendors were invited to submit proposals, and fourteen (14) vendors responded, including eight (8) no-bid responses, and four (4) previously awarded (with no changes). The evaluation committee, comprised of Brian McClenny, Director of Athletics; Lorena Lopez, Assistant Director of Athletics; Laura Williams, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Sandra Pulido, Buyer, evaluated the proposals. Administration is recommending that the two (2) companies listed on the attached list be awarded as qualified vendors, for a total of seventy-three (73) vendors.

LEGAL REVIEW:
None required.

BUDGETARY CONSIDERATIONS:

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

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2022-1031 Athletic Equipment, Supplies, Reconditioning Services, and Related Products and Services (Round 16), and approve the companies on the attached list as qualified vendors, for a coterminous term through June 30, 2025.

Attachment: ☒

SUBMITTED BY: Brian McClenny

For further information contact:
Name: Mr. Brian McClenny
Director of Athletics
Office: 956-618-6089
eMail: bmcclenn@mcallsisd.net

SUPERVISOR: 
Alberto Canales (Aug 19, 2024 23:06 CDT)

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 20, 2024 08:05 CDT)

RFP 2022-1031 Athletic Equipment, Supplies, Reconditioning Services, and Related Products (Round 16)

No.	Responding Supplier	City	State	Recommendation
1	America Team Sports (America Team Sports LLC)	Richardson	TX	Qualified
2	Champion Teamwear (It's Greek To Me, Inc.)	Manhattan	KS	Qualified

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on Memorandum of Understanding No. 2025-097 between the City of McAllen and McAllen Independent School District for Shared Facility Use

REFERENCE: Goal 1: Student Achievement/Student Focus; Strategy 3: Partnerships with Business/Civic/Educational

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District ("District") and the City of McAllen maintain several agreements which make facilities accessible to students. This agreement will permit the use of City facilities and District facilities by students who participate in competitive athletics and sports curriculum as well as youth and adult participants enrolled in City programs. McAllen Independent School District and the City desire to enhance the quantity and quality of year-round athletic programs and services for students and youth by entering into this shared facility use Memorandum of Understanding.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The Memorandum of Understanding outlines the locations that will be made available for use by both parties as well as the coordination for use of facilities. The City agrees to provide lifeguard services at City pool facilities when in use by the District and to provide and maintain on-site Program Supervisor and Instructors at each designated District location during scheduled programs.

LEGAL REVIEW:

Legal Counsel has approved the agreement.

BUDGETARY CONSIDERATIONS:

The District agrees to provide an on-site Coach/MISD staff at each designated City location for athletic activities and the District will also provide custodial services and scoreboard operator services when facilities are in use by City.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Memorandum of Understanding No. 2025-097 between the City of McAllen and McAllen Independent School District for Shared Facility Use.

Attachment: ☒

SUBMITTED BY: _____

For further information contact:
Name: Ms. Lorena Garcia, Deputy Superintendent for
Business & Operations
Office: (956) 688-5418
Email: lorena.garcia@mcallenisd.net

SUPERVISOR: *Lorena Garcia*

Approved for presentation to the Board of Education:

Rene Gutierrez
RENE GUTIERREZ (Aug 21, 2024 12:04 CDT)

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
CITY OF MCALLEN AND MCALLEN INDEPENDENT SCHOOL DISTRICT**

This Memorandum of Understanding is made and entered into on this the 27th day of August 2024 by and between the **CITY OF MCALLEN**, a home-rule municipality of Hidalgo County, Texas (“City”) and **McALLEN INDEPENDENT SCHOOL DISTRICT** (“MISD”).

WHEREAS, City desires to provide, through its Parks & Recreation Department facilities for use by students who participate in the MISD competitive athletics curriculum; and,

WHEREAS, MISD desires to provide through its Athletics Department various training opportunities for the sports curriculum provided year round at City facilities; and,

WHEREAS, MISD, desires to provide, through its Athletics Department, facilities for use by participants enrolled in City programs; and,

WHEREAS, City, desires to provide, through its Parks & Recreation Department, recreational opportunities and community services to youth and adult participants in its programs at MISD facilities; and,

WHEREAS, City and MISD desire to enhance the quantity and quality of year-round athletic programs and services for students and youth by entering into this shared facility MOU;

IT IS THEREFORE AGREED THAT:

1. City agrees that it will permit and make available the following locations, subject to availability, to be used by MISD:

McAllen Sports Park (North & South)
Multipurpose Pavilion
Municipal Swimming Pool
Boys & Girls Swimming Pool
De Leon Multipurpose Field
Bicentennial Soccer Fields
Springfest Sports Park
Firemen’s Park
Municipal Softball Complex

2. MISD agrees that it will submit a written request for usage of facilities a minimum of 45 days prior to the requested date of usage.
3. MISD will provide and maintain an on-site coach/ MISD staff as assigned by the Athletic Director or his designated representative at each designated City location for the duration of the designated dates and times of the athletics curriculum.

4. City will provide lifeguard services at City pool facilities when in use by MISD for the designated dates and times.
5. MISD agrees that it will permit and make available the following locations subject to availability, to be used by the City.

MISD Tennis Courts (McAllen High School, Memorial High School, Nikki Rowe High School, Travis MS, Morris MS, De Leon MS)
Nikki Rowe High School Natatorium
Memorial "Boxer" Stadium
Nikki Rowe Stadium
De Leon MS Field

6. City agrees that it will submit a written request for usage of facilities a minimum of 45 days prior to the requested date of usage.
7. City will provide and maintain an on-site Program supervisor and instructors as assigned by the Parks Director or his designated representative at each designated MISD location for the duration of the dates and times of the program.
8. MISD will provide custodial services and scoreboard operator services when MISD facilities are in use by City.
9. City will provide custodial services when City facilities are in use by MISD.
10. The terms and conditions of all other agreements between the Parties pertaining to the facilities are not affected by this MOU in any way and remain in full force and effect.
11. The term of this MOU shall continue in force until it is terminated, or a Party withdraws. Each Party may unilaterally withdraw from this MOU without cause, or penalty or further obligation by either Party by providing written notice.
12. The Parties intend that the services under this MOU shall be carried out in the most efficient manner possible. To that end, the Parties intend to designate individuals that will serve as primary contacts between the Parties. The Parties intend that, to the maximum extent possible and unless otherwise approved by the other party, all significant communications between the Parties shall be made through the primary contacts or their designees. The designated primary contacts for each Party are:

For City of McAllen:	Parks & Recreation Department Denny Meline, Director PO Box 220 McAllen, TX 78502-0220 956-681-3314 dmeline@mcallen.net
----------------------	---

For MISD

Rene Gutierrez, Superintendent
2000 North Twenty-third Street
McAllen, TX 78501
956-618-6000
rene.gutierrez@mcallenisd.net

11. The persons executing this MOU on behalf of their respective entities hereby represent and warrant that they have the right, power, legal capacity, and appropriate authority to enter into this MOU on behalf of the entity which they sign.

12. Nothing in this MOU shall be interpreted as limiting, superseding, or otherwise affecting either parties' normal operations in carrying out its statutory or regulatory duties.

WITNESS THE HANDS OF THE PARTIES effective as of the day and year first written above.

McALLEN INDEPENDENT SCHOOL DISTRICT

Sofia Pena
President, School Board of Trustees

CITY OF MCALLEN

Roel "Roy" Rodriguez, P.E.
City Manager

Attest:

Perla Lara, TRMC/CMC, CPM
City Secretary

Isaac J Tawil
City Attorney

Approved as to form:

By:  _____
[JOHNATHAN BALL \(Aug 23, 2024 10:55 CDT\)](#)
Jonathan Ball, Staff Attorney

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on Memorandum of Agreement No. 2025-098 Texas Student Data System ("TSDS") Public Education Information Management System ("PEIMS") Cooperative with Region One Education Service Center

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The purpose of the Memorandum of Agreement between Region One Education Service Center ("Region One ESC") and McAllen Independent School District ("District") is to utilize Region One ESC TSDS PEIMS Cooperative service to assist the District staff with detailed training, technical support, issue identification and remediation.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Region One ESC TSDS PEIMS Cooperative will assist District staff in verifying and submitting TSDS PEIMS to Texas Education Agency ("TEA").

LEGAL REVIEW:

Agreement has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

Funds for these services are budgeted through General Fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Agreement No. 2025-098 Texas Student Data System ("TSDS") Public Education Information Management System ("PEIMS") Cooperative with Region One Education Service Center for a period of one (1) year, beginning September 1, 2024 through August 31, 2025.

Attachment: ☒

SUBMITTED BY: 

For further information contact:
Name: Ms. Angela Allen, Director of Student Operations
Office: 956-632-3625
eMail: angela.allen@mcallenisd.net

SUPERVISOR: 

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 19, 2024 14:24 CDT)

REGION ONE EDUCATION SERVICE CENTER

Memorandum of Agreement for Region One Education Service Center with MCALLEN ISD

This Memorandum of Agreement "Agreement" is entered into by and between Region One Education Service Center (hereinafter Region One ESC) and MCALLEN ISD ("Participating District").

The purpose of the Agreement is to provide PEIMS services to the Participating District.

WITNESSETH:

WHEREAS, the Participating District is authorized by the Texas Education Code, and the Texas Interlocal Cooperation Act (Chapter 791, Title 7, Government Code), to enter into agreements with ESCs; and

WHEREAS, the Participating District desires to purchase certain support services; and

WHEREAS, Texas Education Code 8.002 permits regional education service centers, at the discretion of the commissioner of education, to provide services to assist schools in increasing efficiency and effectiveness of school operations (TEC 8.002). Authority for such services is granted under Texas government Code 791.001 et seq, as amended.

THEREFORE, NOW BE IT AGREED that the undersigned Participating District in return for the payment of the consideration stated below and subject to all terms of this Agreement, does hereby agree to the following terms, conditions, and general provisions:

1. Term of Contract:

The term of the agreement is 09/01/2024 to 08/31/2025

2. Termination of the Contract:

Either party to this Memorandum of Agreement may terminate this agreement by providing written notice to the other party fifteen (15) calendar days prior to the date of termination. In the event of termination Region One ESC shall determine the direct and indirect costs incurred to the date of termination and the Participating District shall pay Region One ESC that amount.

3. Role of Region One ESC:

Scope of work:

This commitment form is an agreement for Region One Education Service Center to provide technical assistance, support, and training as described in our attached TSDS PEIMS Cooperative Schedule of Services. In return for services, the district/charter will commit to payment of fees as stated below.

TSDS PEIMS Basic Services:

Services provided to all LEAs at no cost; Region 1 ESC PEIMS Staff provides the following services to all of our LEAs in this region:

- Designate ESC PEIMS contact person and alternate;
- Inform the districts of pertinent PEIMS and TSDS documents;
- Communicate TEA submission and resubmission deadlines;
- Provide listing of the required records, data elements, and required code tables;
- Forward change/update communications from TEA;
- Respond to TIMS tickets for support questions regarding PEIMS;
- Monitor the completion of Superintendent Approvals; and
- Accept LEA PEIMS submissions in TSDS.

TSDS PEIMS Coop - Schedule of Services (available via contract):

Members of the PEIMS Coop will receive basic services plus the following enhanced services:

- Provide training sessions related to PEIMS such as but not limited to:
 - Annual fall and spring update trainings;
 - PEIMS records overview for the four PEIMS submissions (Fall, Mid-Year, Summer, and Extended);
 - TSDS-PEIMS technical training as needed; and
- Present training sessions concerning TSDS Core Collections
 - Charter School Waitlist
 - ECDS
 - SPPI-14
 - Class Roster

- RFT
- Special Education Language Acquisition
- Child Find
- Training and Support for TSDS Upgrade Ed-Fi
- Provide telephone support and technical assistance with TSDS Core Collection submissions
- Assist districts with TSDS data submission to the TSDS system in order to meet published deadlines;
- Access to the New PEIMS Coordinator Academy
- Access to the “PEIMS Coordinator Monthly Updates” webinar
- Provide consultation and technical telephone support to the district’s PEIMS Coordinator and PEIMS-related personnel on:
 - Texas Education Data Standards;
 - Student Attendance Accounting Handbook;
 - TSDS PEIMS usage, reports, and errors; and
 - TSDS Unique ID discrepancies
 - Texas Records Exchange (TREx)
- Contingent on meeting ESC due dates, provide additional data analysis by:
 - Reviewing summary reports for data anomalies;
 - Providing Ad hoc reports;
 - Fall, Mid-Year, Summer, and Extended Collection custom reports as needed; provide submission summary reports to assist districts in determining that their submissions contain data for all records required by the collections;
- Access to the PEIMS Coop Sharepoint Site that includes
 - Resource Repository including Checklists and Data Layouts
 - Training Library
 - Calendar of Events
 - Archived LEA PEIMS Fall Disaggregation reports
- Access to Tableau Data Visualization and Analytics Dashboard Workbooks
 - Budgeting Tools – Student, Staff, and Actual Financial Data
 - PEIMS Data Dives – Student Fall, Discipline, CCMR
- Maintain a Regional database for five years (Region One associated LEA’s);
- TSDS Incident Management System (TIMS) support in all components;

PEIMS Staff Development Services:

Districts and charters occasionally need ESC PEIMS personnel assistance on-site to conduct in-district information sessions for campus and district administrators and PEIMS personnel.

On-Site/virtual trainings will be assessed at half or full day sessions and are not included with Coop membership fee. Pricing is as follows: \$1,500 daily rate per ESC specialist.

4. Role of Participating District:

When appropriate, Participating District should provide the materials, supplies, hardware/network support, and maintenance needed for the technical support specialist to complete the assigned task.

5. Costs:

Annual Contract Cost \$7,250.00

District will be invoiced on an annual basis.

Annual Subscription Breakdown

Item Description	Price
TSDS PEIMS Cooperative	7,250.00
Annual Subscription Grand Total	7,250.00

6. Limitation of Liability:

To the extent allowed by law, MCALLEN ISD agrees to indemnify, defend and hold harmless the Region One ESC, directors, officers, and employees from and against any losses, or damages that may occur due to Region One ESC carrying out the agreed upon services as specified in this contract.

Authorization

Region One ESC	Participating District
Dr. Daniel P. King Executive Director	Sofia M. Peña Board of Trustees, President
Date:	Date:
Email: dking@esc1.net	Email: sofia.pena1@mcallenisd.net
Phone: (956) 984-6005	Phone: (956) 618-6000
	Contact Person: Angela Allen

Approved as to form:

by 
[JOHNATHAN BALL \(Aug 16, 2024 09:43 CDT\)](#)
 Johnathan Ball, Staff Attorney

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Report Regarding Dual Enrollment Program

REFERENCE: Goal 1: Student Achievement/Student Focus

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District is committed to offer our students opportunities to advance their post secondary studies while in high school through the dual enrollment program. The dual enrollment program is in partnership with the following institutions of higher education:

- * South Texas College
- * University of Texas Austin
- * University of Texas Rio Grande Valley

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

N/A

LEGAL REVIEW:

None.

BUDGETARY CONSIDERATIONS:

None.

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

Attachment: ☐

SUBMITTED BY: _____

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

SUPERVISOR: _____

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 21, 2024 08:20 CDT)



◆◆◆

Report Regarding McAllen ISD Dual Enrollment

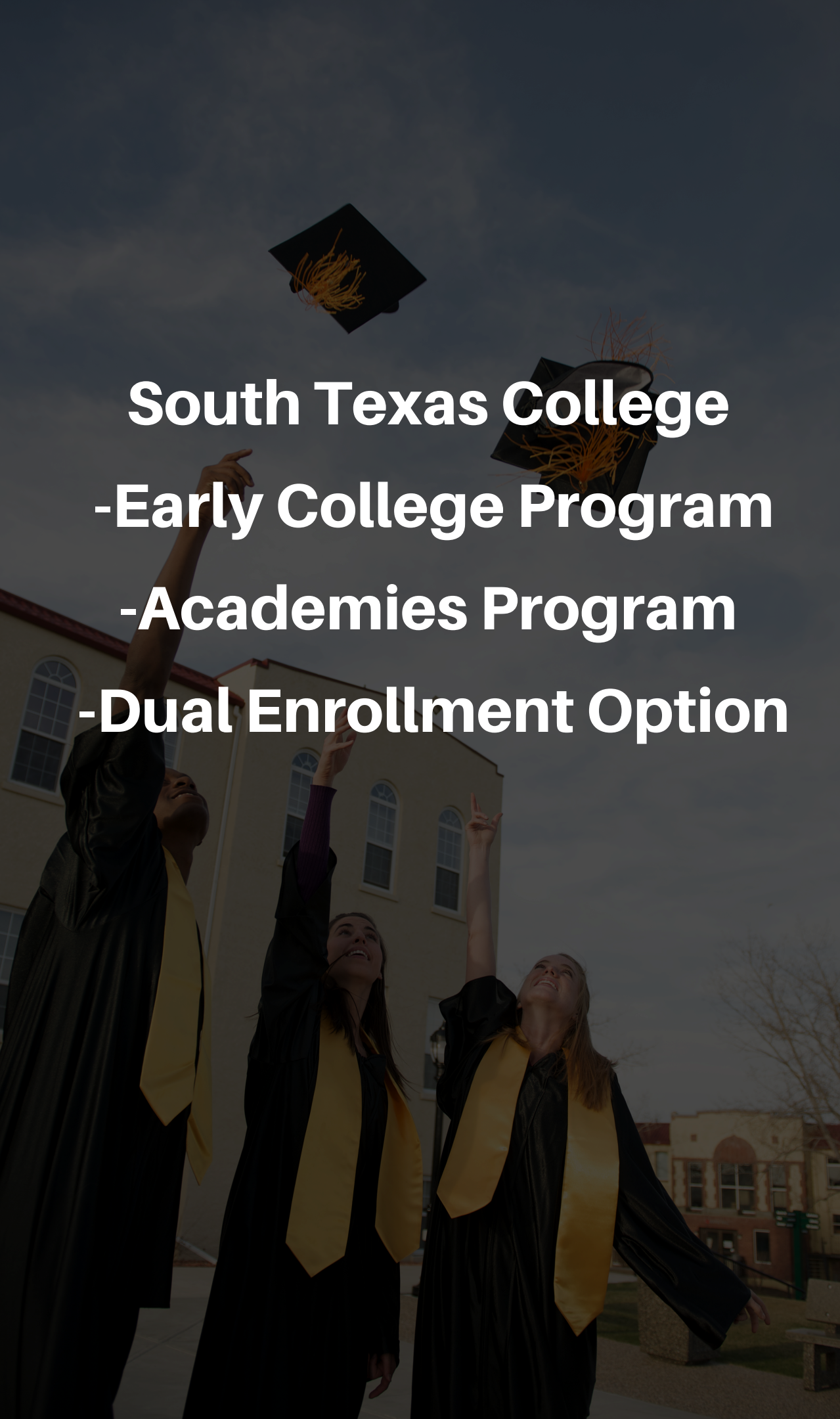
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Purpose of Dual Enrollment:

Dual enrollment programs allow high school students to take college-level courses and earn college credit while still in high school. The purpose for these programs are to:

1. Accelerate Learning
2. College Preparation
3. Cost Savings
4. Increased Motivation and Engagement
5. Exposure to Different Fields
6. Skill Development

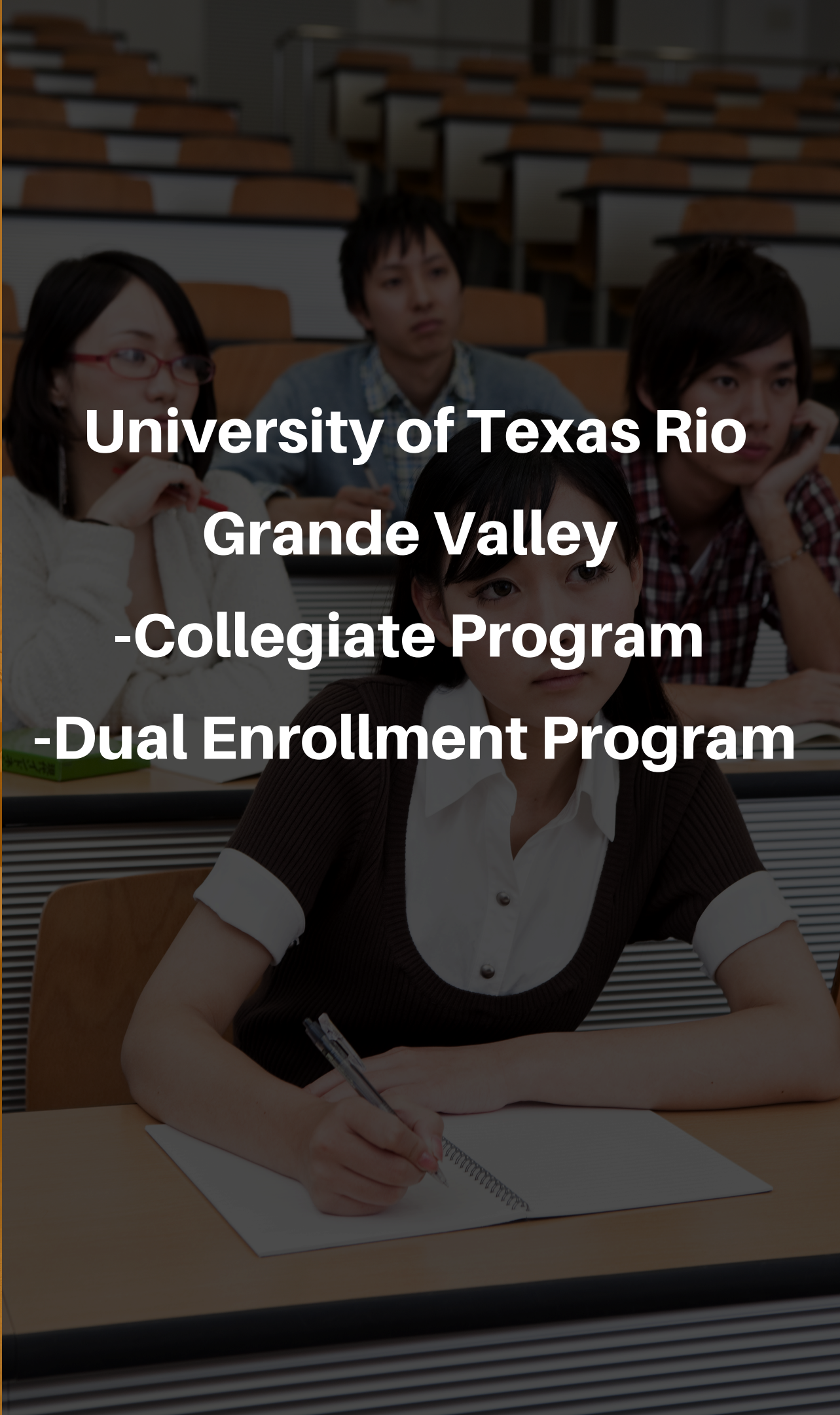


A photograph of three graduates in black gowns and yellow stoles, throwing their caps into the air in celebration. The background shows a university building under a clear sky.

South Texas College
-Early College Program
-Academies Program
-Dual Enrollment Option

A photograph of students walking through a brightly lit university hallway with arched doorways. The image is overlaid with a semi-transparent orange filter.

University of Texas
-OnRamps Program

A photograph of students sitting in a lecture hall, looking towards the front. The image is overlaid with a semi-transparent dark grey filter.

**University of Texas Rio
Grande Valley**
-Collegiate Program
-Dual Enrollment Program

Dual Enrollment STC

School Year	Number of STC Courses	Number of STC Students	Number of Attempted Credits	Number of Earned Credit	Percent Earned
2021-2022	99	750	8,866	7,608	86%
2022-2023	110	843	9,928	8,951	90%
2023-2024	137	993	12,328	11,381	92%
2024-2025	139 (pending summer)	930 (pending summer)	12,128	Pending	Pending



Dual Enrollment OnRamps

School Year	Number of OnRamps Courses	Number of OnRamps Students	Number of Attempted Credits	Number of Earned Credits	Percent Credits Earned
2021-2022	13	336	1,674	818	49%
2022-2023	9	362	1,901	1,025	54%
2023-2024	12	398	1,637	1,071	65%
2024-2025	12	423	2,853	Pending	Pending





Dual Enrollment UTRGV

School Year	Number of UTRGV Courses	Number of UTRGV Students	Number of Attempted Credits	Number of Earned Credits	Percent Credits Earned
2024-2025	8	79	1,975	Pending	Pending





Dual Enrollment Is The **Passport** To Post Secondary Education.

Thank You

I am pleased to report a steady increase in our Dual Enrollment Program and will continue to increase opportunities for our McAllen ISD students.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Report Regarding 2023-2024 McAllen ISD Professional Employee Opinion Survey

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Texas Association of School Boards (TASB) conducted a survey of professional and para-professional (instructional aides) McAllen Independent School District (MISD) employees on February 5 - February 16, 2024.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The purpose of the survey was to assess employee attitudes and level of satisfaction with their jobs and work conditions. Survey information will be used to understand how respondents perceive specific issues and the general level of job satisfaction among employees. Most of the survey requested employees respond to statements using a Likert-type scale. Some responses were combined for purposes of analysis.

LEGAL REVIEW:

None.

BUDGETARY CONSIDERATIONS:

The survey project was funded with budgeted funds.

RECOMMENDED BOARD ACTION:

This item is for information only; no action is required.

SUBMITTED BY: 
Alberto Canales (Aug 22, 2024 15:40 CDT)

SUPERVISOR: 

For further information contact:
Name: Dr. Albert Canales, Chief Human Resources Officer
Office: (956) 618-6009
Email: albert.canales@mcallenisd.net

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 23, 2024 08:59 CDT)



Report Regarding 2023-2024 McAllen ISD Professional Employee Opinion Survey

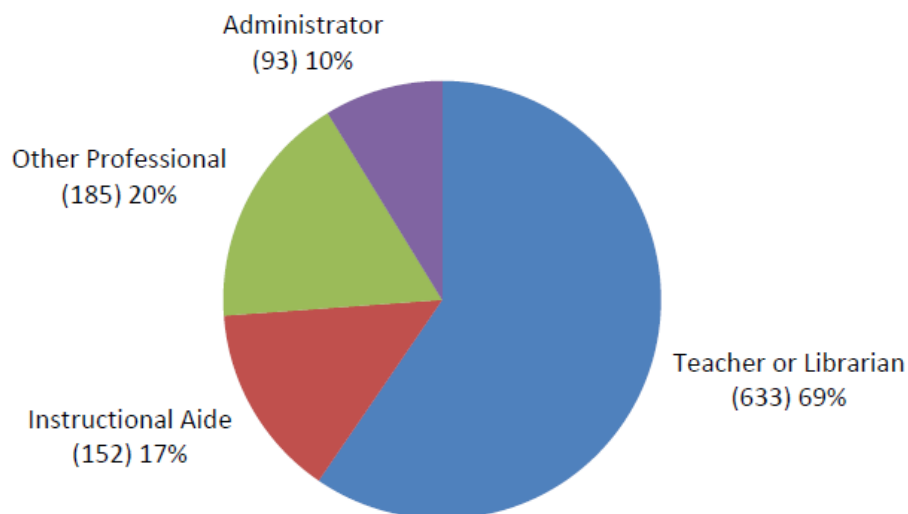


All employee responses were submitted directly to TASB. A total of 1,063 employees participated, yielding a response rate of 42 percent, which is below the 2023 response rate of 83 percent.

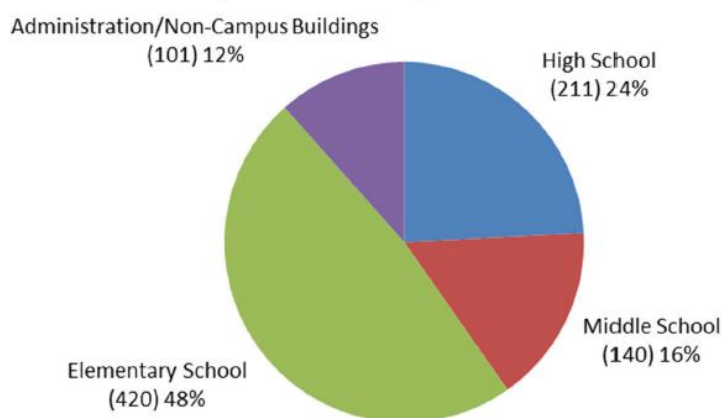
Of those, 911 were teachers/professional employees, yielding a response rate of 43 percent for that group, which is less than 2023 rate of 85 percent.



Representation by Job Type



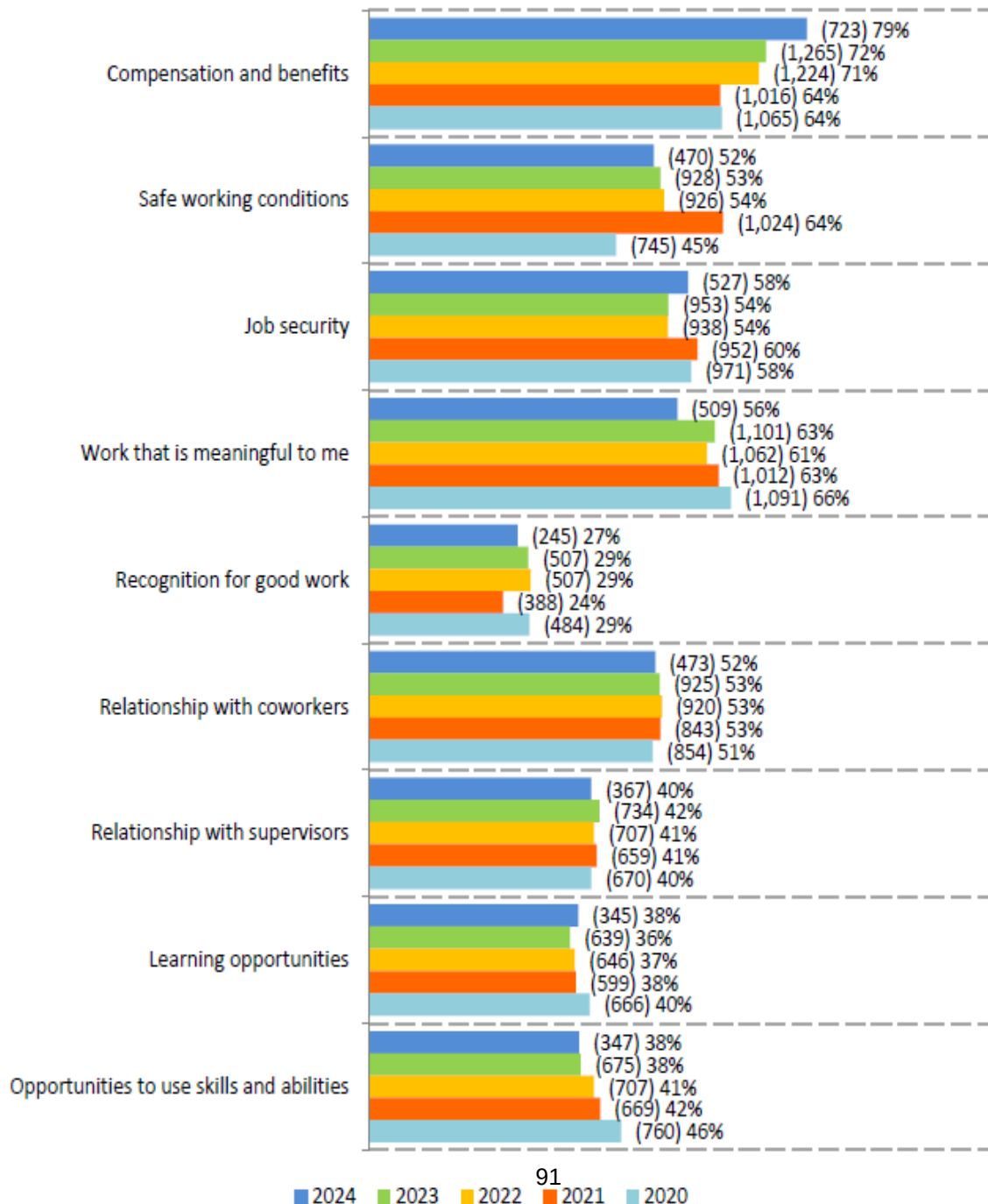
Representation by Work Location



All work locations were represented in the survey. Nearly half of participants (48 percent) worked at the elementary schools.

Respondents could choose up to 5 items that they valued as most important to their job satisfaction.

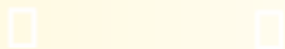
Factors that Contribute to Job Satisfaction



a. The remaining sections of the survey used a likert-type scale to provide respondents with a list of statements and asked for their level of agreement.

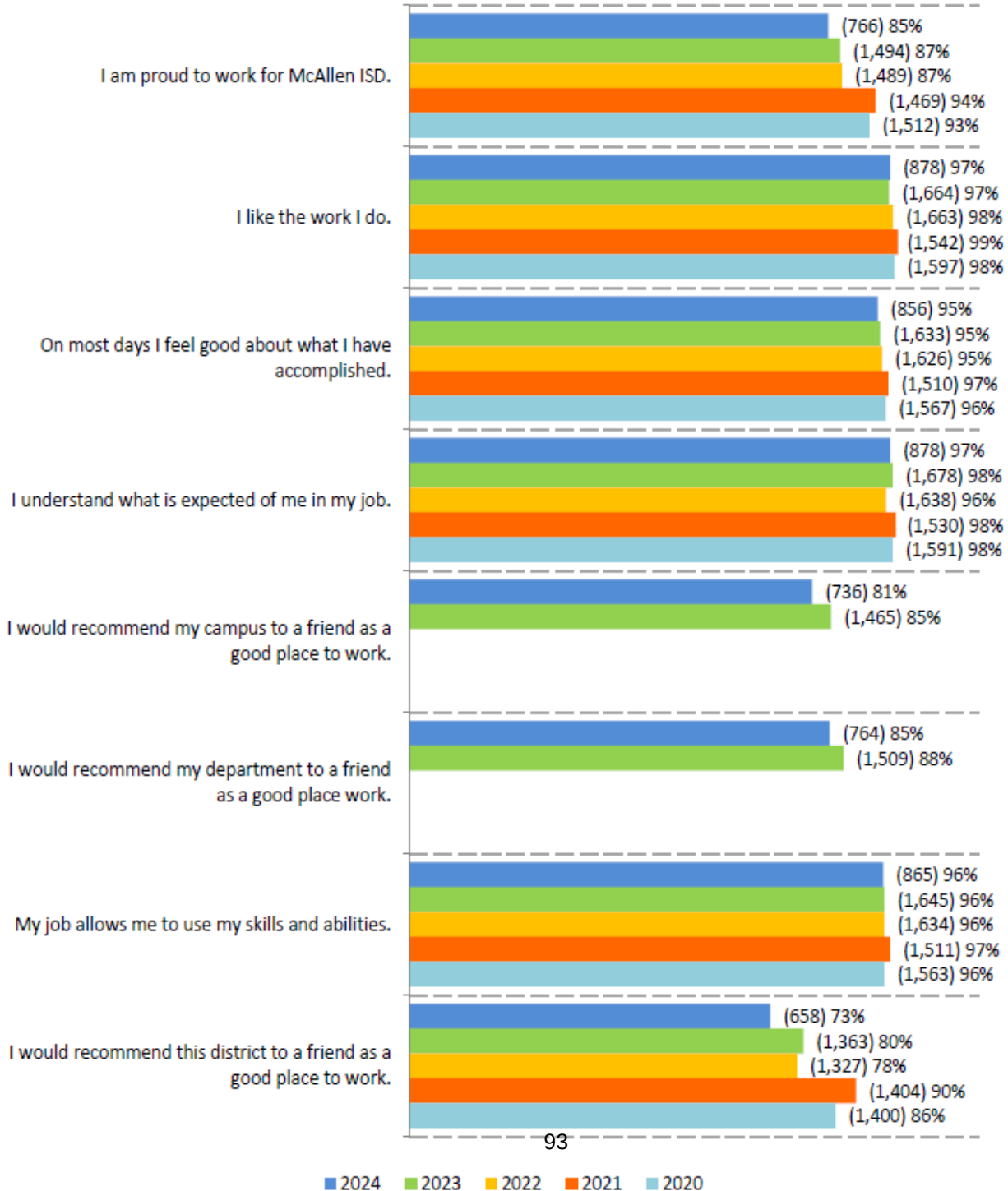
a. Response categories were:

- i. Strongly agree
- ii. Agree
- iii. Disagree
- iv. Strongly disagree
- v. No opinion or not applicable

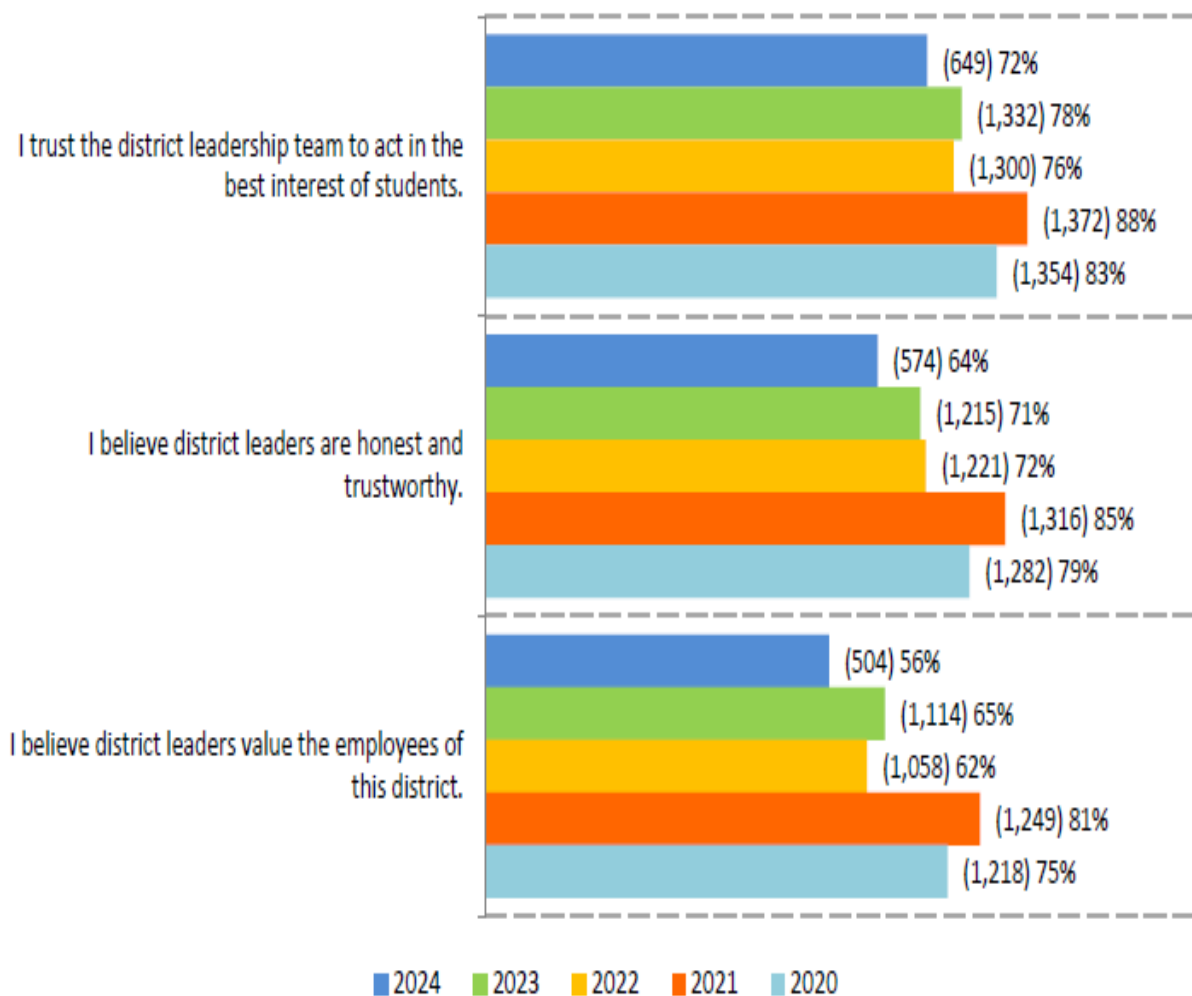


c. The categories of **STRONGLY AGREE** and **AGREE** were combined for the following charts to indicate a positive response.

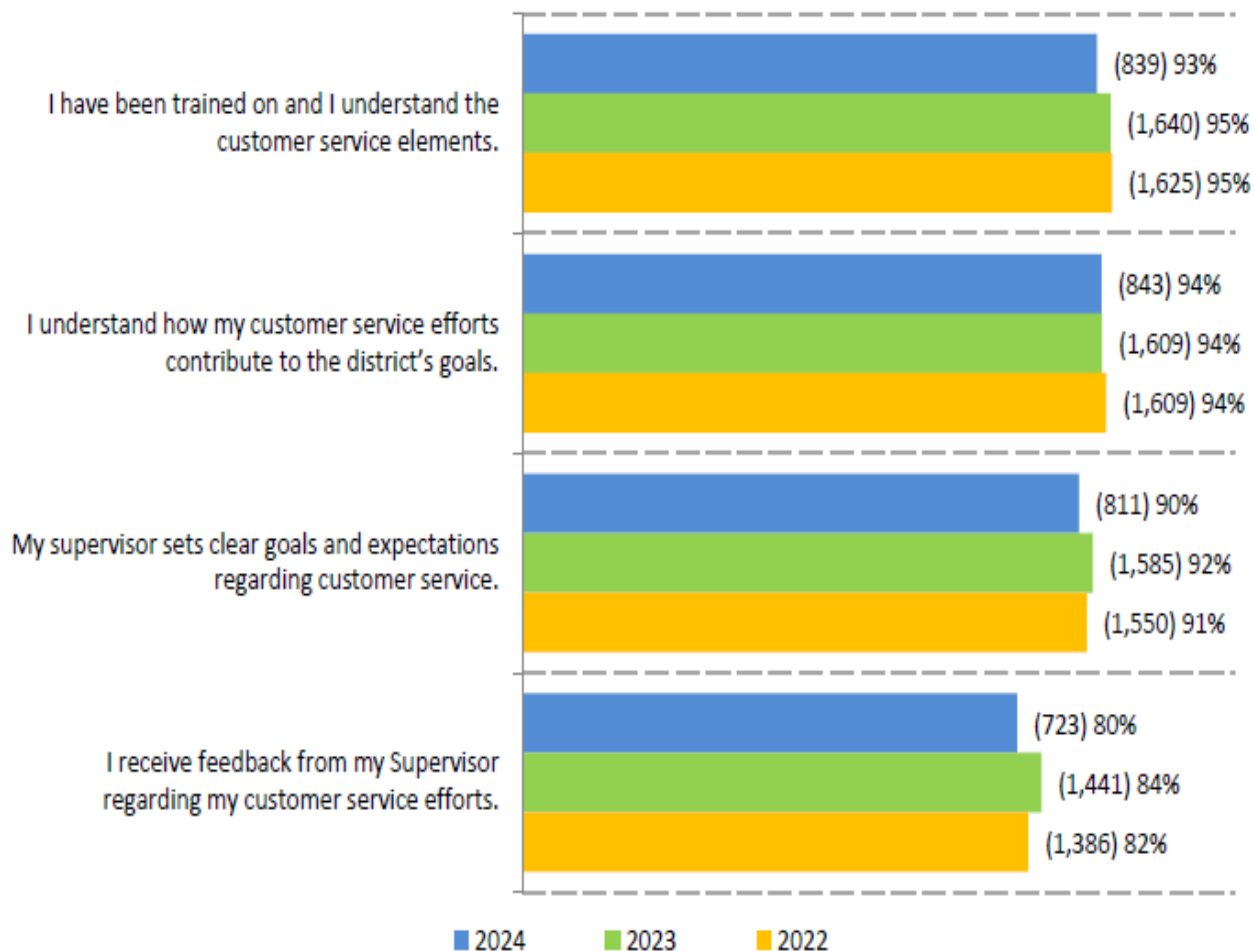
Job Satisfaction



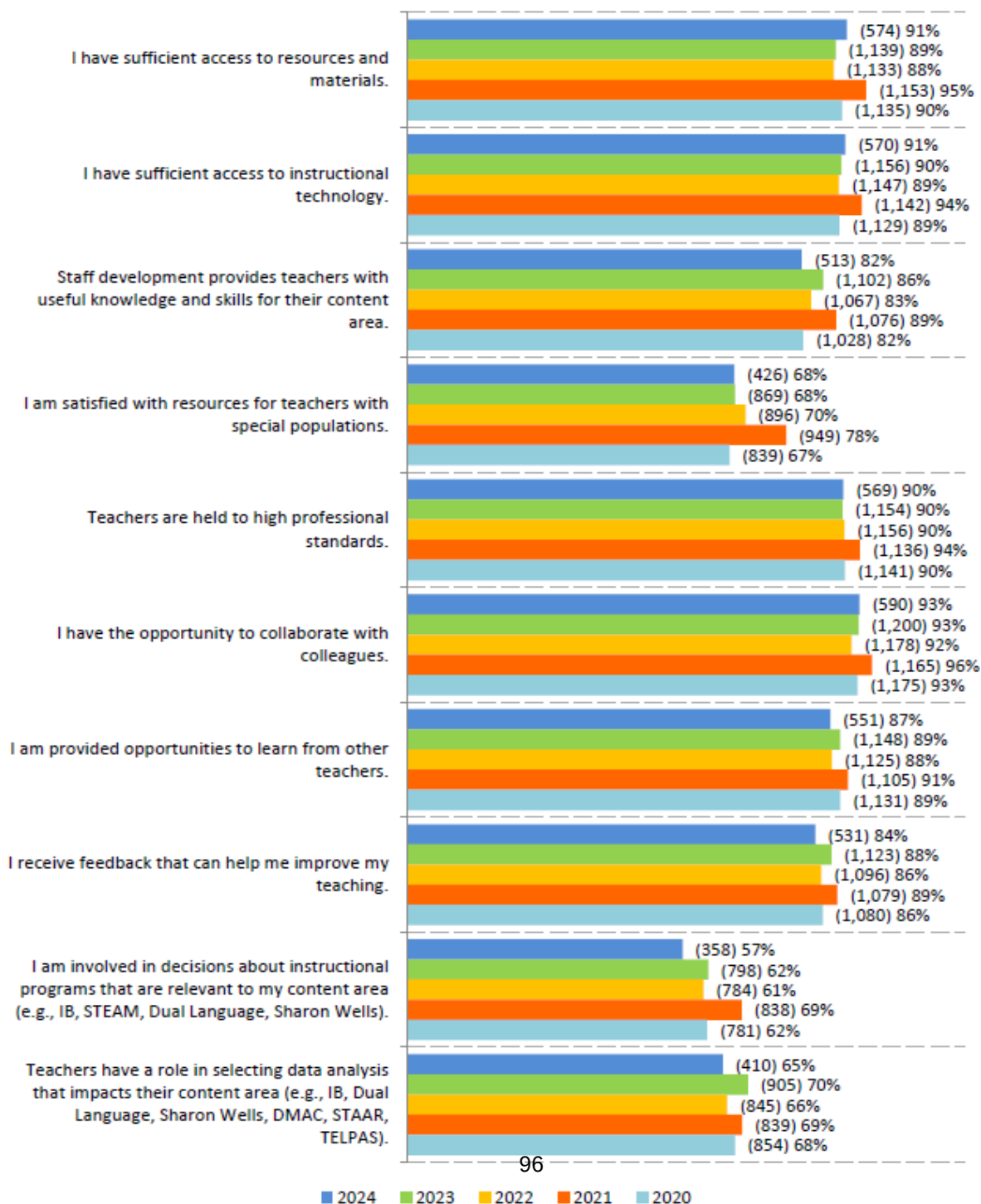
District Leadership (Superintendent and Board of Trustees)



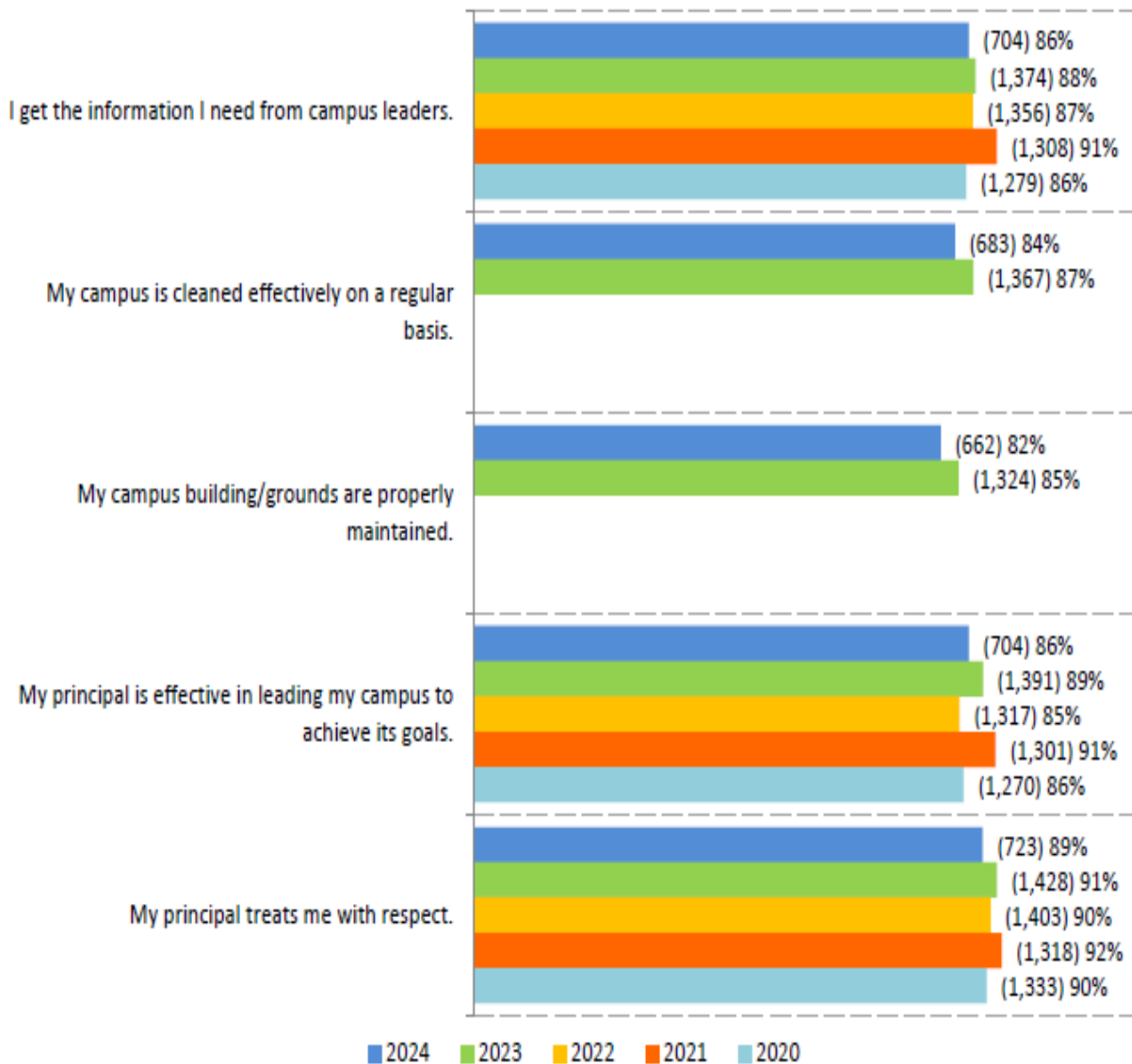
Customer Service



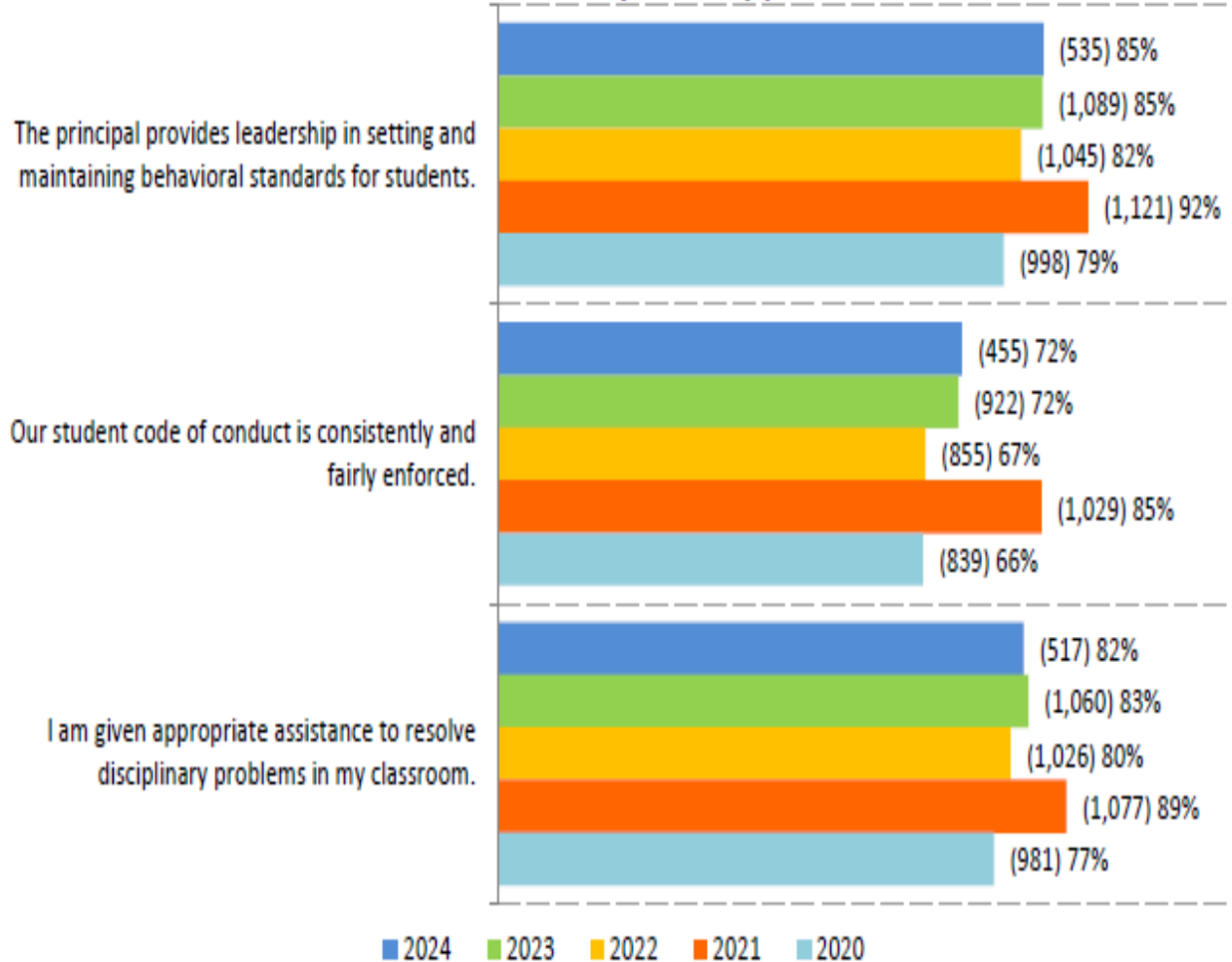
Curriculum and Instruction Support



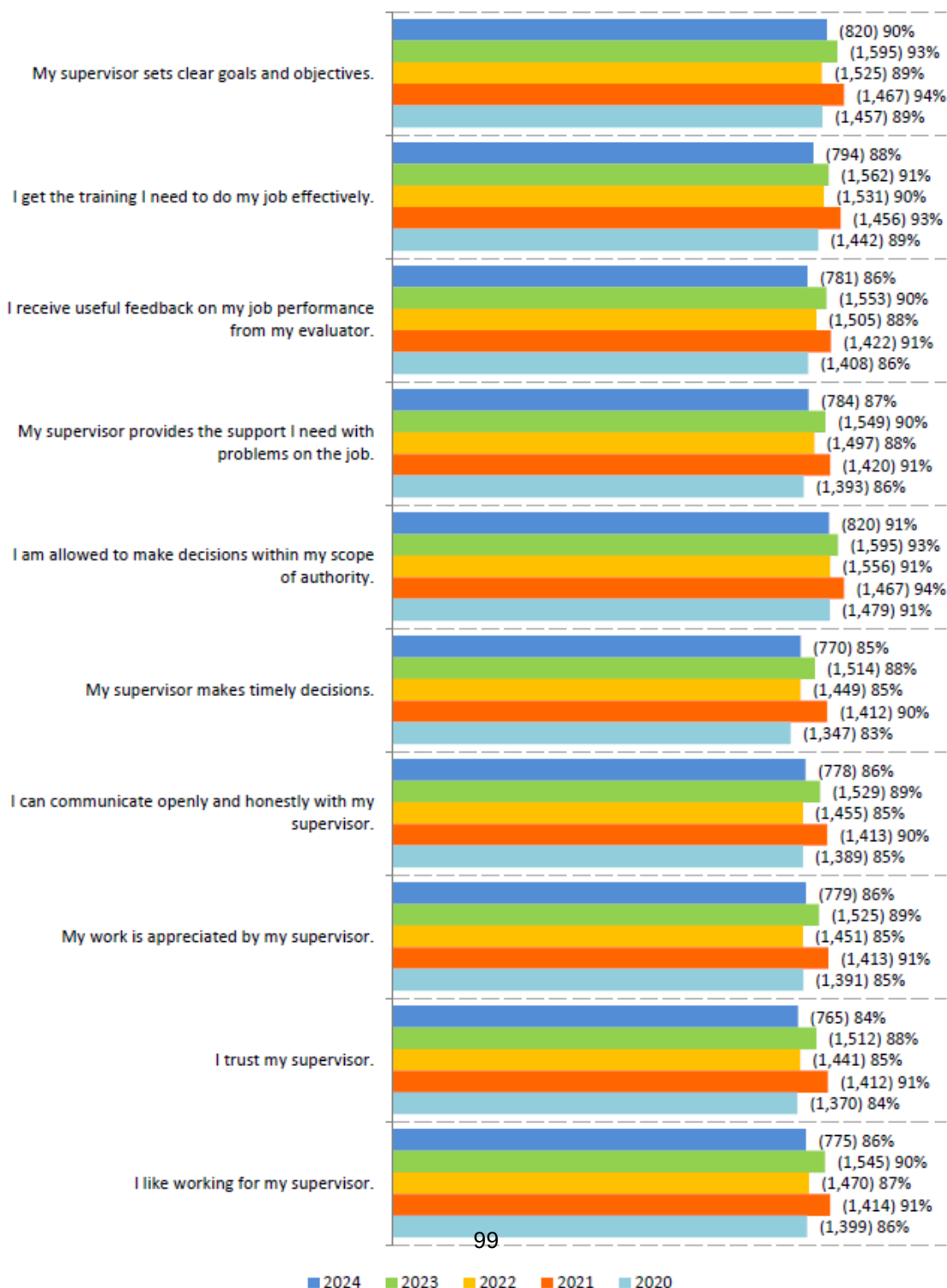
Campus Environment



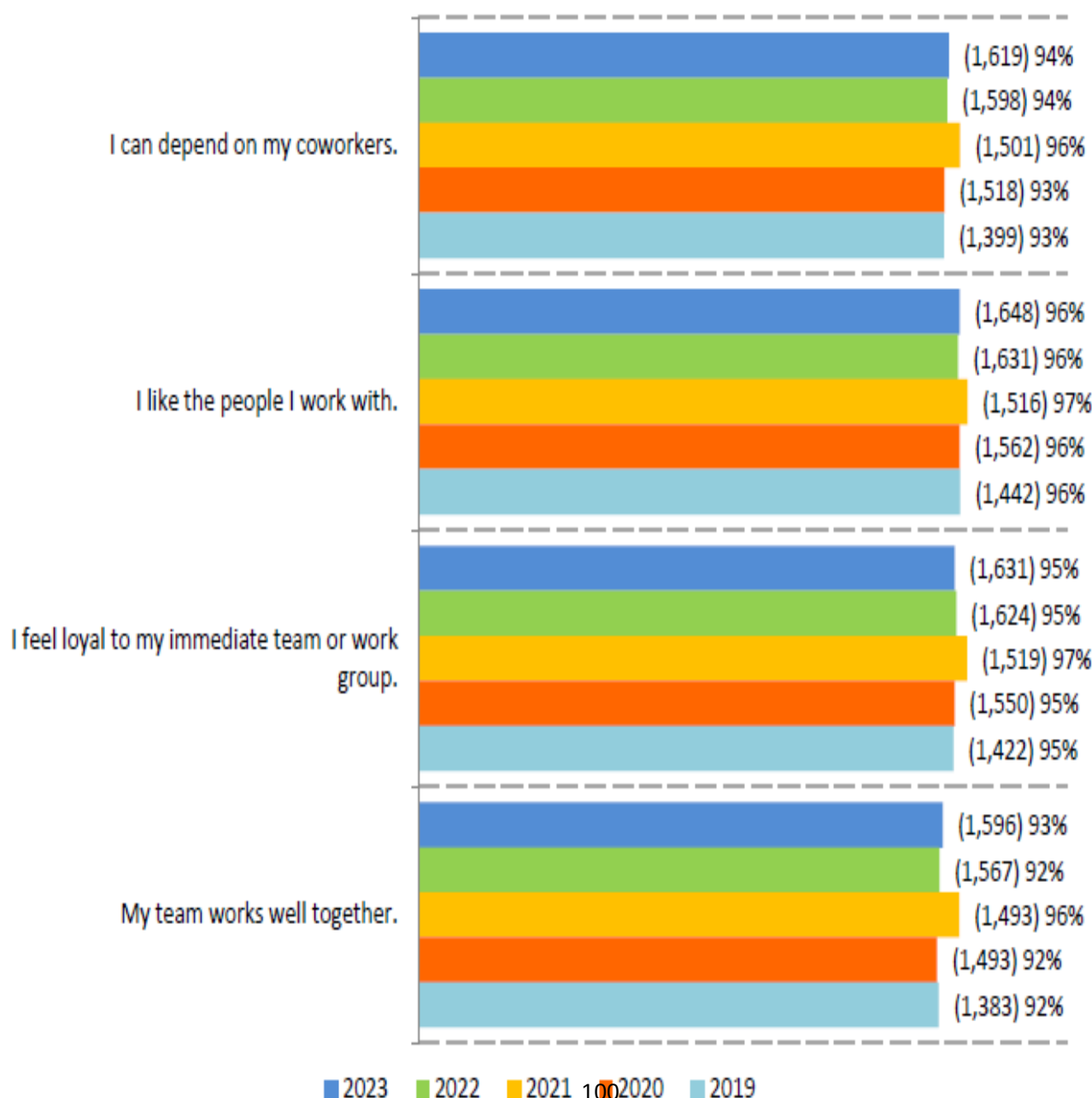
Student Discipline Support



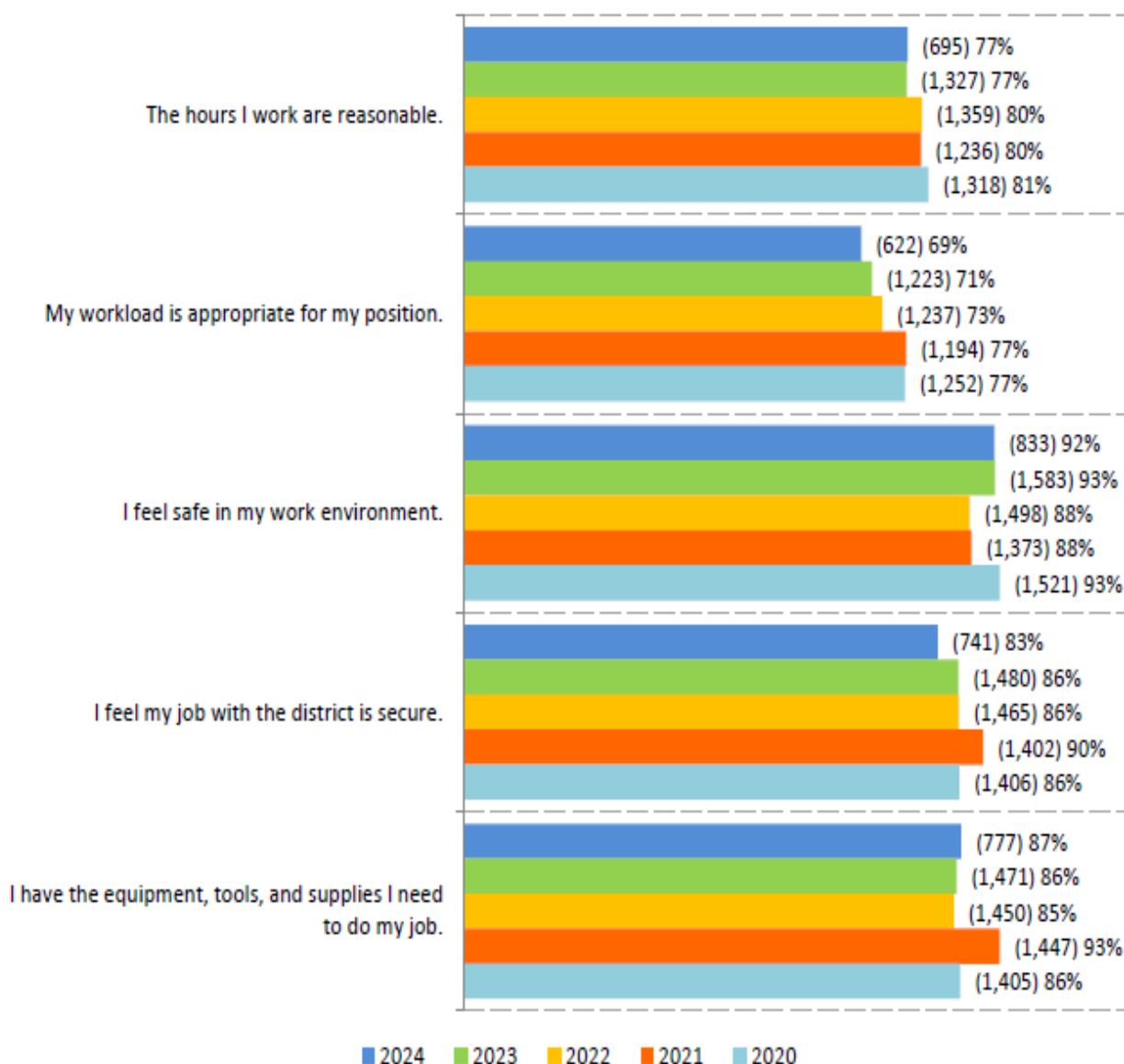
Relationship with Supervisor



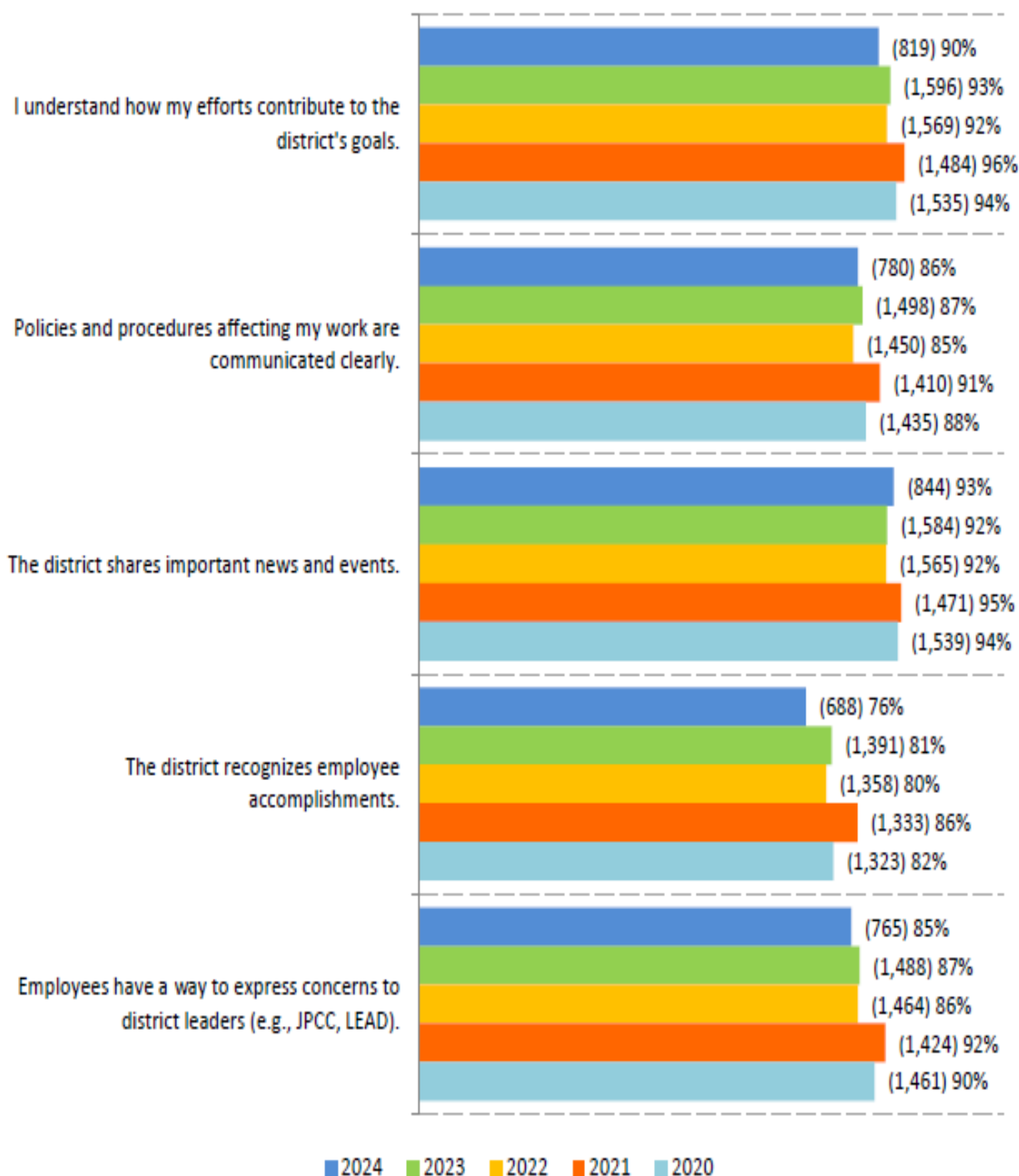
Relationship with Coworkers



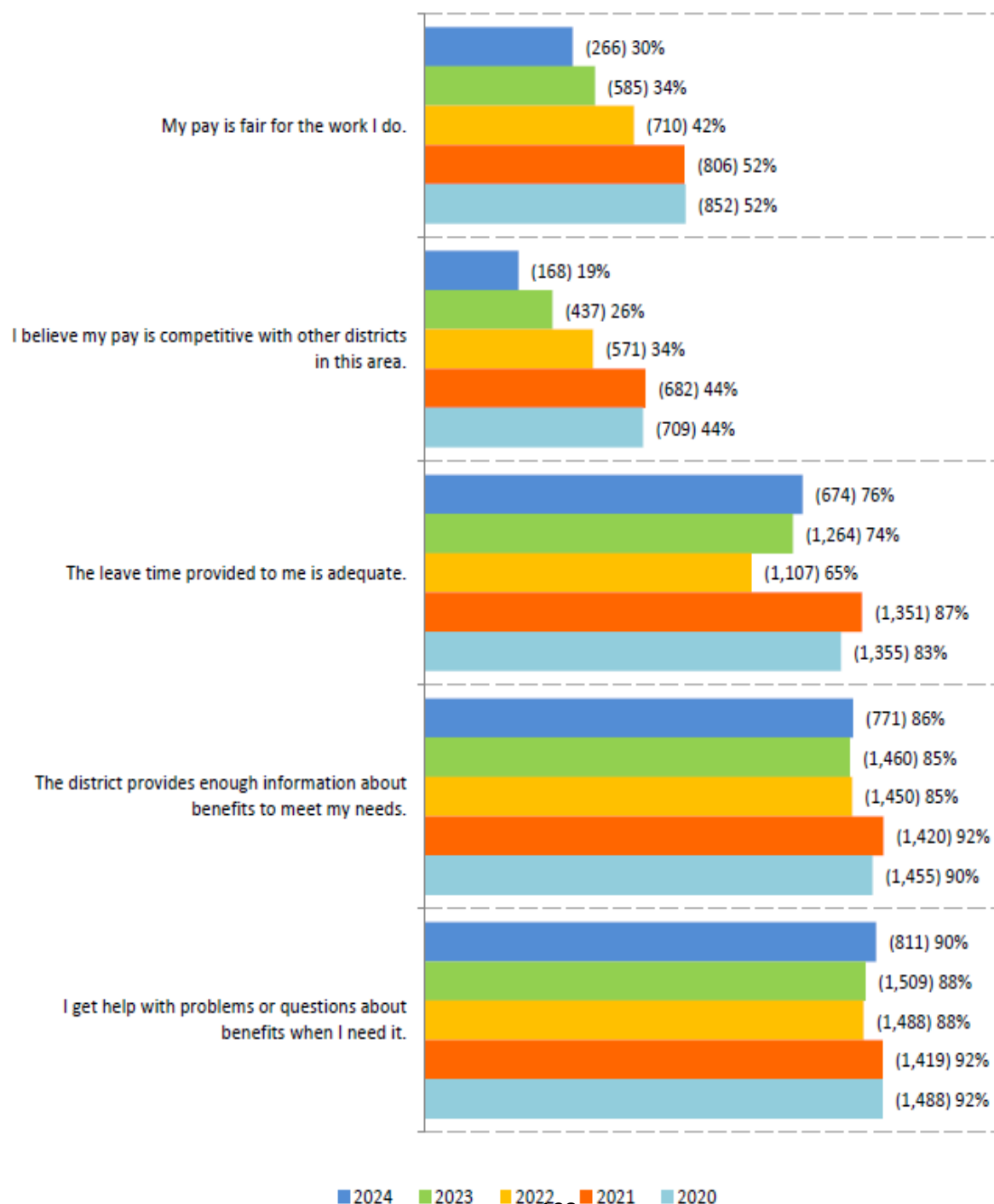
Working Conditions



District Communications



Compensation and Benefits



Employee Opinion Survey

McAllen Independent School District

April 17, 2024

Cat Rubiera



TABLE OF CONTENTS

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EXECUTIVE SUMMARY

Background

The HR Services Division of the Texas Association of School Boards (TASB) conducted a confidential survey of McAllen Independent School District (MISD) employees in early February through late February 2024 at the request of the district.

The purpose of the survey was to assess employee engagement towards their district and campus, as well as their level of satisfaction with their job and work conditions. Survey information may be used by district leadership to understand how respondents perceive specific issues and to reveal a general level of job satisfaction among employees. District leadership can participate in creating an environment that fosters engaged employees. Research shows that engaged teachers are 62 percent less likely to leave their district for another; as well, teacher engagement is directly related to student engagement¹.

Districts with an engaged workforce tend to have a common vision or mission adopted district-wide, believed by campus leadership, and shared by all employees. Campus leadership that communicates openly, provides more feedback, and allows employees to use their best skills can motivate employees to do outstanding work. Districts benefit from an actively engaged environment because actively engaged employees remain involved, have lower absenteeism, are passionate, and are dedicated to their work as well as the district's mission.

TASB HR Services developed the survey in collaboration with McAllen ISD in 2013 and administered the same survey, to allow year-to-year comparisons. Most of the survey requested that employees respond to statements using a Likert-type scale. Some responses were combined for purposes of analysis. For example, throughout this report, "strongly agree" and "agree" responses were combined to indicate a positive response.

The survey included a variety of topics to gather data about demographics, environment, relationship, and campus concern. Topics are listed on the next page.

Survey Administration and Respondents

McAllen ISD provided HR Services a list of employee email addresses, and at the time of survey launch there were 2539 employees. HR Services sent an email with a link to the survey to MISD staff requesting their participation. All employee responses were submitted directly to TASB. A total of 1,063 employees participated, yielding a response rate of 42 percent, which is below the 2023 response rate of 83 percent. Of those, 911 were teachers/professional employees, yielding a response rate of 43 percent for that group, which is less than 2023 rate of 85 percent.

¹ Gallup, Inc. "Gallup's Perspective on Understanding the K-12 Teacher Experience." *Gallup.com*. Gallup, 2019. <https://www.gallup.com/education/247094/gallup-perspective-understanding-teacher-experience.aspx>

Summary by Topic

The table below shows a summary of positive responses for each topic presented on the survey. These represent the percentage of respondents who chose agree or strongly agree, averaged across the items in a topic.

On average, relationship with coworkers had the highest percentage of positive responses (93 percent), while compensation and benefits had the lowest (60 percent). Subsequent sections of the report will include charts and highlight specific items within each topic.

Survey Topics	Positive (Average) 2024	Difference from Previous Year (2024 to 2023)
Job Satisfaction	88%	-3%
Working Conditions	82%	-1%
Relationship with Coworkers	93%	-1%
Relationship with Supervisor	87%	-3%
Customer Service	89%	-2%
Compensation and Benefits	60%	-1%
District Communications	86%	-2%
District Leadership (Superintendent/Board of Trustees)	64%	-7%
Campus Environment	85%	-3%
Curriculum and Instruction Support	81%	-1%
Student Discipline Support	80%	0%

DEMOGRAPHICS

A total of 911 teacher/professional surveys were submitted, yielding a response rate of 43 percent. Respondents were asked for their job type first in order to show only relevant questions; for example, only teachers received questions about student discipline.

The demographic makeup of respondents is a factor to keep in mind when comparing results across years. For example, between the 2023 respondents and those in 2024, there were slight variations in distribution by job type and work location.

Participation by Job Type

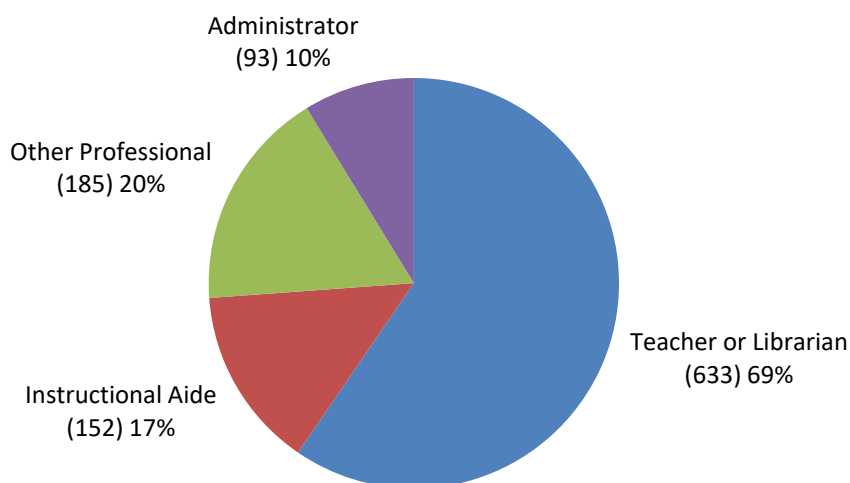
Job Type	# of Employees	# of Respondents	Participation Rate	% of Total Survey
Teacher or Librarian	1,593	633	40%	69%
Other Professional	446	185	41%	20%
Administrator*	73	93	127%*	10%
Total	2,112	911	43%	100%

*As part of the survey, respondents self-identified within a job group. This can lead to a slight difference between district-reported counts and the respondent-reported demographics.

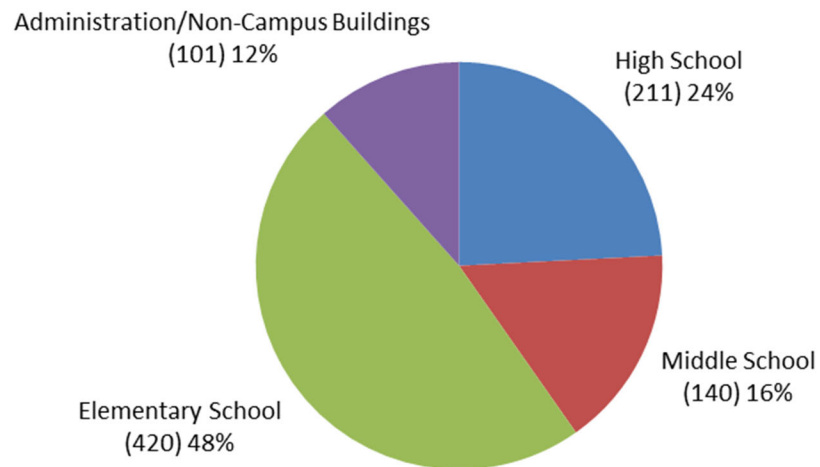
The largest group of respondents were teachers or librarians, composing 40 percent of the total respondents and representing 69 percent of all teachers and librarians employed by the district. The participation rates for the three groups have shifted since last year; however, shortening the time to complete the survey has played a part.

The other professional group includes employees in the following jobs: counselor, nurse, diagnostician, speech language pathologist, and facilitator.

Representation by Job Type



Representation by Work Location



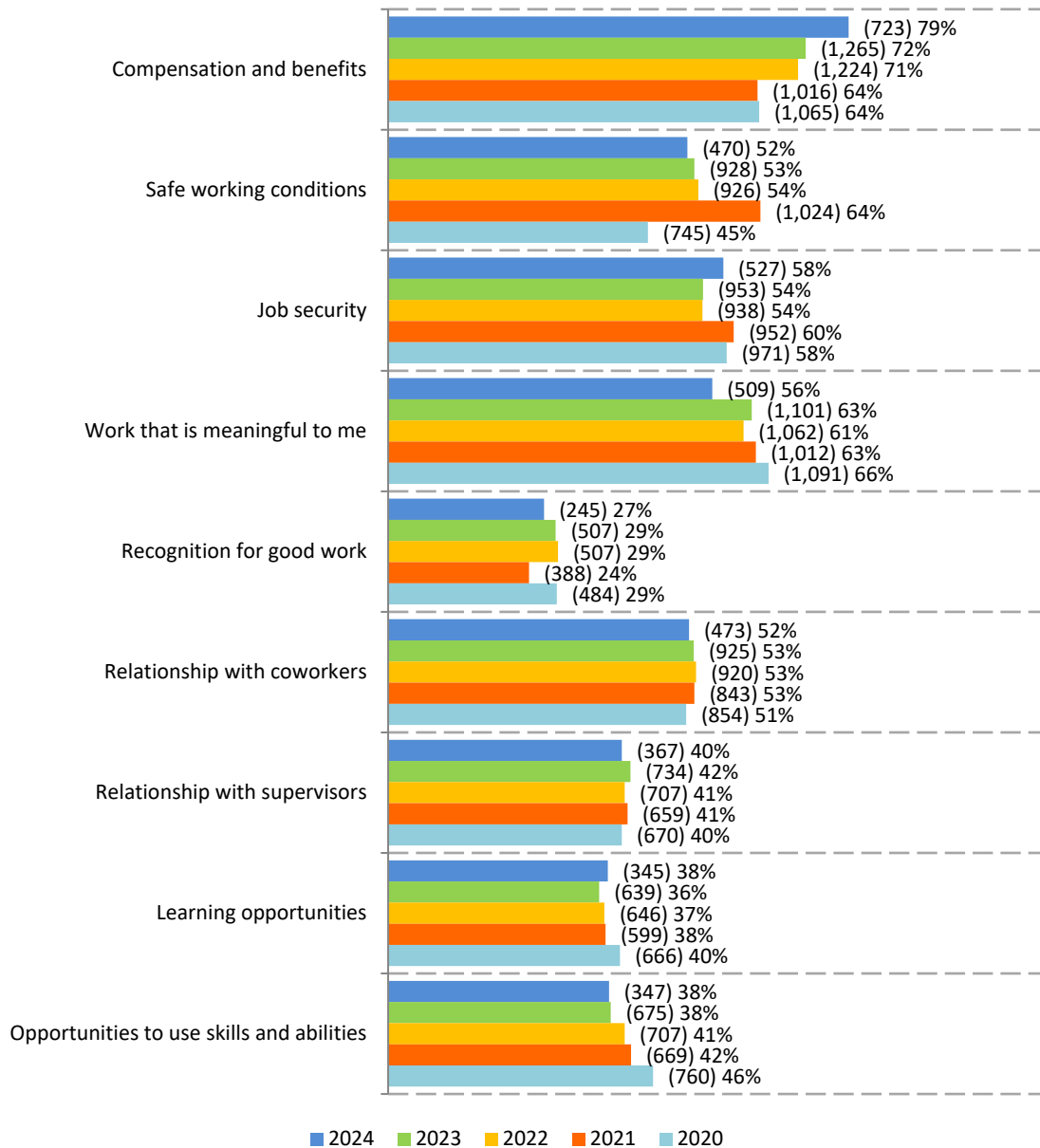
All work locations were represented in the survey. Nearly half of participants (48 percent) worked at the elementary schools.

FINDINGS BY SURVEY TOPIC

Job Satisfaction Factors

For this question, respondents could choose up to five items that they valued as most important to their job satisfaction.

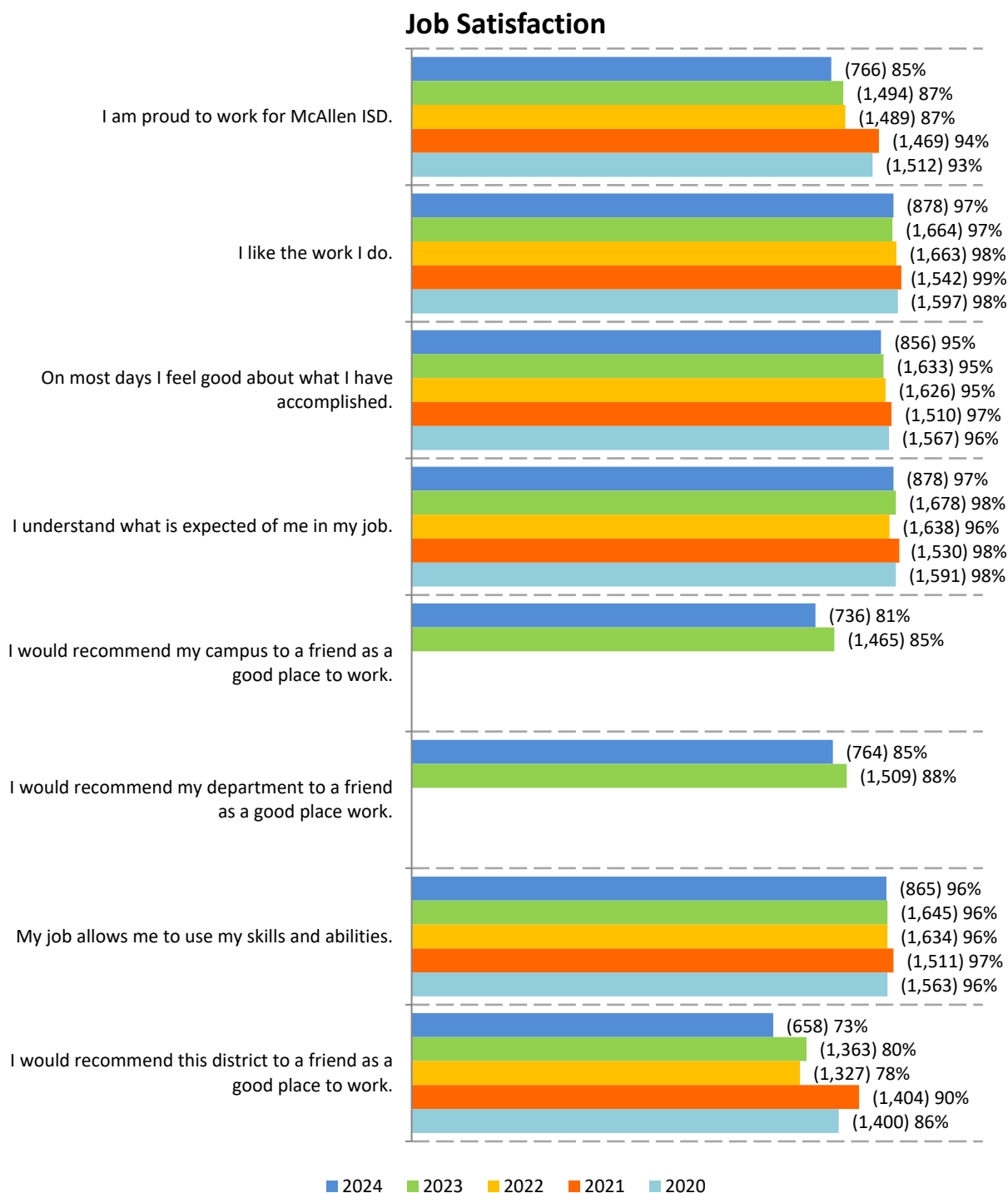
Factors that Contribute to Job Satisfaction



Five factors were chosen by over half of respondents: compensation and benefits (up 7 points to 79 percent), job security (58 percent), work that is meaningful (down 7 points to 56 percent), safe working conditions and relationship with coworkers (both 52 percent).

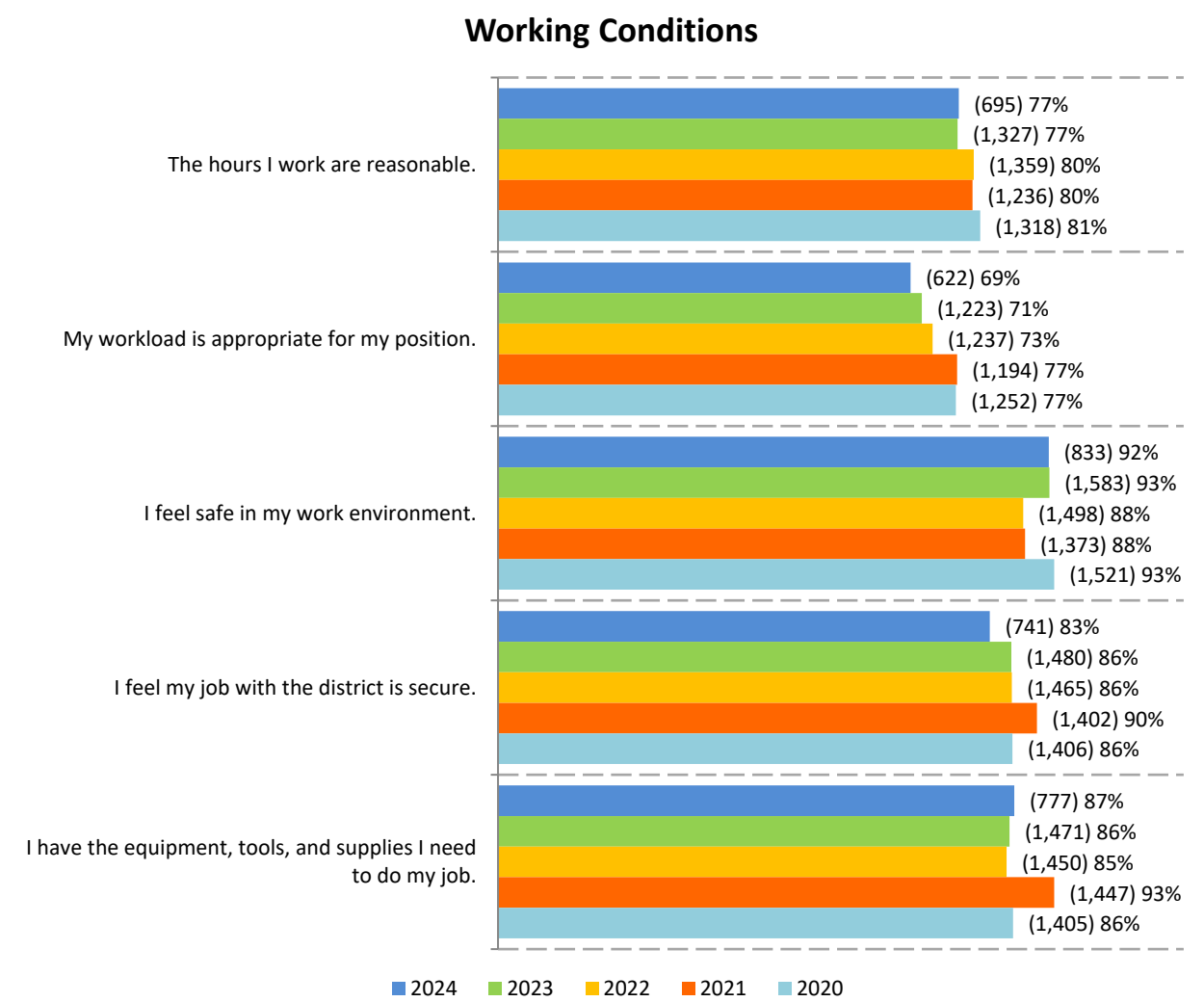
Likert-type Scale Questions

The remaining sections of the survey provided respondents with a list of statements and asked for their level of agreement. Response categories were strongly agree, agree, disagree, strongly disagree, and no opinion/not applicable. The categories of strongly agree and agree were combined for these charts to indicate a positive response.



Survey participants responded favorably regarding job satisfaction, with 88 percent expressing agreement with each statement, on average. This topic saw fluctuation within the items ranging from 0 point change to 7 point decrease. Respondents were most likely to recommend their department (85 percent) as a good place to work, followed by their campus (down 4 points to 81 percent), then the district (down 7 points to 73 percent).

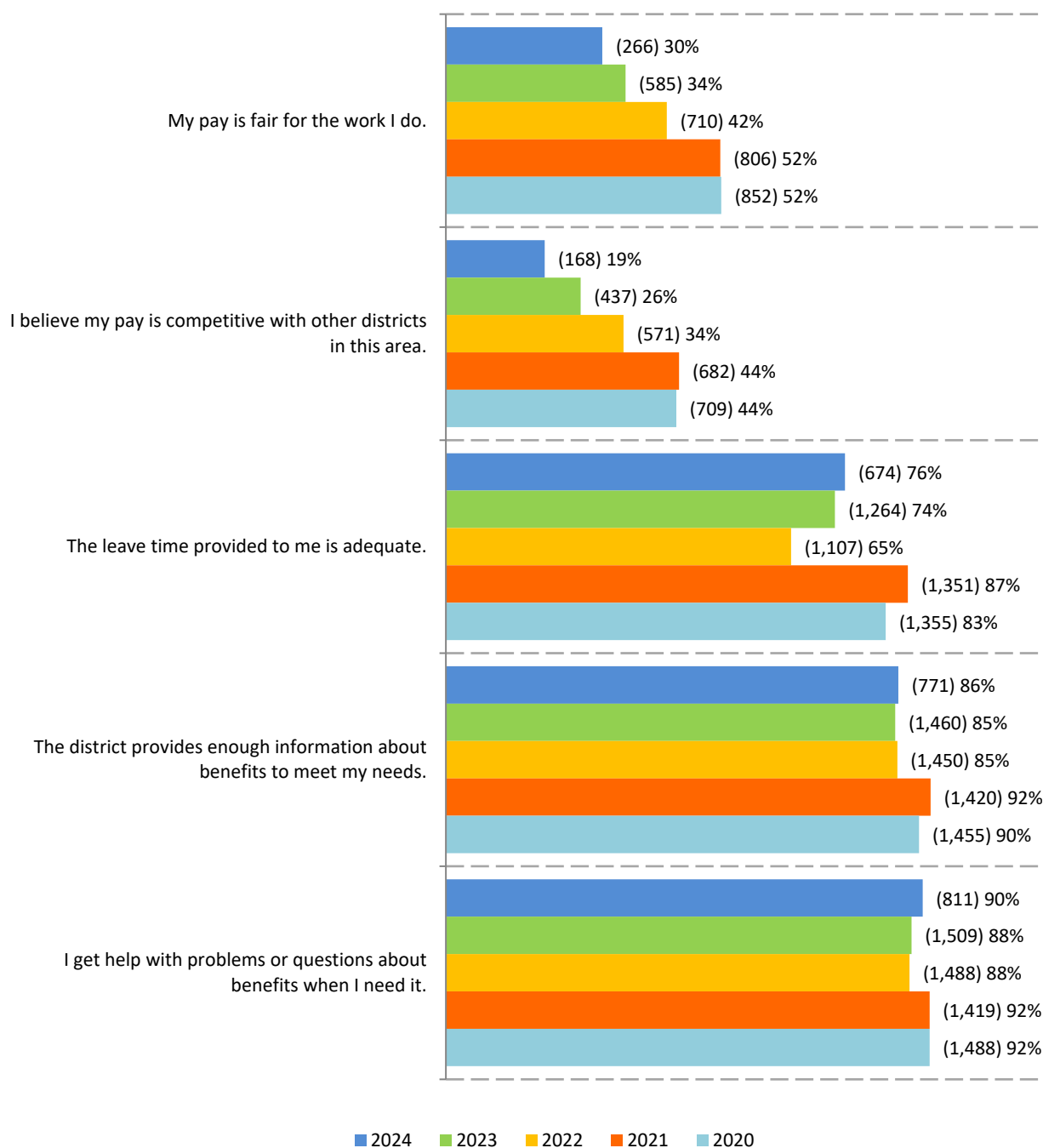
Four items had at least 95 percent agreement: understand expectations, like the work, use skills and abilities, and feel good about accomplishments. Within the top four items there was next to no change in agreement. Later topics will give additional insight into what items, outside of the job itself, make respondents satisfied with their employment at McAllen ISD.



Overall, McAllen ISD respondents expressed satisfaction with their working conditions. Almost all report working in an environment that is safe (92 percent). Respondents also feel secure in their employment (down 3 points to 83 percent), have the tools or supplies needed to do their jobs (87 percent), and that their work hours are reasonable (77 percent).

Regarding workload, 69 percent agree that it is appropriate for their position, which is a slight decrease from 71 percent agreement last year and at a 5-year low.

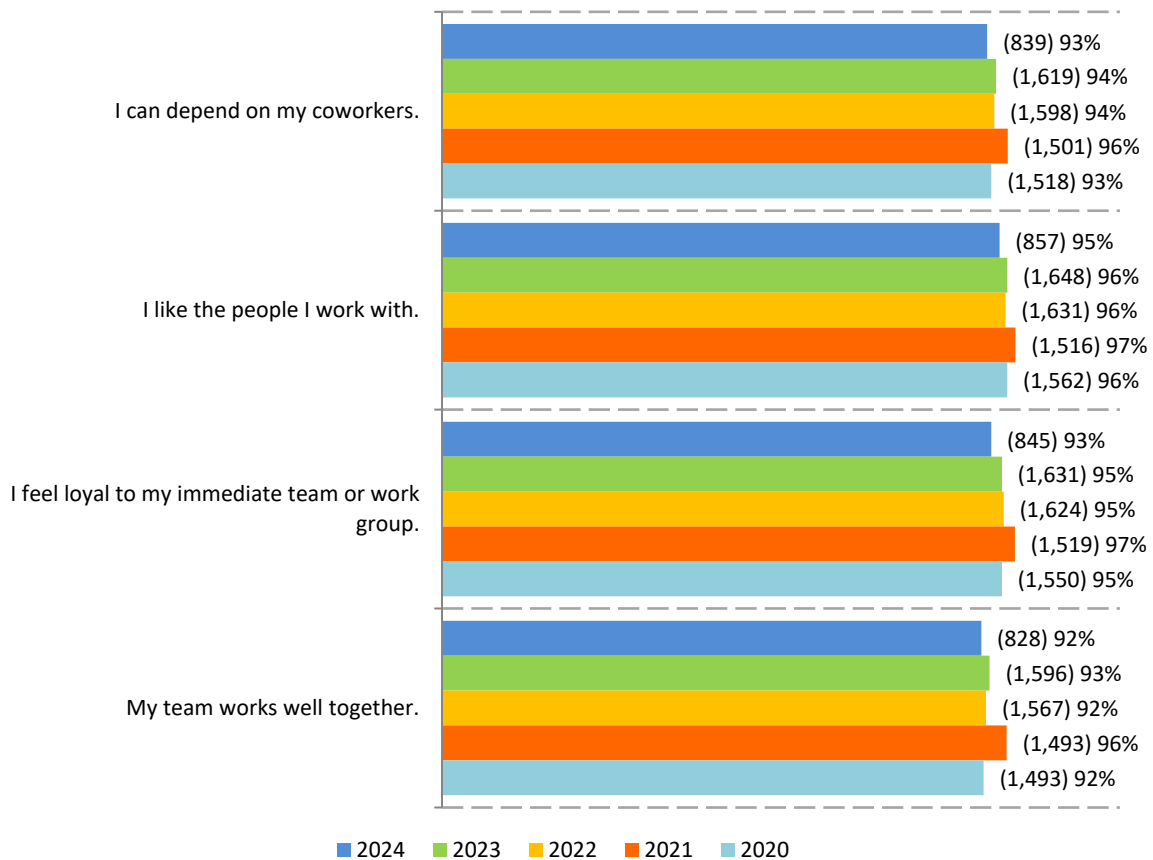
Compensation and Benefits



Respondents are satisfied with the information they receive about benefits (86 percent) and the assistance they receive when they have questions about benefits (90 percent). Further, 76 percent of respondents feel that the leave time provided is adequate. All three items saw slight increases from last year.

Respondents were less inclined to agree that their pay was fair (down 4 points to 30 percent) or competitive with other districts in the area (down 7 points to 19 percent).

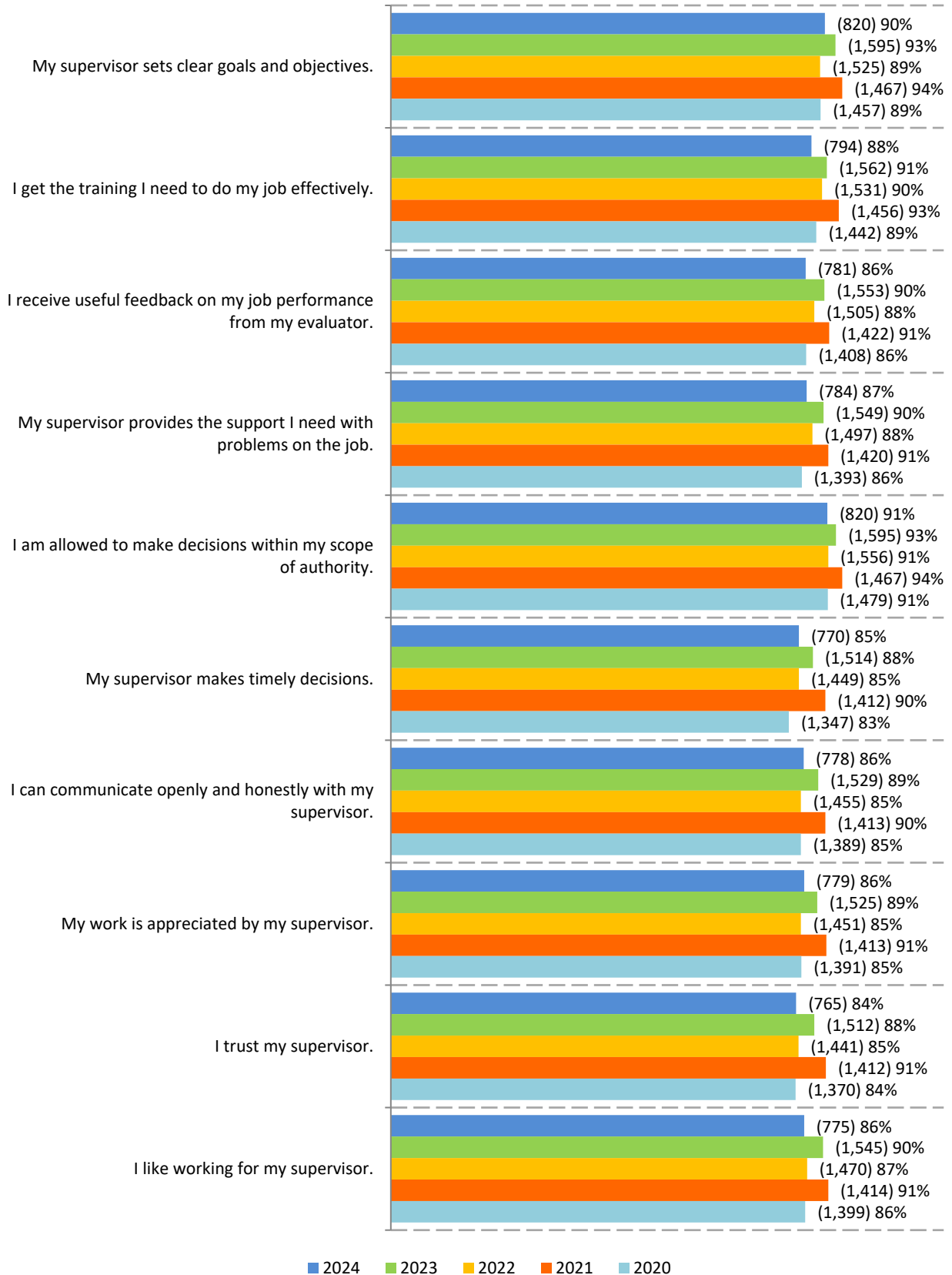
Relationship with Coworkers



Respondents view coworker relationships very favorably, with 92 percent or higher of respondents agreeing with each item in this topic. Opinions have stayed similar over the last 5 years with a slight peak in 2021.

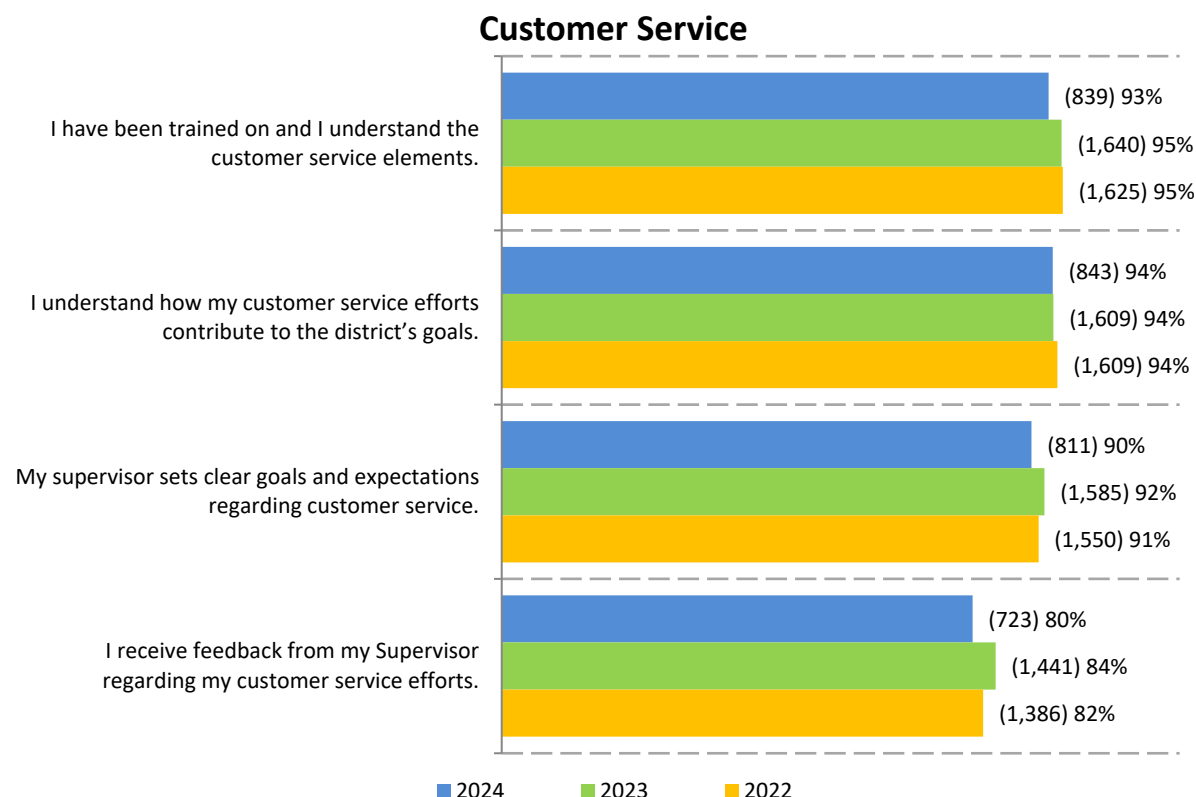
Respondents almost unanimously like their coworkers (95 percent). In addition, they agreed that they feel loyal to their team (93 percent), that coworkers are dependable (93 percent), and that the team works well together (92 percent).

Relationship with Supervisor



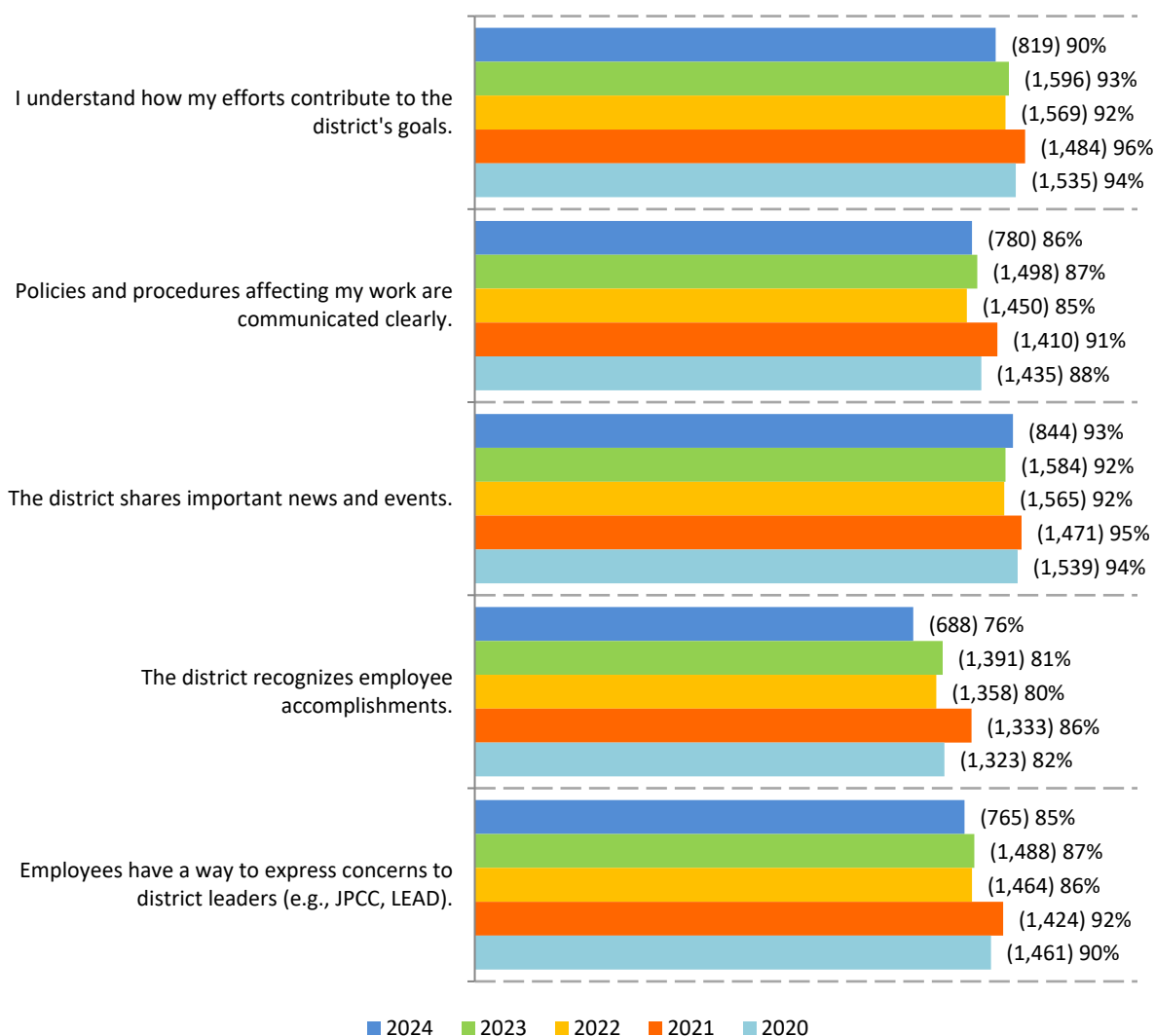
Most respondents agreed with the statements about their supervisor across all areas surveyed. For every item in this section, at least 84 percent of respondents agreed with the statement presented. The strongest areas were delegation and setting goals, with 91 percent of respondents reporting that they are allowed to make decisions within their scope of authority and 90 percent reporting their supervisors set clear goals and objectives.

Supervisors were viewed favorably overall, but all items saw a decrease between 2 and 4 points. Respondents agree supervisors set clear goals and objectives (90 percent), they receive training to do their job (88 percent), and their supervisor provides support with problems (87 percent).



Overall, respondents feel positive about their customer service elements and goals with at least 80 percent agreeing with each statement. Almost all respondents agree they understand how customer service efforts contribute to district goals (94 percent), they were trained and understand customer service elements (93 percent), agree their supervisor sets clear goals and expectations for customer service (90 percent), and they receive feedback regarding customer service efforts (down 4 points to 80 percent).

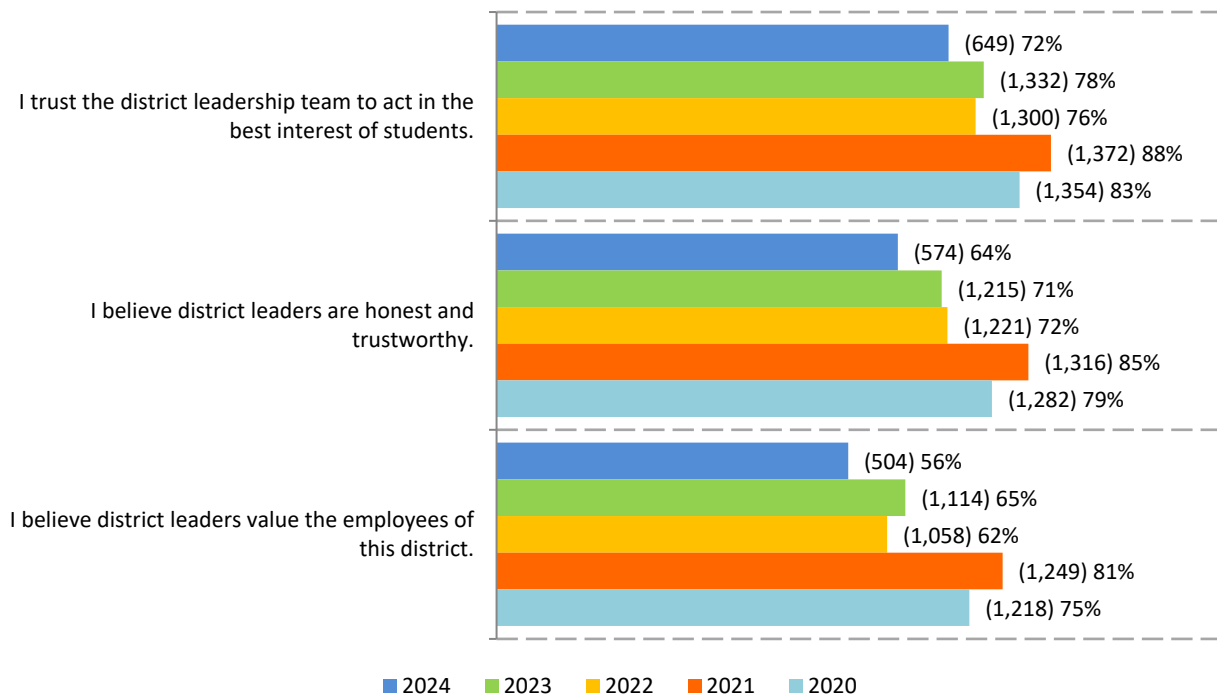
District Communications



Respondents viewed district communications positively, but most items saw a decrease from last year ranging between 1 point to 5 points. Almost all respondents agreed the district shares important news and events (93 percent), they understand how their efforts contribute to the district (down 3 points to 90 percent), and policies and procedures affecting their work are communicated clearly (86 percent).

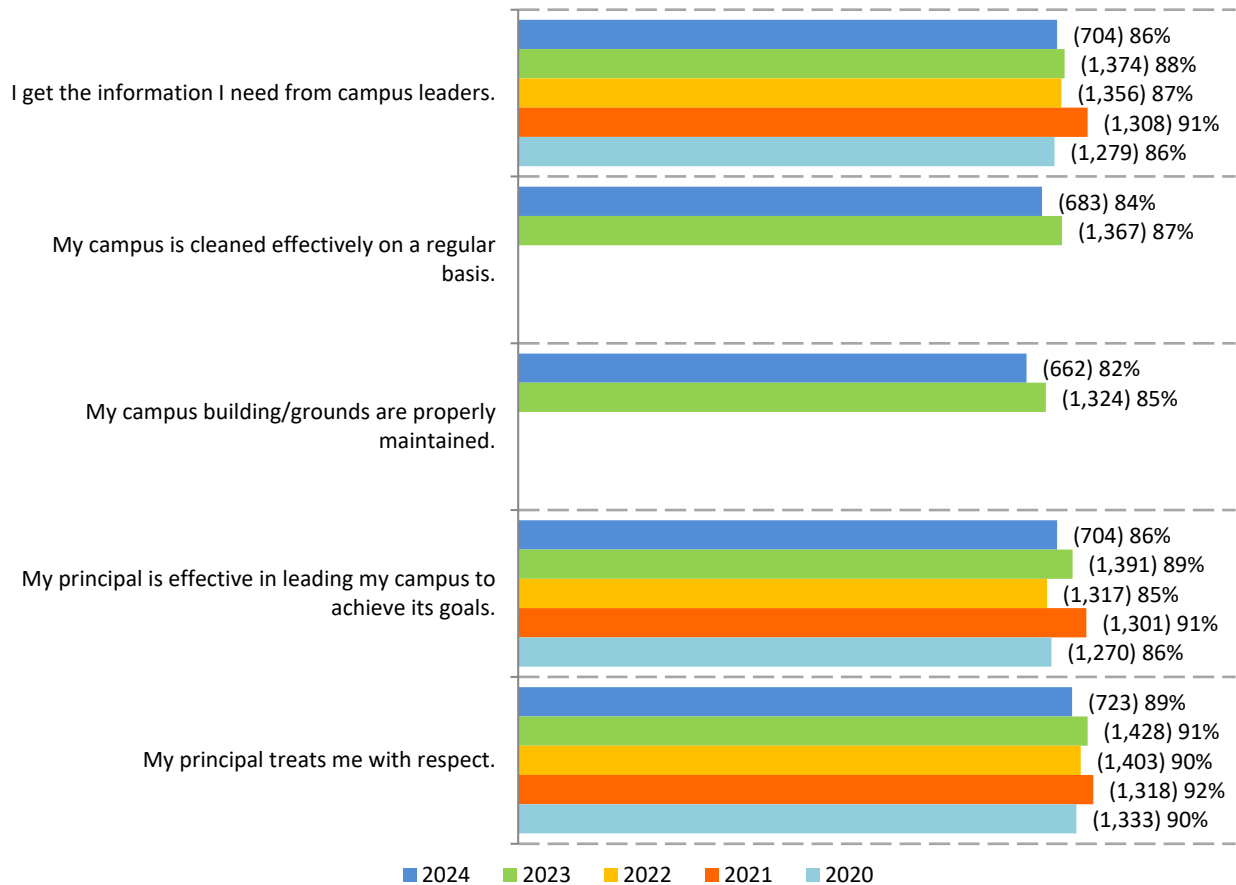
The lowest item but still a majority, 76 percent agree the district recognizes employee accomplishments (down 5 points from last year).

District Leadership (Superintendent and Board of Trustees)



A majority of respondents agreed with items in the district leadership section, with at least 56 percent agreement on each item. Respondents trust the district leadership team to act in the best interest of students (down 6 points to 72 percent), they believe district leaders are honest and trustworthy (down 7 points to 64 percent), and they believe district leaders value employees (down 9 points to 56 percent).

Campus Environment



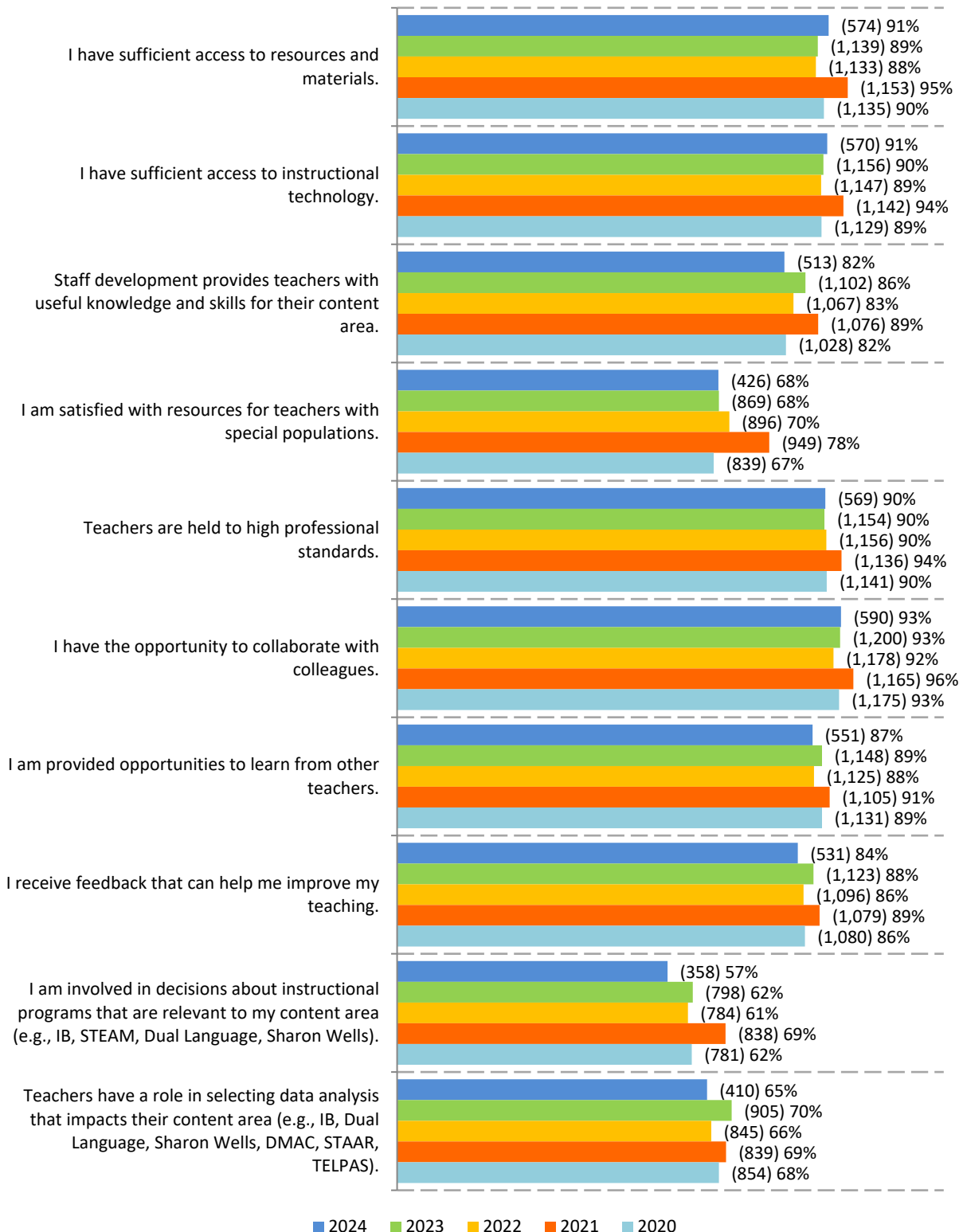
Statements about campus environment were only shown to teachers and other professionals, to ensure they were relevant items to respondents.

Overall, campus environments are viewed in a positive light. Each item in this section received at least 82 percent agreement among respondents; however, each item also decreased slightly from last year's value. Nearly all respondents said their principal treats them with respect (89 percent), and 86 percent reported getting the information they need from campus leaders and their principal is effective in leading their campus.

For the two items covering campus maintenance, both saw a 3 point decrease from last year. Respondents agree their campus is cleaned effectively on a regular basis (84 percent) and their campus buildings/grounds are properly maintained (82 percent).

Statements about curriculum and instruction support and student discipline were only shown to teachers, to ensure they were relevant items to respondents.

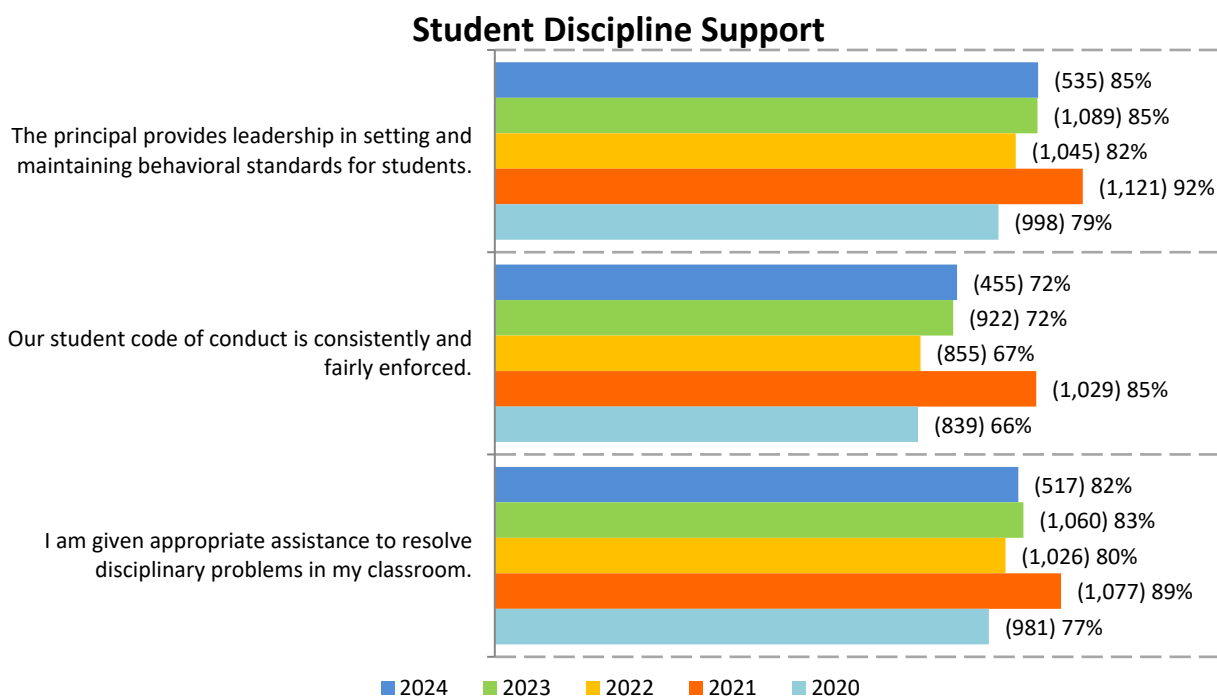
Curriculum and Instruction Support



Curriculum and instruction are viewed positively among teachers with an average of 81 percent agreement. Items in this topic saw fluctuation within 5 points of last year with most decreasing.

Nearly all respondents agreed they have opportunities to collaborate with colleagues (93 percent) and are held to a high professional standard (90 percent). They also indicate that teachers have sufficient access to instructional technology, as well as resources and materials (both at 91 percent), and teachers have opportunities to learn from other teachers (87 percent).

Overall, respondents were satisfied with the curriculum and instructional issues captured here. The lowest agreement, still a majority of respondents at 57 percent, was for having a role in decisions about instructional programs in their content area.



Within this topic, 82 percent of respondents feel they are given appropriate assistance to resolve disciplinary problems and 72 percent agree the student code of conduct is consistently and fairly enforced. The greatest proportion, 85 percent, feel the principal provides leadership for behavioral standards.

Summary

Overall, survey participants this year viewed their jobs and the district favorably. In most cases, responses saw a decrease from last year's results. The majority of topics had 80 percent or higher agreement on the statements provided.

Some topics showed variation from last year. The following topics saw decreases in favorable responses: job satisfaction, relationship with supervisor, customer service, district communication, district leadership, and campus environment. On the other hand, the following topics stayed similar to last year: working conditions, relationship with coworkers, curriculum and instruction support, and student discipline. While one topic had fluctuations which was compensation and benefits.

COMMENTS

Additional comments were provided by 499 people, which represents 47 percent of survey respondents. These comments represent a subset of respondents. As such, the district should consider these in light of results from related questions presented earlier in this report. Comments are tallied by topic to protect the confidentiality of respondents' submissions.

Accolades and Complaints

Recurring themes by order of frequency are summarized below. Only topics with more than one comment are included. An individual participant may comment on multiple areas and will be included in the count for each unique topic.

Type and Topic of Comment		Count
Complaint	Base pay is low or not competitive when compared to surrounding districts	66
Accolade	Supervisor is supportive	62
Complaint	Campus or team has insufficient staffing or work assignment	61
Accolade	Love the administrator or supervisor	52
Accolade	Love the school or district	50
Accolade	Supervisor has good communication skills	44
Complaint	Supervisor has poor communication skills	41
Accolade	Overall, the district is a good place to work	40
Accolade	Campus leadership is engaged and supportive of student's education and growth	39
Accolade	Campus leadership and staff work well together as a team	37
Accolade	Campus or team has good culture or morale	35
Accolade	Campus or team works well and fosters good relationships	35
Complaint	Code of conduct and student discipline lack effective consequences	34
Accolade	Supervisor is a strong leader	32
Complaint	Supervisor is unfair/not trustworthy	31
Complaint	Supervisor is unsupportive	31
Accolade	Campus or team is dependable and supportive	30
Complaint	District buildings need repairs or remodeling	27
Complaint	Campus or team has a poor culture or low morale	26
Complaint	District loses quality employees or has high turnover	26
Complaint	Facilities are not clean or maintained	25
Complaint	Central administrator is unsupportive	23
Complaint	Employees do not feel valued or appreciated	23
Complaint	Special education lacks staff or support	23
Accolade	Supervisor is respectful/courteous to others	22
Complaint	Benchmark and state testing are overemphasized	21

Complaint	Campus leadership is not engaged and supportive of student's education and growth	21
Complaint	Campus or team has inadequate time for planning or collaboration	20
Complaint	Central administration does not appear to use budget strategically or wisely	19
Accolade	Campus or district buildings are safe and secure	18
Complaint	Campus or team culture of bullying, gossiping, or cliques	18
Complaint	Supervisor displays favoritism or nepotism	18
Accolade	Campus or team has adequate time for planning and collaboration	17
Accolade	Code of conduct and student discipline provide effective consequences	17
Accolade	Increase in community events and opening up campuses has been beneficial to the campus and community	17
Complaint	Overall, the district is a challenging place to work	17
Complaint	Central administration lacks connection to campuses	16
Complaint	District or campus has irrelevant staff development	16
Complaint	Supervisor is a poor leader	15
Complaint	Teachers receive too many requests from administration to leave time for planning/teaching	15
Accolade	Supervisor is accessible/available	14
Complaint	Dislike administrator or supervisor	14
Accolade	District provides useful resources (online or other)	13
Complaint	Campus administration does not hold students accountable for their actions, attendance, and grades	13
Complaint	Campus does not have supplies for employees to do their job	13
Accolade	Love the work itself	12
Accolade	Supervisor is experienced/knowledgeable in the role	12
Complaint	Campus or team is not dependable or unsupportive	12
Complaint	Central administration does not communicate well	12
Complaint	Supervisor is disrespectful/discourteous to others	12
Complaint	Work obligations require hours outside of contract	12
Complaint	Campus grounds needs more attention (beautification and maintenance)	11
Complaint	Campus or district buildings are not safe or need more security	11
Accolade	Supervisor is fair/trustworthy	10
Accolade	District buildings are repaired or remodeled	9
Accolade	Employees feel valued and appreciated	9
Accolade	Mental health support on campus has been helpful	9
Accolade	New cafeteria is wonderful	8
Complaint	Inequalities in technology among staff (smart boards, laptop carts, tablets)	8
Complaint	Paraprofessionals are not treated with trust or respect	8
Complaint	Supervisor is inaccessible/unavailable	8
Accolade	Central administrator is supportive	7
Complaint	Class sizes are too large	7
Accolade	Campus administration hold students accountable for their actions, attendance, and grades	6

Accolade	Central administration communicates well	6
Accolade	Special education has adequate staff and support	6
Complaint	Board of Trustees are unsupportive and displays favoritism or nepotism	6
Complaint	District requires extra work that does not have benefits to education	6
Complaint	Supervisor is inexperienced/unknowledgeable in the role	6
Complaint	Supervisor micromanages his/her staff	6
Accolade	Campus or team has sufficient staffing and work assignment	5
Accolade	District or campus has relevant staff development	5
Accolade	Vague answers	5
Complaint	Administrator caters to parents at the expense of staff and students	5
Complaint	Campus leadership and staff do not work well together as a team	5
Complaint	District lacks useful resources (online or other)	5
Complaint	General complaint about the superintendent	5
Complaint	Paraprofessionals do not receive adequate training	5
Complaint	Special education lacks resources	5
Complaint	Vague answers	5
Accolade	General accolade for the superintendent	4
Complaint	Central office is inexperienced/unknowledgeable in the role	4
Complaint	Mental health support on campus needs to improve	4
Accolade	Central administration has strong connection to campuses	3
Complaint	Campus or building has weak or no Wi-Fi	3
Complaint	Students appear to enjoy consequences when they are sent out of classroom (e.g., receive attention or avoid class)	3
Accolade	Facilities are clean and maintained	2
Accolade	Supervisor trusts his/her staff	2
Accolade	Teachers' time is balanced between planning/teaching and requests from administration	2
Complaint	New programs are costly, without effective training, or frequently switched	2

Suggestions

Additional opportunities for improvement suggested by respondents are summarized below.

Topic of Suggestion		Count
Staffing	Review district staffing and consider hiring more: • Campus security • Campus testing support • Classroom aides/Bilingual classroom aides • Certified deaf interpreters (teachers and paraprofessionals) • Custodians	21
Building Maintenance	Update/expand on district facilities by providing: • Remodel cafeterias and libraries • Indoor practice facilities for outdoor sports • Larger classrooms • More staff bathrooms • An IT building • Rebuild old buildings • Additional parking	19
Building Security	Improve campus and building security by adding: • Exterior lighting • A required tag pass for all doors • Electric gates to campus parking lots • Repaired perimeter fencing • Upgrade intercom systems • Update video surveillance systems • Clear paths to all fire exits • Zone off construction areas	15
Building Maintenance	Provide maintenance, repairs, and/or replace: • HVAC system (repair and clean air ducts) • Administration building roof (replace and repair leak damage) • Plumbing issues (sewage smell in cafeteria and clinic) • Remove black mold • Paint auditorium • POD maintenance • Repair holes in floor and ceiling tiles	12
Professional Development	Include the following types of training with professional development: • CPI (clarifying acceptable restraints) • Emergency preparedness • Classroom behavior management • Special education curriculum	11

Grounds Maintenance	Consider improving campus grounds by: • Removing overgrowth, weeds, and ant beds • Evaluating drainage in the dismissal area where rain puddles form	7
Compensation	Evaluate pay for all staff (not selected groups) and pay more for experienced and credentialed staff	10
Technology Support	Update classroom and student technology and improve time required to troubleshoot student technology issues (this has gotten better but still needs improving)	10
Curriculum and Instruction	Improve district curriculum for history, math, and science, implement MTSS district-wide, provide phonics-based supplemental instruction, and bring back Sing, Spell, Read, and Write	6
Educational Technology	Consider improving technology by the following: • Providing students with new computers in a timely manner • Providing paraprofessionals with laptops that are compatible with the timekeeping program • Updating teacher computers and providing adequate equipment	5
Building Maintenance	Ensure all campuses have PPCD/Life Skills bathrooms attached to the special educational classrooms and include a low changing cot	5
Curriculum and Instruction	Increase reading and math intervention groups and have consistent pull outs year-round to ensure improvement	4
Educational Supplies	Provide work-related supplies and equipment (e.g., laminator, functional copy machines, color copiers, and science lab equipment)	4
Information System	Update administrative systems to: • Rollover information when a student transfers to a different campus • Have more efficient tracking of grades, attendance, and other administrative duties • Stop manually tracking	4
Student Accountability	Offer more incentives to students for attendance and academic goals	2

APPENDIX: SURVEY INSTRUMENT

McAllen ISD Professional Employee Survey 2024

Job Type

Job type is used for comparing the respondent group to the employee group and tailors the survey by job type with specific questions shown to only some jobs (such as teacher). See [FAQs](#) for more information.

- ☐ Teacher or Librarian
- ☐ Instructional Aide
- ☐ Other Professional (e.g., counselor, RN, speech therapist, diagnostician, facilitator)
- ☐ Administrator

Please indicate what you value as most important to your job satisfaction. (Choose up to 5 that apply.)

- | | |
|--|--|
| ☐ Compensation and benefits | ☐ Relationship with coworkers |
| ☐ Safe working conditions | ☐ Relationship with supervisors |
| ☐ Job security | ☐ Learning opportunities |
| ☐ Work that is meaningful to me | ☐ Opportunities to use skills and abilities |
| ☐ Recognition for good work | |

Curriculum and Instruction Support

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
I have sufficient access to resources and materials.	☐	☐	☐	☐	☐
I have sufficient access to instructional technology.	☐	☐	☐	☐	☐
Staff development provides teachers with useful knowledge and skills for their content area.	☐	☐	☐	☐	☐
I am satisfied with resources for teachers with special populations.	☐	☐	☐	☐	☐
Teachers are held to high professional standards.	☐	☐	☐	☐	☐

I have the opportunity to collaborate with colleagues.	☐	☐	☐	☐	☐
I am provided opportunities to learn from other teachers.	☐	☐	☐	☐	☐
I receive feedback that can help me improve my teaching.	☐	☐	☐	☐	☐
I am involved in decisions about instructional programs that are relevant to my content area (e.g., IB, STEAM, Dual Language, Sharon Wells).	☐	☐	☐	☐	☐
Teachers have a role in selecting data analysis that impacts their content area (e.g., IB, Dual Language, Sharon Wells, DMAC, STAAR, TELPAS).	☐	☐	☐	☐	☐

Student Discipline Support

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
The principal provides leadership in setting and maintaining behavioral standards for students.	☐	☐	☐	☐	☐
Our student code of conduct is consistently and fairly enforced.	☐	☐	☐	☐	☐
I am given appropriate assistance to resolve disciplinary problems in my classroom.	☐	☐	☐	☐	☐

District Communications

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
I understand how my efforts contribute to the district's goals.	☐	☐	☐	☐	☐
Policies and procedures affecting my work are communicated clearly.	☐	☐	☐	☐	☐
The district shares important news and events.	☐	☐	☐	☐	☐
The district recognizes employee accomplishments.	☐	☐	☐	☐	☐
Employees have a way to express concerns to district leaders (e.g., JPCC, LEAD).	☐	☐	☐	☐	☐

District Leadership (Superintendent and Board of Trustees)

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
I trust the district leadership team to act in the best interest of students.	()	()	()	()	()
I believe district leaders are honest and trustworthy.	()	()	()	()	()
I believe district leaders value the employees of this district.	()	()	()	()	()

Job Satisfaction

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
I am proud to work for McAllen ISD.	()	()	()	()	()
I like the work I do.	()	()	()	()	()
On most days I feel good about what I have accomplished.	()	()	()	()	()
I understand what is expected of me in my job.	()	()	()	()	()
I would recommend my campus to a friend as a good place to work.	()	()	()	()	()
I would recommend my department to a friend as a good place work.	()	()	()	()	()
My job allows me to use my skills and abilities.	()	()	()	()	()
I would recommend this district to a friend as a good place to work.	()	()	()	()	()

Relationship with Supervisor

(Evaluating supervisor)

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
My supervisor sets clear goals and objectives.	()	()	()	()	()
I get the training I need to do my job effectively.	()	()	()	()	()

I receive useful feedback on my job performance from my evaluator.	()	()	()	()	()
My supervisor provides the support I need with problems on the job.	()	()	()	()	()
I am allowed to make decisions within my scope of authority.	()	()	()	()	()
My supervisor makes timely decisions.	()	()	()	()	()
I can communicate openly and honestly with my supervisor.	()	()	()	()	()
My work is appreciated by my supervisor.	()	()	()	()	()
I trust my supervisor.	()	()	()	()	()
I like working for my supervisor.	()	()	()	()	()

Customer Service

The questions below refer to the different elements of the district's Customer Service Standards:

- 1) The 5 domains (self-awareness, self-regulation, motivation, empathy, & social skills)
- 2) Courtesy and Respect
- 3) Greeting and Communication
- 4) Go the Extra Mile
- 5) Environment

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
I have been trained on and I understand the customer service elements.	()	()	()	()	()
I understand how my customer service efforts contribute to the district's goals.	()	()	()	()	()
My supervisor sets clear goals and expectations regarding customer service.	()	()	()	()	()
I receive feedback from my Supervisor regarding my customer service efforts.	()	()	()	()	()

Relationship with Coworkers

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
I can depend on my coworkers.	()	()	()	()	()
I like the people I work with.	()	()	()	()	()
I feel loyal to my immediate team or work group.	()	()	()	()	()
My team works well together.	()	()	()	()	()

Campus Environment

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
I get the information I need from campus leaders.	()	()	()	()	()
My campus is cleaned effectively on a regular basis.	()	()	()	()	()
My campus building/grounds are properly maintained.	()	()	()	()	()
My principal is effective in leading my campus to achieve its goals.	()	()	()	()	()
My principal treats me with respect.	()	()	()	()	()

Working Conditions

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
The hours I work are reasonable.	()	()	()	()	()
My workload is appropriate for my position.	()	()	()	()	()
I feel safe in my work environment.	()	()	()	()	()
I feel my job with the district is secure.	()	()	()	()	()
I have the equipment, tools, and supplies I need to do my job.	()	()	()	()	()

Compensation and Benefits

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
My pay is fair for the work I do.	☐	☐	☐	☐	☐
I believe my pay is competitive with other districts in this area.	☐	☐	☐	☐	☐
The leave time provided to me is adequate.	☐	☐	☐	☐	☐
The district provides enough information about benefits to meet my needs.	☐	☐	☐	☐	☐
I get help with problems or questions about benefits when I need it.	☐	☐	☐	☐	☐

Where do you work?

- | | |
|---|---|
| ☐ High School | ☐ Administration/Non-Campus Buildings
(Including Instruction & Guidance Center and
Early Childhood) |
| ☐ Middle School | |
| ☐ Elementary School | |

Work Location

Location is used for comparing the respondent group to the employee group and to provide district leaders with responses grouped by location. See [FAQs](#) for more information.

- | | |
|---|--|
| ☐ Achieve Early College High School @ Lincoln | ☐ Memorial High School |
| ☐ Lamar Academy/Options High School | ☐ James "Nikki" Rowe High School |
| ☐ McAllen High School | |

Work Location

- | | |
|--|---|
| ☐ Dorothea Brown Middle School | ☐ Michael E. Fossum Middle School |
| ☐ Dr. Rodney D. Cathey Middle School | ☐ Homer J. Morris Middle School |
| ☐ Alonzo De Leon Middle School | ☐ William B. Travis Middle School |

Work Location

- ☐ Francisca Alvarez Elementary School
- ☐ Dr. Carlos Castaneda Elementary
- ☐ Jose De Escandon Elementary
- ☐ Victor Fields Elementary School
- ☐ Reynaldo G. Garza Elementary School
- ☐ Leonelo H. Gonzalez Elementary School
- ☐ Lucile McKee Hendricks Elementary School
- ☐ Sam Houston Elementary School
- ☐ Andrew Jackson Elementary School

- ☐ Christa McAuliffe Elementary School
- ☐ Ben Milam Elementary School
- ☐ Dr. Pablo Perez Elementary School
- ☐ Sam Rayburn Elementary School
- ☐ Theodore Roosevelt Elementary School
- ☐ Blanca E. Sanchez Elementary School
- ☐ Juan Seguin Elementary School
- ☐ Thigpen-Zavala Elementary School
- ☐ Woodrow Wilson Elementary School

What is going better at your campus or in your department this year, and what can still be improved?

The district receives a summarized list of topics with a tally for positive, negative, or suggestion by topic. See [FAQs](#) for more information.

Thank You!

Employee Opinion Survey

McAllen Independent School District

April 17, 2024

Cat Rubiera



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EXECUTIVE SUMMARY

Background

The HR Services Division of the Texas Association of School Boards (TASB) conducted a confidential survey of McAllen Independent School District (MISD) employees in early February through mid-February 2024 at the request of the district.

The purpose of the survey was to assess employee engagement towards their district and campus, as well as their level of satisfaction with their job and work conditions. Survey information may be used by district leadership to understand how respondents perceive specific issues and to reveal a general level of job satisfaction among employees. District leadership can participate in creating an environment that fosters engaged employees. Research shows that engaged teachers are 62 percent less likely to leave their district for another; as well, teacher engagement is directly related to student engagement¹.

Districts with an engaged workforce tend to have a common vision or mission adopted district-wide, believed by campus leadership, and shared by all employees. Campus leadership that communicates openly, provides more feedback, and allows employees to use their best skills can motivate employees to do outstanding work. Districts benefit from an actively engaged environment because actively engaged employees remain involved, have lower absenteeism, are passionate, and are dedicated to their work as well as the district's mission.

TASB HR Services developed the survey in collaboration with McAllen ISD in 2013 and administered the same survey, with small additions at district request, to allow year-to-year comparisons. Most of the survey requested that employees respond to statements using a Likert-type scale. Some responses were combined for purposes of analysis. For example, throughout this report, "strongly agree" and "agree" responses were combined to indicate a positive response.

The survey included a variety of topics to gather data about demographics, environment, relationship, and campus concern. Topics are listed on the next page.

Survey Administration and Respondents

McAllen ISD provided HR Services a list of employee email addresses, and at the time of survey launch there were 2539 employees. HR Services sent an email with a link to the survey to MISD staff requesting their participation. All employee responses were submitted directly to TASB. A total of 1,063 employees participated, yielding a response rate of 42 percent, which is below the 2023 response rate of 83 percent. Of those, 152 were instructional aide employees, yielding a response rate of 36 percent for that group, which is less than 2023 rate of 73 percent.

¹ Gallup, Inc. "Gallup's Perspective on Understanding the K-12 Teacher Experience." *Gallup.com*. Gallup, 2019. <https://www.gallup.com/education/247094/gallup-perspective-understanding-teacher-experience.aspx>

Summary by Topic

The table below shows a summary of positive responses for each topic presented on the survey. These represent the percentage of respondents who chose agree or strongly agree, averaged across the items in a topic.

On average, campus environment had the highest percentage of positive responses (94 percent), while compensation and benefits had the lowest (59 percent). Most topics saw improvement, on average, including a 4 point increase for relationship with supervisor, customer service, and campus environment. Subsequent sections of the report will include charts and highlight specific items within each topic.

Survey Topics	Positive (Average) 2024	Difference from Previous Year (2024 to 2023)	
Job Satisfaction	93%		1%
Working Conditions	91%		1%
Relationship with Coworkers	93%		1%
Relationship with Supervisor	90%		4%
Customer Service	92%		4%
Compensation and Benefits	59%		-1%
District Communications	85%		1%
District Leadership (Superintendent/Board of Trustees)	70%		-2%
Campus Environment	94%		4%

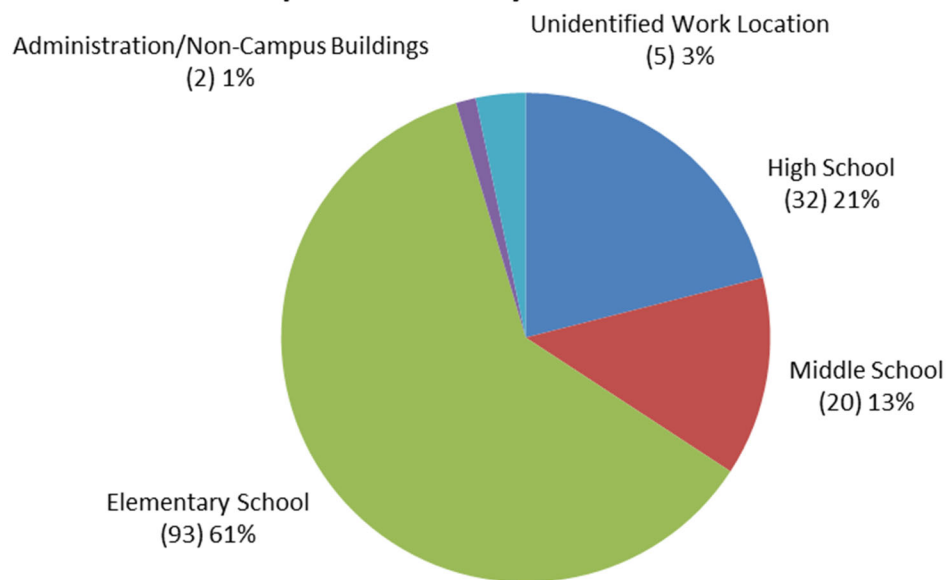
DEMOGRAPHICS

A total of 152 instructional aide surveys were submitted, yielding a response rate of 36 percent. Respondents were asked for their job type first in order to show only relevant questions; for example, only teachers received questions about student discipline (captured in the professionals report).

Participation by Job Type

Job Type	# of Employees	# of Respondents	Participation Rate	% of Total Survey
Instructional Aide	427	152	36%	100%
Total	427	152	36%	100%

Representation by Work Location



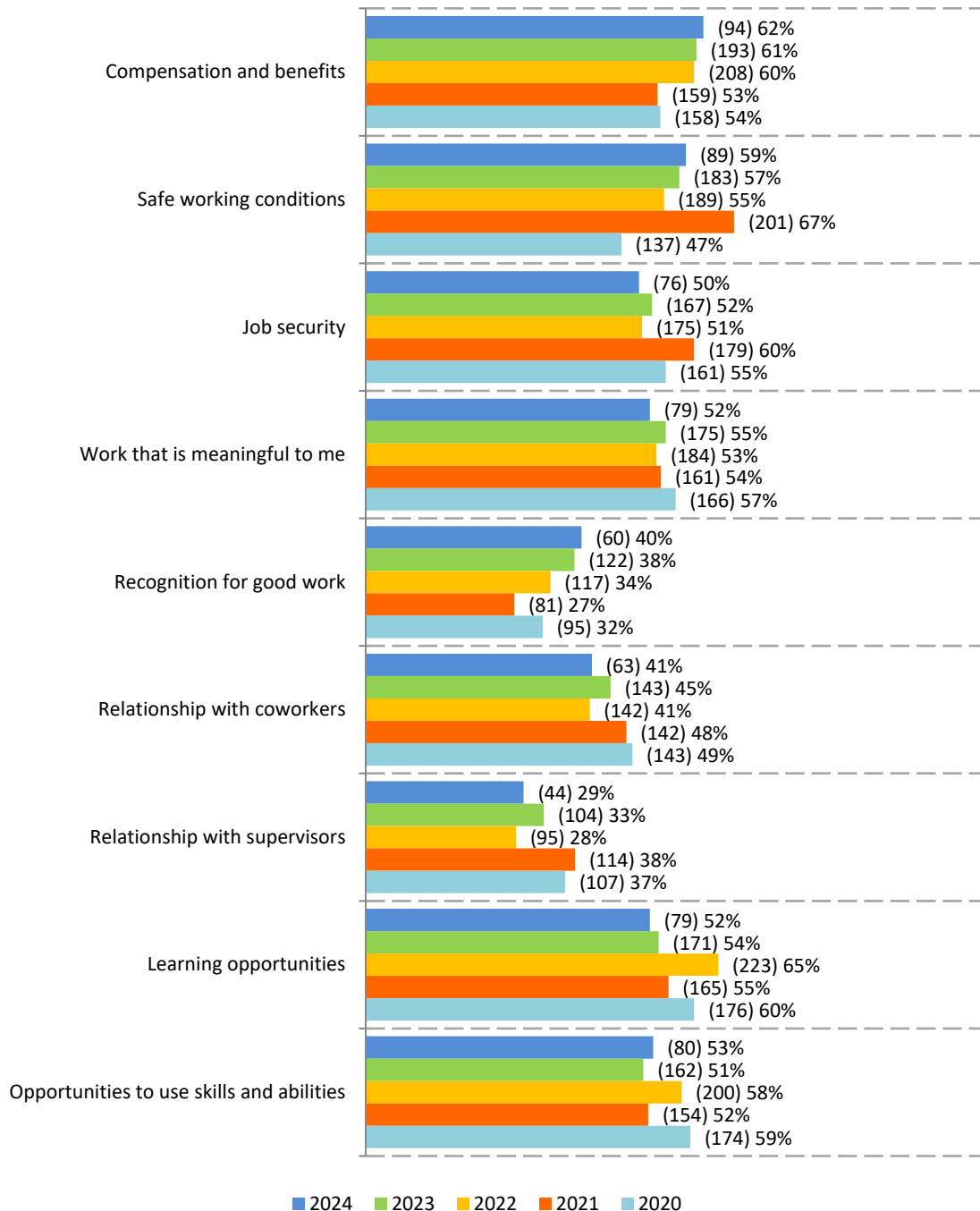
All work locations were represented in the survey. The largest group of participants worked at the elementary schools (61 percent).

FINDINGS BY SURVEY TOPIC

Job Satisfaction Factors

For this question, respondents could choose up to five items that they valued as most important to their job satisfaction.

Factors that Contribute to Job Satisfaction

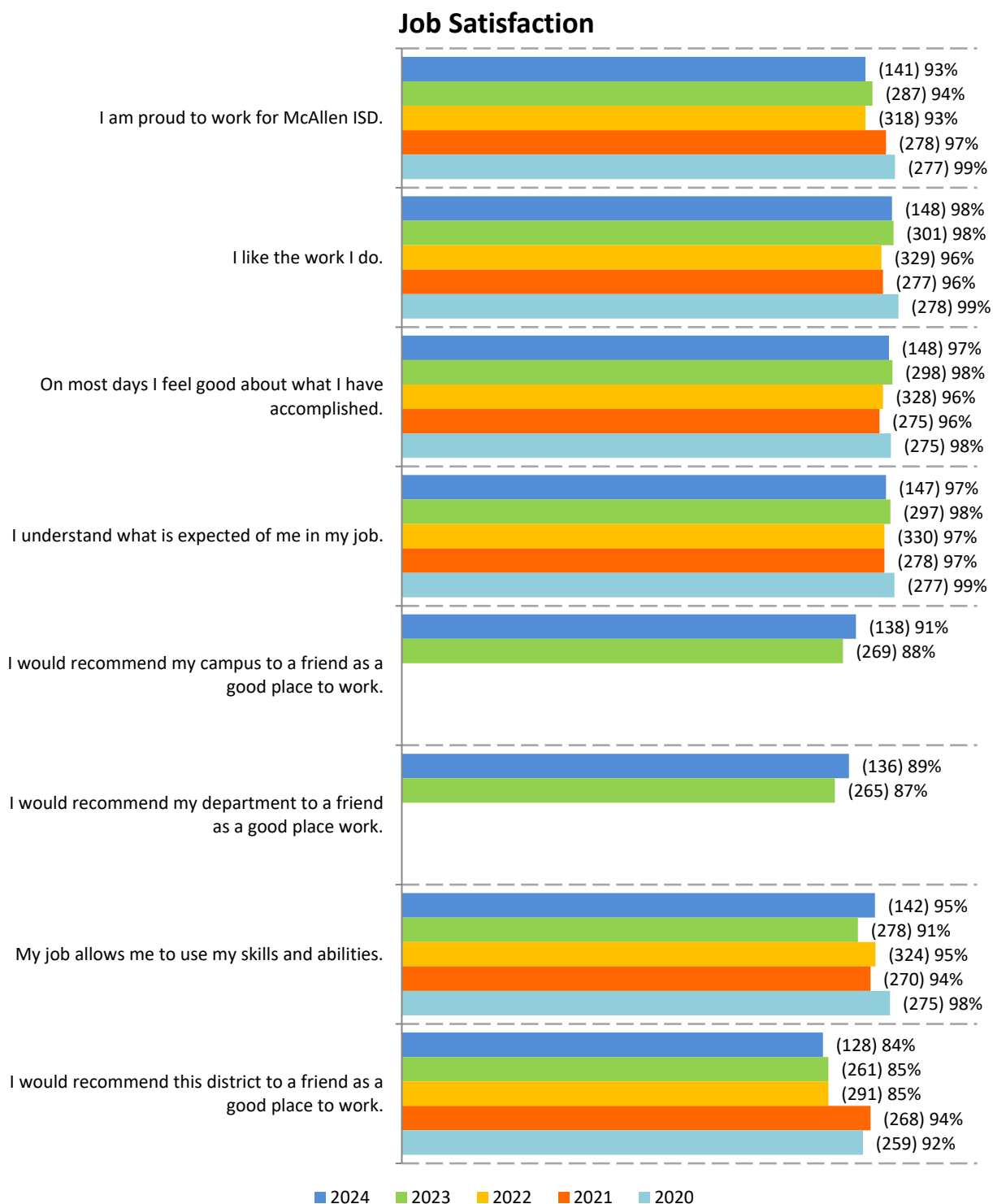


Six factors were chosen by at least half of respondents. For 62 percent of respondents, compensation and benefits was a factor, which was also the top factor last year. All other five factors have maintained similar proportions as last year, which are, safe working conditions (59 percent), opportunities to use skills and abilities (53 percent), working is meaningful (52 percent), learning opportunities (52 percent), and job security (50 percent).

The least common factors were relationships with coworkers (41 percent), recognition for good work (40 percent), and relationship with supervisor (29 percent). These three factors have been on the bottom for the last 5 years. Although these are important attributes when working for a school district they were not considered as influential compared to other factors.

Likert-type Scale Questions

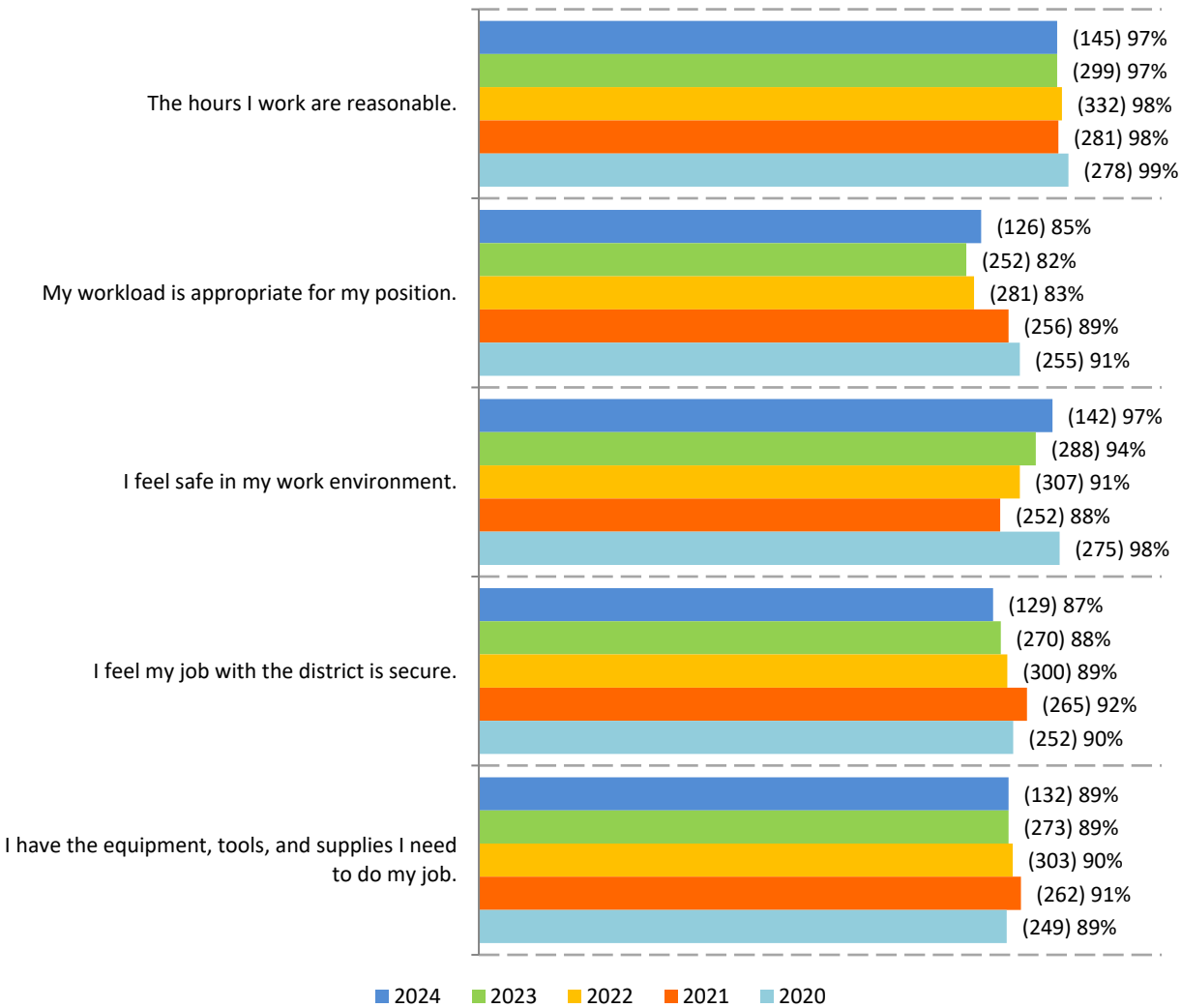
The remaining sections of the survey provided respondents with a list of statements and asked for their level of agreement. Response categories were strongly agree, agree, disagree, strongly disagree, and no opinion/not applicable. The categories of strongly agree and agree were combined for these charts to indicate a positive response.



Survey participants responded favorably regarding job satisfaction, with 93 percent expressing agreement with each statement, on average. Respondents were slightly more likely to recommend their particular campus (91 percent) or department (89 percent) as a good place to work than the district (84 percent).

Three items had at least 97 percent agreement: like the work, feel good about accomplishments, and understanding expectations of their job. There were only very small fluctuations from last year, indicating that the district respondents are again satisfied by the work they do. Later topics will give additional insight into what items, outside of the job itself, make respondents satisfied with their employment at McAllen ISD.

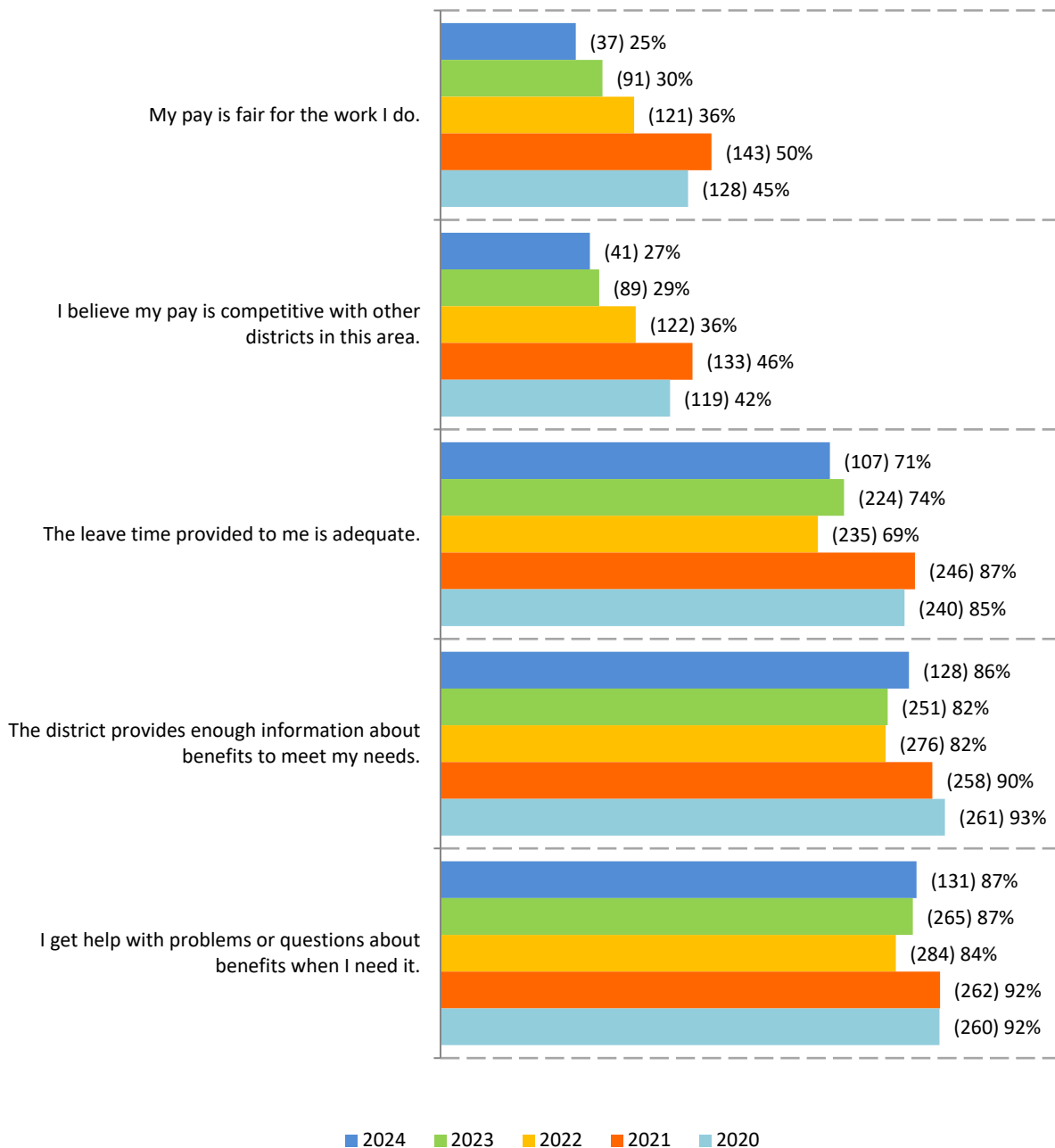
Working Conditions



Overall, McAllen ISD respondents expressed satisfaction with their working conditions. Nearly all report working in an environment that is safe and hours worked are reasonable (both 97 percent). Most believe they have the tools or supplies needed to do their jobs (89 percent) and feel secure in their employment (87 percent).

Regarding workload, 85 percent agree that it is appropriate for their position, which is a slight increase from 82 percent agreement last year.

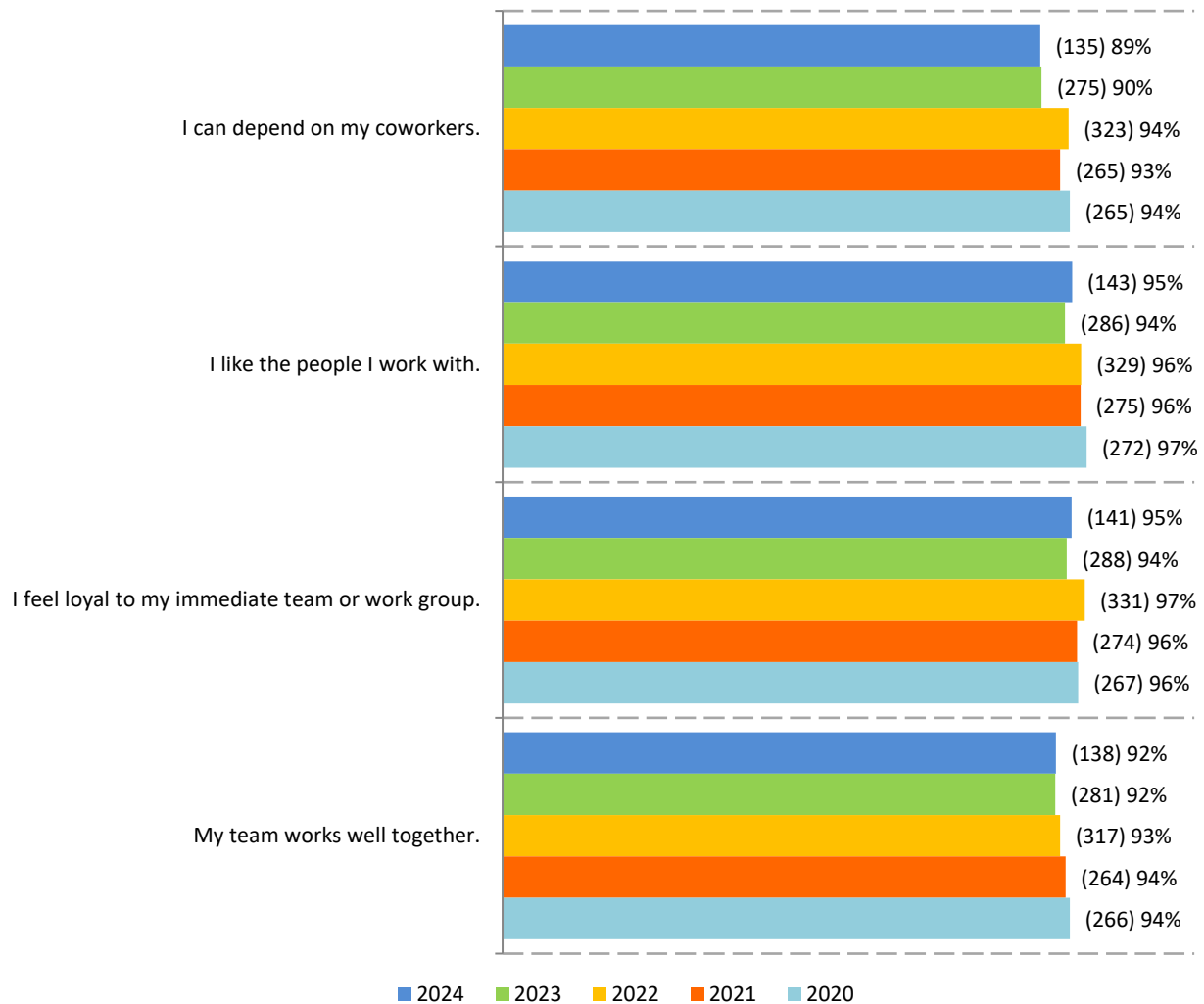
Compensation and Benefits



Most respondents are satisfied with the information they receive about benefits (up 4 points to 86 percent) and the assistance they receive when they have questions about benefits (87 percent). Further, 71 percent of respondents feel that the leave time provided is adequate, which saw a 3 point decrease from last year.

Respondents were less inclined to agree that their pay was fair (down 5 points to 25 percent) or competitive with other districts in the area (27 percent). While these values are lower than others in the section, the majority of participants did respond positively.

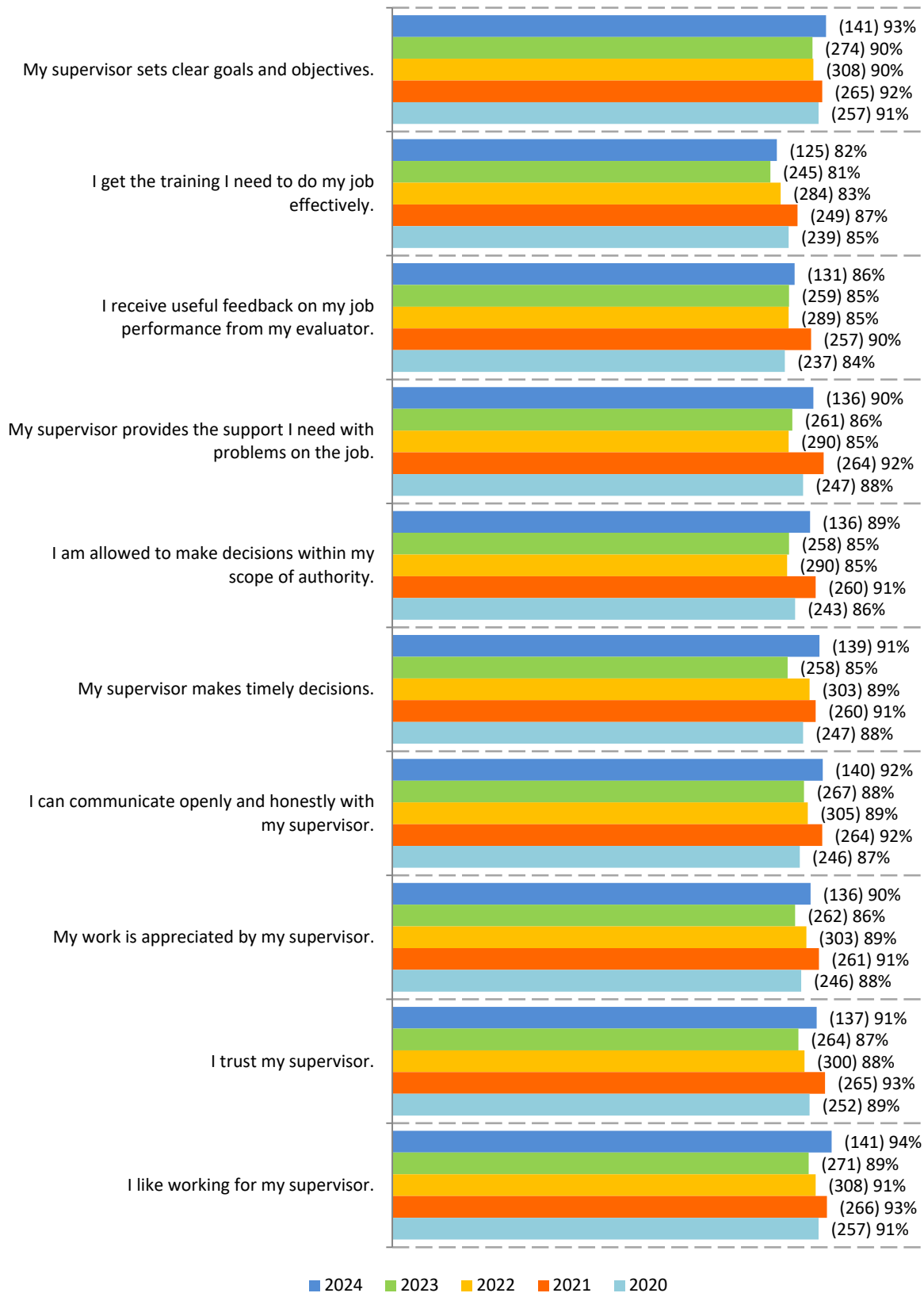
Relationship with Coworkers



Respondents view coworker relationships very favorably, with over 88 percent of respondents agreeing with each item in this topic. Opinions remained steady from last year, with all answers remaining within 1 percentage point of values from 2023.

Respondents almost unanimously like their coworkers (95 percent). In addition, they agreed that coworkers were dependable (89 percent), that they feel loyal to their team (95 percent), and that the team works well together (92 percent).

Relationship with Supervisor

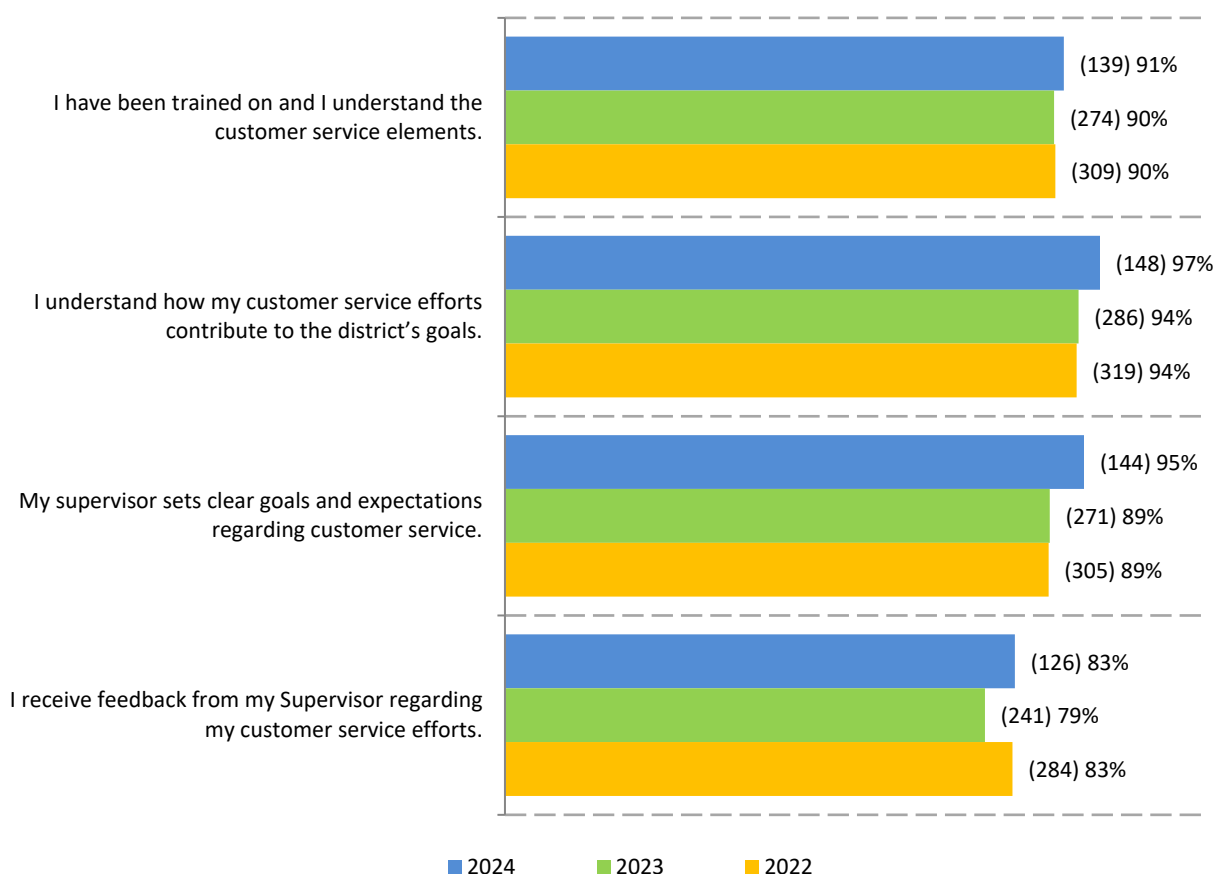


Nearly all respondents agreed with the statements about their supervisor across all areas surveyed. For every item in this section, more than 80 percent of respondents agreed with the statement presented. All items in this section saw an increase from last year ranging from 1 point to 6 points.

Respondents like working for their supervisor (up 5 points to 94 percent), feel their supervisor sets clear goals and objectives (up 3 points to 93 percent), and agree their supervisor communicates openly and honestly (up 4 points to 92 percent). Respondents also agreed their supervisor makes timely decisions which saw a 6 point increase to 91 percent.

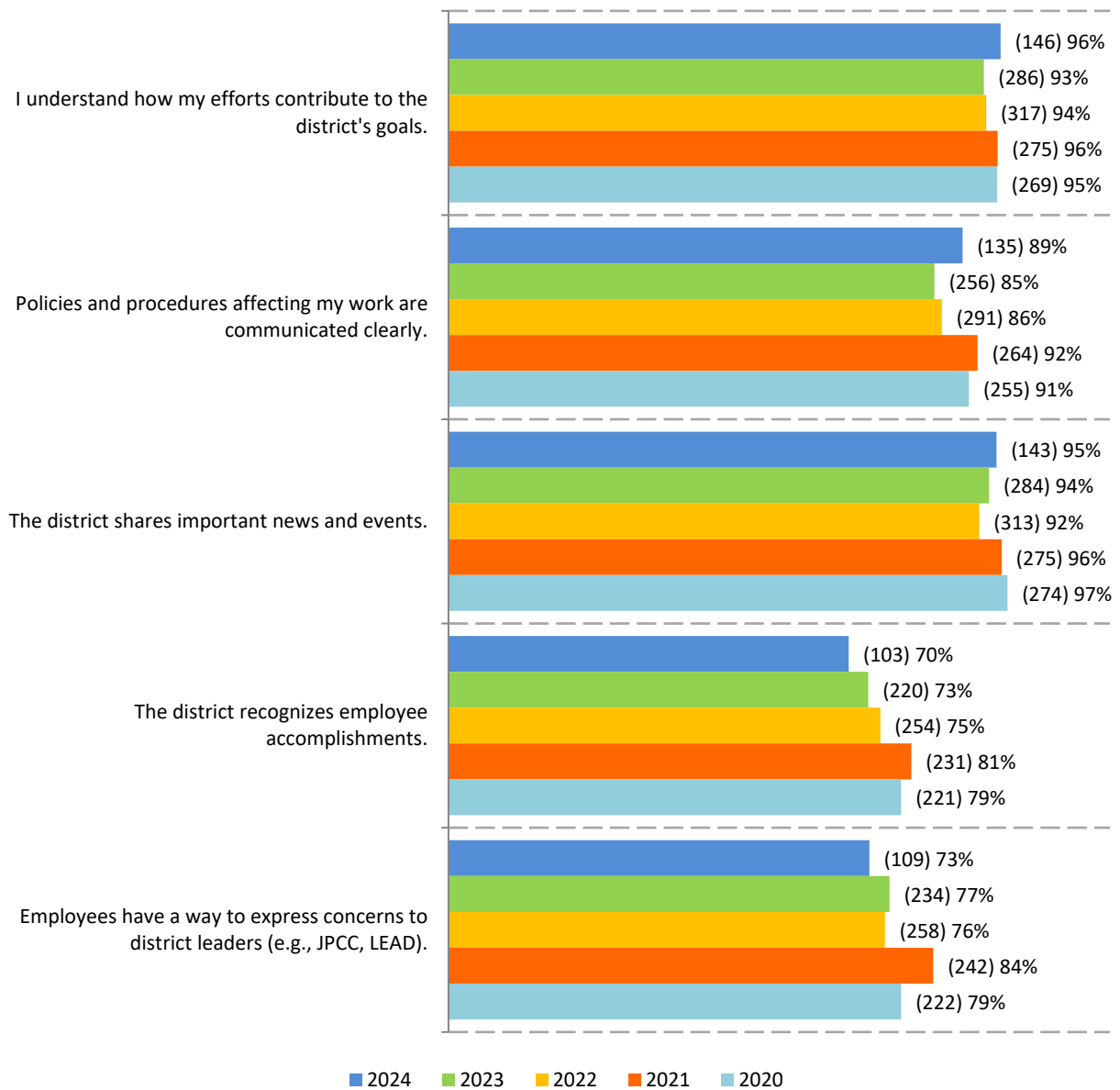
Four other items saw a 4 point increase from last year: trust their supervisor (91 percent), provided support with problems (90 percent), feel appreciated (90 percent), and are allowed to make decisions within their scope of authority (89 percent).

Customer Service



Overall, respondents feel positive about the customer service elements and goals with 92 percent agreeing with each statement, on average. All items in this section saw an increase from last year, ranging from 1 point to 6 points. Respondents almost unanimously understand how customer service efforts contribute to the district's goals (up 3 points to 97 percent). Respondents also agree their supervisor set clear goals and expectations regarding customer service (up 6 points to 95 percent), agree they have been trained and understand customer service elements (up 1 point to 91 percent), and they receive feedback regarding their customer service efforts (up 4 points to 83 percent).

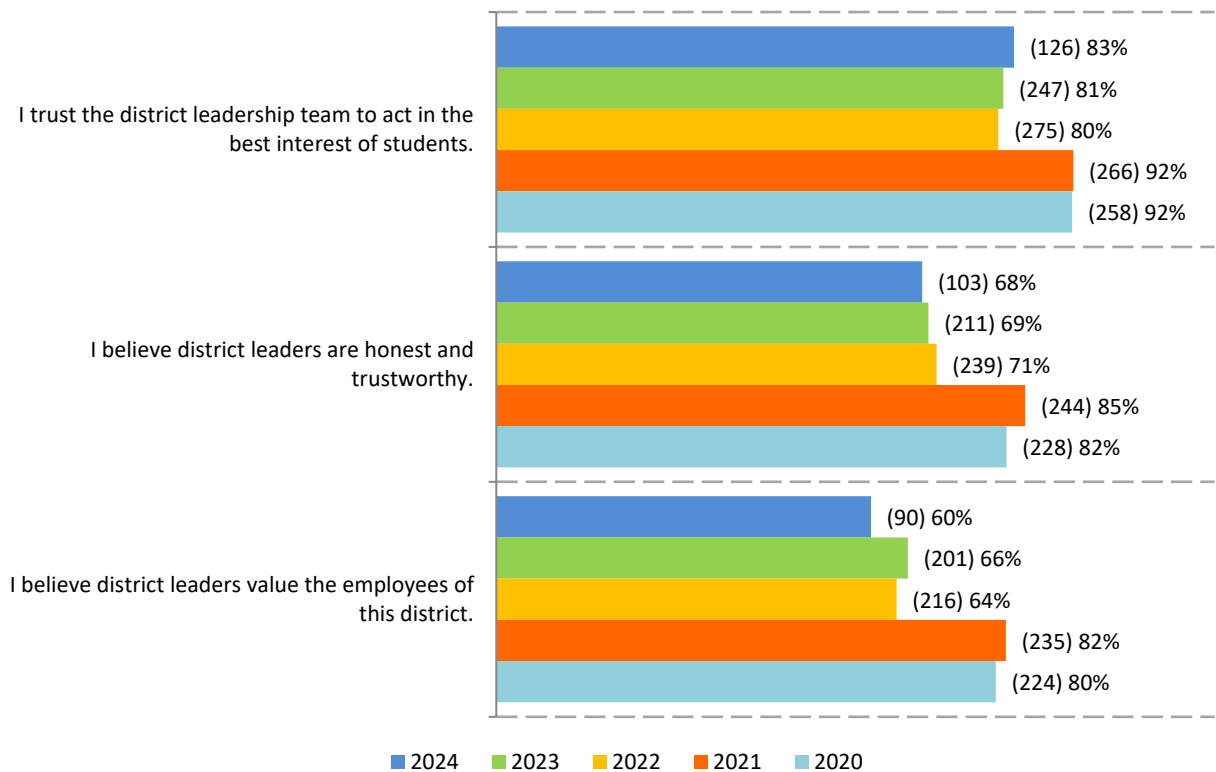
District Communications



Respondents viewed district communications positively, though there were some fluctuations within 4 points (increase and decreases) from last year. Almost all respondents, 96 percent, understand how their efforts contribute to the district and 95 percent feel that the district shares important news and events. Respondents also agree policies and procedures affecting their work was communicated clearly (up 4 points to 89 percent).

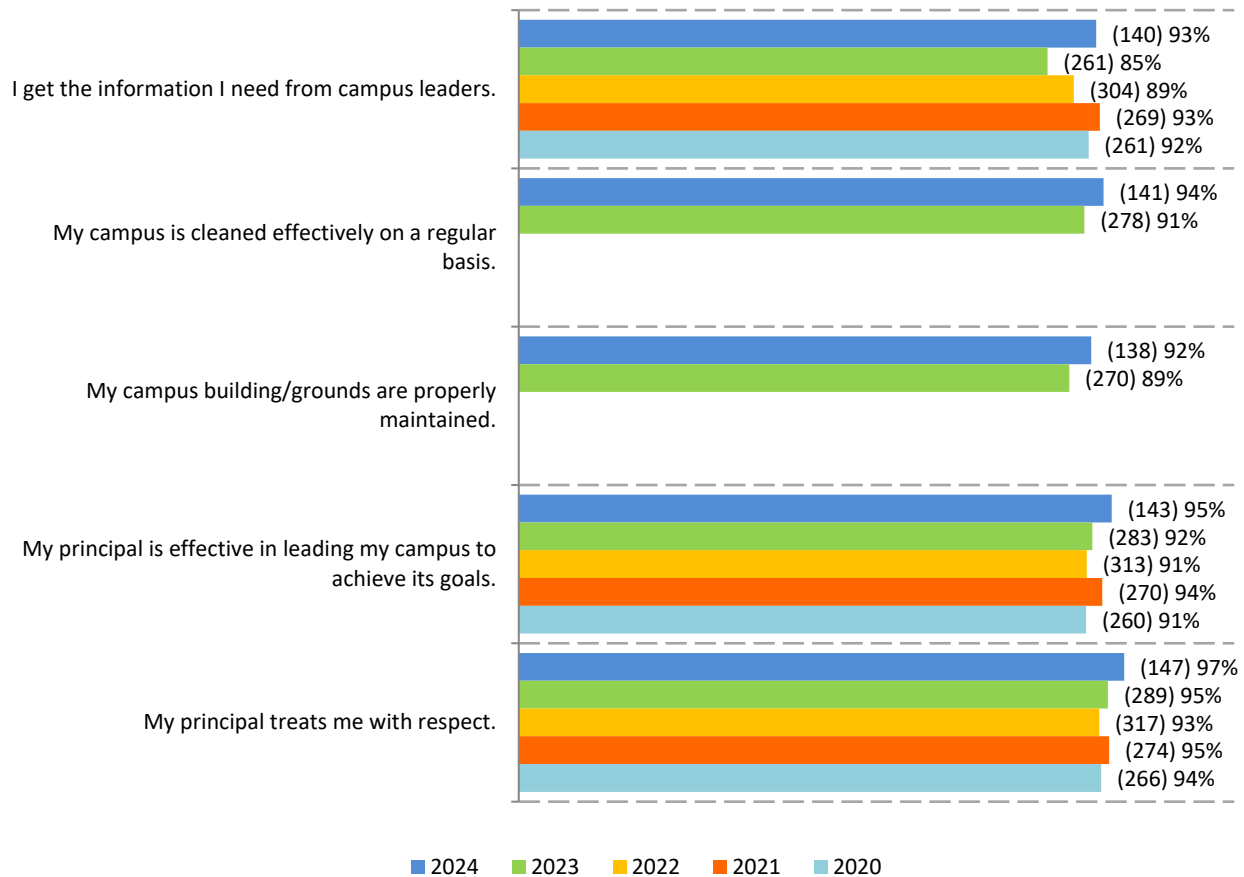
Two items were reported less favorably this year compared to last. Currently, 70 percent of respondents feel that the district recognizes employee accomplishments, compared to 73 percent last year. This item is at a 5 year low with 81 percent in agreement in 2021. Respondents also agreed that employees have a way to express concerns to district leaders (down 4 points to 73 percent). This item is also at a 5 year low with 84 percent in agreement in 2021.

District Leadership (Superintendent and Board of Trustees)



Most respondents agreed with items in the district leadership section, with 83 percent trusting the district leaders to act in the best interest of students. District leaders are believed to be trustworthy by 68 percent of respondents, and 60 percent believe that district leaders value the employees. Respondents believe that district leaders value employees saw a 6 point decrease from last year and is at a 5 year low with 82 percent in agreement in 2021.

Campus Environment



Overall, campus environments are viewed in a positive light. Each item in this section received at least 90 percent agreement among respondents and all items saw an increase ranging from 2 points to 8 points from last year. Almost unanimously, respondents feel their principal treats them with respect (up 2 points to 97 percent), their principal is effective at leading their campus to achieve goals (up 3 points to 95 percent), and they receive information needed from their campus leaders (up 8 points to 93 percent).

Respondents also feel positive about their campus maintenance with 94 percent feeling their campus is cleaned effectively on a regular basis and 92 percent feeling their campus building/grounds are properly maintained. Both items seeing a 3 point increase from last year.

Summary

Overall, survey participants this year viewed their jobs and the district favorably. In most cases, responses increased with last year's results. The majority of topics had 90 percent or higher agreement, on average, on the statements provided and 27 of the 49 items had at least 90 percent agreement.

The relationship with coworkers topic remained the same from last year, while job satisfaction and district communication saw fluctuating responses with increases and decreases among the items. On the other hand, increases were seen in topics of working conditions, relationship with supervisor, customer service, and campus environment. While decreases were seen in compensation and benefits, and district leadership.

COMMENTS

Additional comments were provided by 499 people, which represents 47 percent of survey respondents. These comments represent a subset of respondents. As such, the district should consider these in light of results from related questions presented earlier in this report. Comments are tallied by topic to protect the confidentiality of respondents' submissions.

Accolades and Complaints

Recurring themes by order of frequency are summarized below. Only topics with more than one comment are included. An individual participant may comment on multiple areas and will be included in the count for each unique topic.

Type and Topic of Comment		Count
Complaint	Base pay is low or not competitive when compared to surrounding districts	66
Accolade	Supervisor is supportive	62
Complaint	Campus or team has insufficient staffing or work assignment	61
Accolade	Love the administrator or supervisor	52
Accolade	Love the school or district	50
Accolade	Supervisor has good communication skills	44
Complaint	Supervisor has poor communication skills	41
Accolade	Overall, the district is a good place to work	40
Accolade	Campus leadership is engaged and supportive of student's education and growth	39
Accolade	Campus leadership and staff work well together as a team	37
Accolade	Campus or team has good culture or morale	35
Accolade	Campus or team works well and fosters good relationships	35
Complaint	Code of conduct and student discipline lack effective consequences	34
Accolade	Supervisor is a strong leader	32
Complaint	Supervisor is unfair/not trustworthy	31
Complaint	Supervisor is unsupportive	31
Accolade	Campus or team is dependable and supportive	30
Complaint	District buildings need repairs or remodeling	27
Complaint	Campus or team has a poor culture or low morale	26
Complaint	District loses quality employees or has high turnover	26
Complaint	Facilities are not clean or maintained	25
Complaint	Central administrator is unsupportive	23
Complaint	Employees do not feel valued or appreciated	23
Complaint	Special education lacks staff or support	23
Accolade	Supervisor is respectful/courteous to others	22
Complaint	Benchmark and state testing are overemphasized	21

Complaint	Campus leadership is not engaged and supportive of student's education and growth	21
Complaint	Campus or team has inadequate time for planning or collaboration	20
Complaint	Central administration does not appear to use budget strategically or wisely	19
Accolade	Campus or district buildings are safe and secure	18
Complaint	Campus or team culture of bullying, gossiping, or cliques	18
Complaint	Supervisor displays favoritism or nepotism	18
Accolade	Campus or team has adequate time for planning and collaboration	17
Accolade	Code of conduct and student discipline provide effective consequences	17
Accolade	Increase in community events and opening up campuses has been beneficial to the campus and community	17
Complaint	Overall, the district is a challenging place to work	17
Complaint	Central administration lacks connection to campuses	16
Complaint	District or campus has irrelevant staff development	16
Complaint	Supervisor is a poor leader	15
Complaint	Teachers receive too many requests from administration to leave time for planning/teaching	15
Accolade	Supervisor is accessible/available	14
Complaint	Dislike administrator or supervisor	14
Accolade	District provides useful resources (online or other)	13
Complaint	Campus administration does not hold students accountable for their actions, attendance, and grades	13
Complaint	Campus does not have supplies for employees to do their job	13
Accolade	Love the work itself	12
Accolade	Supervisor is experienced/knowledgeable in the role	12
Complaint	Campus or team is not dependable or unsupportive	12
Complaint	Central administration does not communicate well	12
Complaint	Supervisor is disrespectful/discourteous to others	12
Complaint	Work obligations require hours outside of contract	12
Complaint	Campus grounds needs more attention (beautification and maintenance)	11
Complaint	Campus or district buildings are not safe or need more security	11
Accolade	Supervisor is fair/trustworthy	10
Accolade	District buildings are repaired or remodeled	9
Accolade	Employees feel valued and appreciated	9
Accolade	Mental health support on campus has been helpful	9
Accolade	New cafeteria is wonderful	8
Complaint	Inequalities in technology among staff (smart boards, laptop carts, tablets)	8
Complaint	Paraprofessionals are not treated with trust or respect	8
Complaint	Supervisor is inaccessible/unavailable	8
Accolade	Central administrator is supportive	7
Complaint	Class sizes are too large	7
Accolade	Campus administration hold students accountable for their actions, attendance, and grades	6

Accolade	Central administration communicates well	6
Accolade	Special education has adequate staff and support	6
Complaint	Board of Trustees are unsupportive and displays favoritism or nepotism	6
Complaint	District requires extra work that does not have benefits to education	6
Complaint	Supervisor is inexperienced/unknowledgeable in the role	6
Complaint	Supervisor micromanages his/her staff	6
Accolade	Campus or team has sufficient staffing and work assignment	5
Accolade	District or campus has relevant staff development	5
Accolade	Vague answers	5
Complaint	Administrator caters to parents at the expense of staff and students	5
Complaint	Campus leadership and staff do not work well together as a team	5
Complaint	District lacks useful resources (online or other)	5
Complaint	General complaint about the superintendent	5
Complaint	Paraprofessionals do not receive adequate training	5
Complaint	Special education lacks resources	5
Complaint	Vague answers	5
Accolade	General accolade for the superintendent	4
Complaint	Central office is inexperienced/unknowledgeable in the role	4
Complaint	Mental health support on campus needs to improve	4
Accolade	Central administration has strong connection to campuses	3
Complaint	Campus or building has weak or no Wi-Fi	3
Complaint	Students appear to enjoy consequences when they are sent out of classroom (e.g., receive attention or avoid class)	3
Accolade	Facilities are clean and maintained	2
Accolade	Supervisor trusts his/her staff	2
Accolade	Teachers' time is balanced between planning/teaching and requests from administration	2
Complaint	New programs are costly, without effective training, or frequently switched	2

Suggestions

Additional opportunities for improvement suggested by respondents are summarized below.

Topic of Suggestion		Count
Staffing	Review district staffing and consider hiring more: • Campus security • Campus testing support • Classroom aides/Bilingual classroom aides • Certified deaf interpreters (teachers and paraprofessionals) • Custodians	21
Building Maintenance	Update/expand on district facilities by providing: • Remodel cafeterias and libraries • Indoor practice facilities for outdoor sports • Larger classrooms • More staff bathrooms • An IT building • Rebuild old buildings • Additional parking	19
Building Security	Improve campus and building security by adding: • Exterior lighting • A required tag pass for all doors • Electric gates to campus parking lots • Repaired perimeter fencing • Upgrade intercom systems • Update video surveillance systems • Clear paths to all fire exits • Zone off construction areas	15
Building Maintenance	Provide maintenance, repairs, and/or replace: • HVAC system (repair and clean air ducts) • Administration building roof (replace and repair leak damage) • Plumbing issues (sewage smell in cafeteria and clinic) • Remove black mold • Paint auditorium • POD maintenance • Repair holes in floor and ceiling tiles	12
Professional Development	Include the following types of training with professional development: • CPI (clarifying acceptable restraints) • Emergency preparedness • Classroom behavior management • Special education curriculum	11

Grounds Maintenance	Consider improving campus grounds by: • Removing overgrowth, weeds, and ant beds • Evaluating drainage in the dismissal area where rain puddles form	7
Compensation	Evaluate pay for all staff (not selected groups) and pay more for experienced and credentialed staff	10
Technology Support	Update classroom and student technology and improve time required to troubleshoot student technology issues (this has gotten better but still needs improving)	10
Curriculum and Instruction	Improve district curriculum for history, math, and science, implement MTSS district-wide, provide phonics-based supplemental instruction, and bring back Sing, Spell, Read, and Write	6
Educational Technology	Consider improving technology by the following: • Providing students with new computers in a timely manner • Providing paraprofessionals with laptops that are compatible with the timekeeping program • Updating teacher computers and providing adequate equipment	5
Building Maintenance	Ensure all campuses have PPCD/Life Skills bathrooms attached to the special educational classrooms and include a low changing cot	5
Curriculum and Instruction	Increase reading and math intervention groups and have consistent pull outs year-round to ensure improvement	4
Educational Supplies	Provide work-related supplies and equipment (e.g., laminator, functional copy machines, color copiers, and science lab equipment)	4
Information System	Update administrative systems to: • Rollover information when a student transfers to a different campus • Have more efficient tracking of grades, attendance, and other administrative duties • Stop manually tracking	4
Student Accountability	Offer more incentives to students for attendance and academic goals	2

APPENDIX: SURVEY INSTRUMENT

McAllen ISD Professional Employee Survey 2024

Job Type

Job type is used for comparing the respondent group to the employee group and tailors the survey by job type with specific questions shown to only some jobs (such as teacher). See [FAQs](#) for more information.

- ☐ Teacher or Librarian
- ☐ Instructional Aide
- ☐ Other Professional (e.g., counselor, RN, speech therapist, diagnostician, facilitator)
- ☐ Administrator

Please indicate what you value as most important to your job satisfaction. (Choose up to 5 that apply.)

- | | |
|--|--|
| ☐ Compensation and benefits | ☐ Relationship with coworkers |
| ☐ Safe working conditions | ☐ Relationship with supervisors |
| ☐ Job security | ☐ Learning opportunities |
| ☐ Work that is meaningful to me | ☐ Opportunities to use skills and abilities |
| ☐ Recognition for good work | |

Curriculum and Instruction Support

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
I have sufficient access to resources and materials.	☐	☐	☐	☐	☐
I have sufficient access to instructional technology.	☐	☐	☐	☐	☐
Staff development provides teachers with useful knowledge and skills for their content area.	☐	☐	☐	☐	☐
I am satisfied with resources for teachers with special populations.	☐	☐	☐	☐	☐
Teachers are held to high professional standards.	☐	☐	☐	☐	☐

I have the opportunity to collaborate with colleagues.	☐	☐	☐	☐	☐
I am provided opportunities to learn from other teachers.	☐	☐	☐	☐	☐
I receive feedback that can help me improve my teaching.	☐	☐	☐	☐	☐
I am involved in decisions about instructional programs that are relevant to my content area (e.g., IB, STEAM, Dual Language, Sharon Wells).	☐	☐	☐	☐	☐
Teachers have a role in selecting data analysis that impacts their content area (e.g., IB, Dual Language, Sharon Wells, DMAC, STAAR, TELPAS).	☐	☐	☐	☐	☐

Student Discipline Support

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
The principal provides leadership in setting and maintaining behavioral standards for students.	☐	☐	☐	☐	☐
Our student code of conduct is consistently and fairly enforced.	☐	☐	☐	☐	☐
I am given appropriate assistance to resolve disciplinary problems in my classroom.	☐	☐	☐	☐	☐

District Communications

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
I understand how my efforts contribute to the district's goals.	☐	☐	☐	☐	☐
Policies and procedures affecting my work are communicated clearly.	☐	☐	☐	☐	☐
The district shares important news and events.	☐	☐	☐	☐	☐
The district recognizes employee accomplishments.	☐	☐	☐	☐	☐
Employees have a way to express concerns to district leaders (e.g., JPCC, LEAD).	☐	☐	☐	☐	☐

District Leadership (Superintendent and Board of Trustees)

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
I trust the district leadership team to act in the best interest of students.	()	()	()	()	()
I believe district leaders are honest and trustworthy.	()	()	()	()	()
I believe district leaders value the employees of this district.	()	()	()	()	()

Job Satisfaction

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
I am proud to work for McAllen ISD.	()	()	()	()	()
I like the work I do.	()	()	()	()	()
On most days I feel good about what I have accomplished.	()	()	()	()	()
I understand what is expected of me in my job.	()	()	()	()	()
I would recommend my campus to a friend as a good place to work.	()	()	()	()	()
I would recommend my department to a friend as a good place work.	()	()	()	()	()
My job allows me to use my skills and abilities.	()	()	()	()	()
I would recommend this district to a friend as a good place to work.	()	()	()	()	()

Relationship with Supervisor

(Evaluating supervisor)

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
My supervisor sets clear goals and objectives.	()	()	()	()	()
I get the training I need to do my job effectively.	()	()	()	()	()

I receive useful feedback on my job performance from my evaluator.	()	()	()	()	()
My supervisor provides the support I need with problems on the job.	()	()	()	()	()
I am allowed to make decisions within my scope of authority.	()	()	()	()	()
My supervisor makes timely decisions.	()	()	()	()	()
I can communicate openly and honestly with my supervisor.	()	()	()	()	()
My work is appreciated by my supervisor.	()	()	()	()	()
I trust my supervisor.	()	()	()	()	()
I like working for my supervisor.	()	()	()	()	()

Customer Service

The questions below refer to the different elements of the district's Customer Service Standards:

- 1) The 5 domains (self-awareness, self-regulation, motivation, empathy, & social skills)
- 2) Courtesy and Respect
- 3) Greeting and Communication
- 4) Go the Extra Mile
- 5) Environment

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
I have been trained on and I understand the customer service elements.	()	()	()	()	()
I understand how my customer service efforts contribute to the district's goals.	()	()	()	()	()
My supervisor sets clear goals and expectations regarding customer service.	()	()	()	()	()
I receive feedback from my Supervisor regarding my customer service efforts.	()	()	()	()	()

Relationship with Coworkers

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
I can depend on my coworkers.	()	()	()	()	()
I like the people I work with.	()	()	()	()	()
I feel loyal to my immediate team or work group.	()	()	()	()	()
My team works well together.	()	()	()	()	()

Campus Environment

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
I get the information I need from campus leaders.	()	()	()	()	()
My campus is cleaned effectively on a regular basis.	()	()	()	()	()
My campus building/grounds are properly maintained.	()	()	()	()	()
My principal is effective in leading my campus to achieve its goals.	()	()	()	()	()
My principal treats me with respect.	()	()	()	()	()

Working Conditions

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
The hours I work are reasonable.	()	()	()	()	()
My workload is appropriate for my position.	()	()	()	()	()
I feel safe in my work environment.	()	()	()	()	()
I feel my job with the district is secure.	()	()	()	()	()
I have the equipment, tools, and supplies I need to do my job.	()	()	()	()	()

Compensation and Benefits

	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion/Not Applicable
My pay is fair for the work I do.	☐	☐	☐	☐	☐
I believe my pay is competitive with other districts in this area.	☐	☐	☐	☐	☐
The leave time provided to me is adequate.	☐	☐	☐	☐	☐
The district provides enough information about benefits to meet my needs.	☐	☐	☐	☐	☐
I get help with problems or questions about benefits when I need it.	☐	☐	☐	☐	☐

Where do you work?

- | | |
|---|---|
| ☐ High School | ☐ Administration/Non-Campus Buildings
(Including Instruction & Guidance Center and
Early Childhood) |
| ☐ Middle School | |
| ☐ Elementary School | |

Work Location

Location is used for comparing the respondent group to the employee group and to provide district leaders with responses grouped by location. See [FAQs](#) for more information.

- | | |
|---|--|
| ☐ Achieve Early College High School @ Lincoln | ☐ Memorial High School |
| ☐ Lamar Academy/Options High School | ☐ James "Nikki" Rowe High School |
| ☐ McAllen High School | |

Work Location

- | | |
|--|---|
| ☐ Dorothea Brown Middle School | ☐ Michael E. Fossum Middle School |
| ☐ Dr. Rodney D. Cathey Middle School | ☐ Homer J. Morris Middle School |
| ☐ Alonzo De Leon Middle School | ☐ William B. Travis Middle School |

Work Location

- ☐ Francisca Alvarez Elementary School
- ☐ Dr. Carlos Castaneda Elementary
- ☐ Jose De Escandon Elementary
- ☐ Victor Fields Elementary School
- ☐ Reynaldo G. Garza Elementary School
- ☐ Leonelo H. Gonzalez Elementary School
- ☐ Lucile McKee Hendricks Elementary School
- ☐ Sam Houston Elementary School
- ☐ Andrew Jackson Elementary School

- ☐ Christa McAuliffe Elementary School
- ☐ Ben Milam Elementary School
- ☐ Dr. Pablo Perez Elementary School
- ☐ Sam Rayburn Elementary School
- ☐ Theodore Roosevelt Elementary School
- ☐ Blanca E. Sanchez Elementary School
- ☐ Juan Seguin Elementary School
- ☐ Thigpen-Zavala Elementary School
- ☐ Woodrow Wilson Elementary School

What is going better at your campus or in your department this year, and what can still be improved?

The district receives a summarized list of topics with a tally for positive, negative, or suggestion by topic. See [FAQs](#) for more information.

Thank You!

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion of the Texas Association of School Board (TASB) Localized Policy Manual Update 123 - First Reading

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

In order to maintain an up-to-date policy manual and inform local decision makers, TASB Localized Manual Update 123 consists of legal and local referenced policies.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

LOCAL policies contained in TASB Localized Manual Update 123 reflect changes necessary for consistency with LEGAL policies.

LEGAL REVIEW:

None.

BUDGETARY CONSIDERATIONS:

On-going contract with TASB policy services.

RECOMMENDED BOARD ACTION:

This item is for information only; no action is required.

Attachment: ☒

SUBMITTED BY:  Alberto Canales (Aug 20, 2024 15:22 CDT)

For further information contact:
Name: Dr. Albert Canales, Chief Human Resources Officer
Office: (956) 618-6009
Email: albert.canales@mcallenisd.net

SUPERVISOR: 

Approved for presentation to the Board of Education:

 RENE GUTIERREZ (Aug 21, 2024 08:18 CDT)

Explanatory Notes

TASB Localized Policy Manual Update 123

McAllen ISD

ATTN(NOTE)

GENERAL INFORMATION ABOUT THIS UPDATE

Please note:

Unless otherwise noted, references to legislative bills throughout these explanatory notes refer to Senate Bills (SB) or House Bills (HB) from the 88th Legislature, regular and special sessions. All referenced bills have already gone into effect unless otherwise noted.

The Local Policy Overview for Update 123, available with your Update 123 materials under [Local Manual Updates](#) on Policy Online® (TASB login required), provides a general, high-level overview of the changes to the local policies included in the update. **Legal policies provide the legal framework for key areas of district operations and are not adopted by the board.**

AIB(LEGAL)

ACCOUNTABILITY: PERFORMANCE REPORTING

The Results Driven Accountability (RDA) section of the policy has been deleted. TEA included RDA information in the Accountability Manual starting in 2023 and repealed the RDA information in the Administrative Code. This change aims to streamline information used in academic accountability and RDA systems.

AIC(LEGAL)

ACCOUNTABILITY: INTERVENTIONS AND SANCTIONS

A citation to the Administrative Code has been included under Student Enrollment and Assignment, Enrollment Provision in Contract, regarding campuses that are closed and repurposed.

As 19 TAC 97.2005 has been repealed, the reference to Results Driven Accountability has been deleted from the section on Special Program Performance Determination.

AIE(LEGAL)

ACCOUNTABILITY: INVESTIGATIONS

The word "accreditation" has been removed as a descriptor for investigations in two places within the policy after an amendment to the Administrative Code, effective January 17, 2024.

BBA(LEGAL)

BOARD MEMBERS: ELIGIBILITY/QUALIFICATIONS

At Intent to Return, language from the Election Code has been included to minimize confusion regarding the specific requirements for establishing an intent to return to the individual's residence after a temporary absence.

BBBB(LEGAL)

ELECTIONS: POST-ELECTION PROCEDURES

HB 5180 added new requirements for public inspection of election records. A reference has been added at Election Records regarding where to find information on public inspection of those records for districts who serve as custodians of their own election records.

BBD(LOCAL)

BOARD MEMBERS: TRAINING AND ORIENTATION

HB 3033 authorizes the attorney general to require trustees to complete training on the Public Information Act if the attorney general finds that there has been a violation of the Act. Language is recommended to make clear that this training after a violation cannot be delegated to the district's Public Information Act coordinator.

BBFA(LOCAL)

ETHICS: CONFLICT OF INTEREST DISCLOSURES

Language is recommended to clarify that a trustee's ethical duty to disclose a financial or other personal interest in board transactions goes beyond the statutory conflicts of interest set out in state and federal law. The added language serves to demonstrate a commitment to avoid undue influence, increase transparency, and avoid the appearance of impropriety in public dealings.

Explanatory Notes

TASB Localized Policy Manual Update 123

McAllen ISD

CCG(LEGAL)

LOCAL REVENUE SOURCES: AD VALOREM TAXES

HB 3273, effective January 1, 2024, revised the Tax Code and requires a taxing unit, including a school district, to provide specific notice to property owners on its website. These provisions have been included in the Appraisal District Property Tax Database section of the policy.

CCGA(LEGAL)

AD VALOREM TAXES: EXEMPTIONS AND PAYMENTS

This policy has been updated to indicate that a board that adopted an exemption for the 2022 tax year may not reduce the amount or repeal that exemption based on SB 2 from the second special session of the 88th Legislature. [See Homestead, Local Options.]

HB 4559, from the 88th regular session, increased the population range for certain districts to provide that the split payment option does not apply to the district's taxes collected by another taxing unit that has adopted that option. [See Split Payments, In Certain Counties.]

CCGB(LEGAL)

AD VALOREM TAXES: ECONOMIC DEVELOPMENT

HB 4559 increased the population threshold for determining a large municipality for provisions related to the appointment of reinvestment zone board members. [See Tax Increment Financing Act, Large Municipality.]

Substantial changes have also been made based on HB 5 to incorporate the Texas Jobs, Energy, Technology, and Innovation Act.

CKB(LEGAL)

SAFETY PROGRAM/RISK MANAGEMENT: ACCIDENT PREVENTION AND REPORTS

TEA's amendments to the Administrative Code rules for mandatory school drills necessitated reorganization of definitions and added clarity to several sections of the policy. Changes in this policy also reflect TEA's amendments to the Administrative Code rules related to active threat exercises.

CKC(LOCAL)

SAFETY PROGRAM/RISK MANAGEMENT: EMERGENCY PLANS

A section on Notice Regarding Violent Activity is recommended to comply with legal requirements. Administrative procedures must be created to align with TEA's model standards.

CKEA(LOCAL)

SECURITY PERSONNEL: COMMISSIONED PEACE OFFICERS

Significant revisions are recommended to the CKE policy series to promote compliance and clarification with HB 3 and other legal requirements. As Education Code 37.081 covers both police authority and duties, the margin note has been edited to clarify the scope of the policy language. The section on temporary assignments has been incorporated into Limitations on Nonschool Employment to account for possible off-duty officer use by both the district and other agencies. A section on Interlocal Agreement has been added to note that district police officers will function within the scope of the agreement. Other edits have been made for consistency with policy style.

The Legal Issues in Update 123 memo, available with your Update 123 materials under [Local Manual Updates](#) on Policy Online (TASB login required), describes common legal concerns and best practices specific to this policy's topic.

CKED(LEGAL)

SECURITY PERSONNEL: OTHER SECURITY ARRANGEMENTS

The provisions of this policy address commissioned security officers with Level III training under the Department of Public Safety hired through a security services contractor or as a district employee in accordance with the Education Code and the Occupations Code.

Explanatory Notes

TASB Localized Policy Manual Update 123

McAllen ISD

CMD(LEGAL)

EQUIPMENT AND SUPPLIES MANAGEMENT: INSTRUCTIONAL MATERIALS CARE AND ACCOUNTING

Cross-references throughout this policy have been updated to EFA since policy EF has been separated into EFA (instructional materials) and EFB (library materials).

CPC(LEGAL)

OFFICE MANAGEMENT: RECORDS MANAGEMENT

Edits to this policy at Destruction of Records remove a reference to 13 TAC 7.123(c), which was deleted from Texas State Library and Archives Commission rules, effective March 6, 2024.

CQA(LEGAL)

TECHNOLOGY RESOURCES: DISTRICT, CAMPUS, AND CLASSROOM WEBSITES

HB 3273, effective January 1, 2024, requires school districts to post a notice informing property owners of the property tax database maintained by the appraisal district. Language has been added at item 28 under the section on Other Required Internet Postings.

CQC(LEGAL)

TECHNOLOGY RESOURCES: EQUIPMENT

A section on Guidelines for Use of Digital Devices has been added to address the TEA and Health and Human Services Commission model health and safety guidelines for the use of digital devices, which are required by the Education Code and were issued in October 2023.

CQC(LOCAL)

TECHNOLOGY RESOURCES: EQUIPMENT

This new local policy is recommended to meet the legal requirement for the board to adopt a policy for the effective integration of digital devices in the district. The policy language adopts the model health and safety guidelines developed by TEA and the Health and Human Services Commission and clarifies that the superintendent must develop regulations for implementation.

DGBA(LOCAL)

PERSONNEL-MANAGEMENT RELATIONS: EMPLOYEE COMPLAINTS/GRIEVANCES

Extensive revisions within the CKE policy series necessitated an update to the cross-reference in the list of other complaint processes.

Also, to accommodate planned restructuring of policy DIA, we have revised the references to that code in this policy to reflect the DIA series. No other changes have been made to this policy.

The Legal Issues in Update 123 memo, available with your Update 123 materials under [Local Manual Updates](#) on Policy Online (TASB login required), describes common legal concerns and best practices specific to this policy's topic.

DHE(LEGAL)

EMPLOYEE STANDARDS OF CONDUCT: SEARCHES AND ALCOHOL/DRUG TESTING

New Department of Transportation rules amend the department's regulated industry drug testing program. The language in the Reports to DPS section has been amended for clarity.

DNA(LEGAL)

PERFORMANCE APPRAISAL: EVALUATION OF TEACHERS

Amendments to the Administrative Code allow districts to begin using the Alternate Domain I rubric as part of the Texas Teacher Evaluation and Support System (T-TESS) beginning with the 2024-25 school year. Language has been updated to reflect this change.

Explanatory Notes

TASB Localized Policy Manual Update 123

McAllen ISD

DP(LEGAL)

PERSONNEL POSITIONS

The section on School Psychological Services has been amended to provide additional clarity and to set out the correct title for licensed specialists in school psychology (LSSPs) as indicated in the Administrative Code.

EEH(LOCAL)

INSTRUCTIONAL ARRANGEMENTS: HOMEBOUND INSTRUCTION

TEA's revisions to the *Student Attendance Accounting Handbook (SAAH)* prompted recommended updates to this policy. Students may now receive homebound services for psychological, as well as medical, conditions. The *SAAH* also indicates that the weeks of confinement due to a medical or psychological condition do not need to be consecutive to qualify. The policy language has been updated to reflect this change.

EF(LEGAL)

INSTRUCTIONAL RESOURCES

In order to clarify the differences in requirements for instructional materials and library materials, as well as to accommodate the new library collection development standards, policy EF has been divided into EFA (instructional material) and EFB (library material). The content in EF(LEGAL) has moved to either EFA or EFB, as appropriate.

EF(LOCAL)

INSTRUCTIONAL RESOURCES

As explained at EF(LEGAL), above, this local policy addressing instructional resources is being deleted. New local policies to address instructional materials and library materials separately are included at EFA and EFB.

EFA(LEGAL)

INSTRUCTIONAL RESOURCES: INSTRUCTIONAL MATERIALS

Content regarding instructional material review and federally required parental inspection has been moved from EF(LEGAL) to EFA(LEGAL).

EFA(LOCAL)

INSTRUCTIONAL RESOURCES: INSTRUCTIONAL MATERIALS

The enclosed policy regarding instructional materials is recommended to coordinate with the policy addressing library materials at EFB(LOCAL). The provisions previously housed at EF(LOCAL) have been moved to this code with the following revisions:

- At Selection, a clarification has been made to reflect that instructional materials must be chosen in accordance with stated objectives and administrative regulations and may include items from the State Board of Education list.
- At Reconsideration of Instructional Materials, the list of individuals who can submit a request for reconsideration has been revised. This change is recommended to align with the list provided in the new EFB(LOCAL), which permits an employee or parent or guardian to submit these requests. If the district would like to expand this list, please contact your policy consultant.

Please review the information at Formal Reconsideration, which specifies who will receive forms requesting the reconsideration of instructional material and who will appoint a reconsideration committee. If the policy needs to identify a different position for these responsibilities, please contact your policy consultant for assistance with revisions.

The Legal Issues in Update 123 memo, available with your Update 123 materials under [Local Manual Updates](#) on Policy Online (TASB login required), describes common legal concerns and best practices specific to this policy's topic.

Explanatory Notes

TASB Localized Policy Manual Update 123

McAllen ISD

EFB(LEGAL)

INSTRUCTIONAL RESOURCES: LIBRARY MATERIALS

EFB(LEGAL) has been revised to incorporate new library collection development standards adopted by the Texas State Library and Archives Commission (TSLAC), effective January 23, 2024. The policy includes a note regarding the Fifth Circuit Court of Appeals enjoinder and the resulting unenforceability of certain statutes related to library material. The TSLAC Library Collection Development Standards are not currently enjoined by the Fifth Circuit Court of Appeals.

EFB(LOCAL)

INSTRUCTIONAL RESOURCES: LIBRARY MATERIALS

This recommended policy aligns with changes to the Administrative Code and the new collection development standards for school libraries as a result of HB 900. Please review the following information in your policy:

- The location of the form for formal reconsideration;
- The position title for the person responsible for appointing the reconsideration committee; and
- The number of days allocated for appointing the committee, providing the material for review to the committee, and completing the committee's final report.

If any information needs to be updated or if further revisions to the policy are needed, please contact your policy consultant for assistance.

EHBAA(LEGAL)

SPECIAL EDUCATION: IDENTIFICATION, EVALUATION, AND ELIGIBILITY

A cross-reference to policy EHB has been included for additional requirements relating to the evaluation and identification process when dyslexia is a suspected disability. [See Determination of Initial Eligibility.]

EHBAB(LEGAL)

SPECIAL EDUCATION: ARD COMMITTEE AND INDIVIDUALIZED EDUCATION PROGRAM

The section on Supplemental Special Education Services (SSES) has been revised to reflect amended Administrative Code rules, effective April 18, 2023. The district is required to notify parents of SSES eligibility and related information during an ARD committee meeting.

A provision regarding an IEP supplement for each child who was enrolled in a district's special education program during the 2019-20 school year or the 2020-21 school year has been removed. That requirement expired on September 1, 2023.

EHBE(LEGAL)

SPECIAL PROGRAMS: BILINGUAL EDUCATION/ESL

Extensive revisions have been made throughout this policy to reflect amended rules relating to emergent bilingual students.

EHBJ(LEGAL)

SPECIAL PROGRAMS: INNOVATIVE AND MAGNET PROGRAMS

Changes to this policy stem from amended Administrative Code provisions relating to innovative courses. The amended rules became effective February 18, 2024.

EKB(LEGAL)

TESTING PROGRAMS: STATE ASSESSMENT

Revisions have been made to remove language that does not require district action to aid in readability and clarity. Citations have also been updated based on rule changes.

Explanatory Notes

TASB Localized Policy Manual Update 123

McAllen ISD

FA(LEGAL)

PARENT RIGHTS AND RESPONSIBILITIES

The cross-reference at Parental Rights relating to teaching materials has been updated to reflect the division of policy EF into EFA and EFB.

FFAC(LEGAL)

WELLNESS AND HEALTH SERVICES: MEDICAL TREATMENT

A section on Telehealth in Medicaid Covered Services has been added to provide guidance from Administrative Code rules specific to telehealth services authorized as Texas Medicaid covered services.

The section on opioid antagonists has been updated to reflect new rules effective November 1, 2023.

Changes have also been made to the section on epinephrine auto-injectors to reflect amended Administrative Code rules.

Citations throughout have been updated based on rule amendments.

FNG(LOCAL)

STUDENT RIGHTS AND RESPONSIBILITIES: STUDENT AND PARENT COMPLAINTS/GRIEVANCES

Extensive revisions within the CKE policy series necessitated an update to the cross-reference in the list of other complaint processes.

Also, to accommodate planned restructuring of policy FFH, we have revised the references to that code in this policy to reflect the FFH series. No other changes have been made to this policy.

The Legal Issues in Update 123 memo, available with your Update 123 materials under [Local Manual Updates](#) on Policy Online (TASB login required), describes common legal concerns and best practices specific to this policy's topic.

GBA(LEGAL)

PUBLIC INFORMATION PROGRAM: ACCESS TO PUBLIC INFORMATION

A cross-reference regarding economic development negotiations under Government Code Chapter 403 has been added.

GF(LEGAL)

PUBLIC COMPLAINTS

The division of policy EF into EFA and EFB necessitated an update to the cross-reference in this policy.

GF(LOCAL)

PUBLIC COMPLAINTS

Extensive revisions within the CKE policy series necessitated an update to the cross-reference in the list of other complaint processes. No other changes have been made to this policy.

The Legal Issues in Update 123 memo, available with your Update 123 materials under [Local Manual Updates](#) on Policy Online (TASB login required), describes common legal concerns and best practices specific to this policy's topic.

GKA(LEGAL)

COMMUNITY RELATIONS: CONDUCT ON SCHOOL PREMISES

Amendments to the Code of Federal Regulations necessitated changes to the section regarding operation of a small unmanned aircraft system.

Explanatory Notes

TASB Localized Policy Manual Update 123

McAllen ISD

GRA(LEGAL)

RELATIONS WITH GOVERNMENTAL ENTITIES: STATE AND LOCAL GOVERNMENTAL AUTHORITIES

The Definitions section has been revised to reflect amended Administrative Code rules that include school resource officers and contracted police officers in the definition of "school personnel and volunteers."

Language has been added at Notice to School Personnel to provide direction if the superintendent is the individual alleged to have committed child abuse or neglect.

The Students Taken into Custody section has been updated to incorporate appropriate legal citations and improve clarity.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion of Revision to Policy EIC (LOCAL) -1st Reading

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Policy EIC (LOCAL) and (LEGAL) Focuses on Academic Achievement and Class Ranking.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Additions/revisions/deletions of this local policy was a result from the Policy Review Session conducted on July 23-24, 2024, with the draft prepared by TASB Policy Service (see proposed policy changes attached). Our Administrative Procedure EIC (Regulation) was also revised to align with the recommended TASB EIC (LOCAL) revisions.

LEGAL REVIEW:

None.

BUDGETARY CONSIDERATIONS:

Budgeted.

RECOMMENDED BOARD ACTION:

This is for information purposes only.

Attachment: ☒

SUBMITTED BY: 
Alberto Canales (Aug 22, 2024 15:40 CDT)

SUPERVISOR: 

For further information contact:
Name: Dr. Albert Canales, Chief Human Resources Officer
Office: (956) 618-6009
Email: alberto.canales@mcallenisd.net

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 23, 2024 08:59 CDT)

172

Superintendent of Schools

ACADEMIC ACHIEVEMENT
CLASS RANKING

EIC
(LOCAL)

Transferred Grades	When a student transfers <u>semester</u> grades for <u>courses that would be eligible to receive additional weight under the District's weighted grade system, properly documented courses</u> , the District shall assign <u>additional</u> weight to those the grades based on the categories and grade weight system used by the District <u>only</u> if the same, <u>a</u> similar, or <u>an</u> equivalent courses are offered to the same class of students in the District.
Local Graduation Honors	For the purpose of determining honors to be conferred during graduation activities, the District shall calculate class rank <u>in accordance with this policy and administrative regulations</u> by using grades available at the <u>time of calculation at the</u> end of the fifth sixweek grading period of the senior year. The average of the fourth and fifth six-week grades shall be given two-thirds the weight of a semester grade for this purpose. For the purpose of applications to institutions of higher education, the District shall also calculate class rank as required by state law. The District's eligibility criteria for local graduation honors shall apply only for local recognitions and shall not restrict class rank for the purpose of automatic admission under state law. [See EIC(LEGAL)]
Valedictorian and Salutatorian	The valedictorian and salutatorian shall be the eligible students with the highest and second highest rank, respectively. To be eligible for <u>this local graduation honor</u>such recognition, a student must: <u>1.</u> Have been continuously enrolled in the same <u>District</u> high school in the District for the four regular (fall and spring) semesters immediately preceding graduation; and <u>2.</u> <u>Be graduating after exactly eight semesters of enrollment in high school; and</u> 4.<u>3.</u> <u>Have completed the foundation program with the distinguished level of achievement.</u>
Breaking Ties	2.—Be enrolled at the time of the graduation ceremony. In case of a tie in weighted numerical grade averages, <u>after calculation to the fourth decimal place,</u> the District shall <u>calculate a weighted numerical grade average only using eligible grades at the time of calculation.</u> apply the following methods, in this order, to determine recognition as valedictorian or salutatorian: 1.—Compute the weighted numerical grade average to a sufficient number of decimal places until the tie is broken.

ACADEMIC ACHIEVEMENT
CLASS RANKING

EIC
(LOCAL)

~~2. Calculate a weighted numerical grade average only using eligible grades earned from the beginning of the junior year through the fifth six-week grading period of the senior year.~~

If the tie is not broken after applying these methods, the District shall recognize all students involved in the tie as sharing the honor and title.

Honor Graduates

The District shall recognize at the graduation ceremony all students whose weighted numerical grade averages comprise the top ~~ten~~ 10 percent of the students in the graduating class, as follows:

- Summa cum laude-top two percent
- Magna cum laude-next three percent (three-five percent)
- Cum laude-remainder of the top ~~ten~~ 10 percent (six-~~ten~~ 10 percent)

Highest-Ranking Graduate

The student meeting the local eligibility criteria for recognition as the valedictorian shall also be considered the highest-ranking graduate for purposes of receiving the honor graduate certificate from the state of Texas.

McAllen ISD
108906

COMMUNITY RELATIONS
NONSCHOOL USE OF SCHOOL FACILITIES
(LOCAL)

GKD

ACADEMIC ACHIEVEMENT
CLASS RANKING

EIC
(REGULATION)

Purpose	The purpose of this regulation is to define the process of determining courses other than core-approved courses to be included for course weight and class rank purposes.
Scope	This policy is for District students who take courses that are not included in the Texas core approved list.
Overview	The District's local policy gives guidance on class rank calculation, exclusions, the weighted grade system, transferred grades, local graduation honors, and valedictorian and salutatorian eligibility. [See EIC(LOCAL)]
Detailed Steps	The administration has the autonomy to propose any course that is not part of the Texas core approved list to be considered for course weight and class rank by following the specific steps outlined below: 1. Discuss the course and reason for the consideration with the associate superintendent for secondary campuses. See Exhibit A 2. Present the reason for the consideration to the High School Strategic Team 3. The High School Strategic Team discusses and votes on the consideration. If approved, the High School Strategic Team outlines the specifics of the course and selects the cohort class when the updated rank/weight will be put in place. 4. The Course update is added to the upcoming Curriculum Bulletin 5. All campuses will follow the recommendation and approval of the ranked course.
Roles and Responsibilities	The High School Strategic Team voting members will include each high school principal, secondary content coordinators, and the instructional service director of the course content In the case of a tied vote, the request and consideration will be presented to the Superintendent for guidance.
Enforcement	For all considerations, the detailed steps must be followed as listed above, if the steps are not followed the consideration will be void.
Communication	The District's policy and related administrative regulations regarding class rank will be reviewed during a High School Strategic Team meeting and any changes or updates will be included in administrator and counselor updates.

**Documentation and
Records**

The High School Strategic Team meeting notes will serve as evidence of all considerations brought to the team.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action of Resolution of the Board Delegating Authority to Accept a Contract Employee's Resignation Effective Before the End of the School Year

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

This resolution should be adopted by the Board only if the Board wishes to designate a District employee, in addition to the Superintendent, to serve as the Board's designee to accept a contract employee's resignation that will be effective before the end of the school year.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

During the TASB local policy review that was held on July 23- 24, 2024, it was determined a Resolution needed to be in place.

LEGAL REVIEW:

Not Applicable.

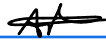
BUDGETARY CONSIDERATIONS:

Not applicable.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the Resolution of the Board Delegating Authority to Accept a Contract Employee's Resignation Effective Before the End of the School Year

Attachment: ☒

SUBMITTED BY: 
Alberto Canales (Aug 21, 2024 11:47 CDT)

SUPERVISOR: 

For further information contact:
Name: Dr. Alberto Canales, Chief Human Resources Officer
Office: (956) 618-6009
Email: albert.canales@mcallenisd.net

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 21, 2024 11:50 CDT)

**RESOLUTION OF THE BOARD DELEGATING AUTHORITY
TO ACCEPT A CONTRACT EMPLOYEE'S RESIGNATION
EFFECTIVE BEFORE THE END OF THE SCHOOL YEAR**

WHEREAS, Education Code 21.105(b), .160(b), and .210(b) and DFE(LOCAL) provide that a contracted employee may resign effective before the end of the school year, with the consent of the Board or the Board's designee; and

WHEREAS, in addition to the delegation of authority to the Superintendent in DFE(LOCAL), the Board seeks to also delegate authority to the Chief Human Resources Officer to accept a contract employee's resignation when the resignation is effective before the end of the school year;

NOW THEREFORE BE IT RESOLVED that in addition to the delegation of authority to the Superintendent in DFE(LOCAL), the Board of McAllen Independent School District also delegates to the Chief Human Resources Officer authority to accept a contract employee's resignation when the resignation is effective before the end of the school year.

The Superintendent or other person designated by Board action will either accept the resignation or submit the matter to the Board in order to pursue remedies allowed by law, if deemed necessary by the superintendent, the superintendent's designee or the Board.

The authority granted by this resolution is effective until the Board revokes such authority by further action.

Adopted this 27th day of August, 2024, by the Board of Trustees.

Presiding Officer: _____
Sofia M. Peña, President,
Board of Trustees,
McAllen Independent School District

ATTEST: _____
Erica de la Garza-Lopez, Secretary,
Board of Trustees,
McAllen Independent School District

APPROVED AS TO FORM:



JOHNATHAN BALL (Aug 21, 2024 11:42 CDT)
Johnathan Ball, Staff Attorney

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action of Resolution of the Board Delegating Authority to Accept a Contract Employee's Resignation Effective at the End of the School Year or Submitted Before Penalty-Free Resignation Date

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

This resolution should be adopted by the Board only if the Board wishes to designate a District employee, in addition to the Superintendent, to serve as the Board's designee to accept a contract employee's resignation effective at the end of the school year or submitted after the last day of the school year and before the penalty-free resignation date.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

During the TASB local policy review that was held on July 23- 24, 2024, it was determined a Resolution needed to be in place.

LEGAL REVIEW:

Not Applicable.

BUDGETARY CONSIDERATIONS:

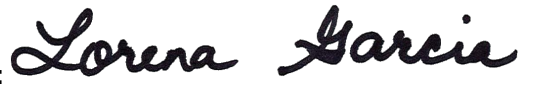
Not applicable.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the Resolution of the Board Delegating Authority to Accept a Contract Employee's Resignation Effective at the End of the School Year or Submitted Before Penalty-Free Resignation Date.

Attachment: ☒

SUBMITTED BY: 
Alberto Canales (Aug 21, 2024 11:19 CDT)

SUPERVISOR: 

For further information contact:
Name: Dr. Alberto Canales, Chief Human Resources Officer
Office: (956) 618-6009
Email: albert.canales@mcallenisd.net

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 21, 2024 11:48 CDT)

**RESOLUTION OF THE BOARD DELEGATING AUTHORITY TO
ACCEPT A CONTRACT EMPLOYEE'S RESIGNATION EFFEC-
TIVE AT THE END OF THE SCHOOL YEAR OR SUBMITTED BE-
FORE PENALTY-FREE RESIGNATION DATE**

WHEREAS, Education Code 21.105(a), .160(a), and .210(a) and DFE(LOCAL) provide that a contracted employee may relinquish a teaching position and leave the District at the end of a school year without penalty by filing with the Board or the Board's designee a written resignation not later than the 45th day before the first day of instruction of the following school year; and

WHEREAS, in addition to the delegation of authority to the Superintendent in DFE(LOCAL), the Board seeks to also delegate authority to the Chief Human Resources Officer to accept a contract employee's written resignation effective at the end of the school year or submitted after the last day of the school year and before the penalty-free resignation date;

NOW THEREFORE BE IT RESOLVED that in addition to the delegation of authority to the Superintendent in DFE(LOCAL), the Board of McAllen Independent School District also delegates authority to the Chief Human Resources Officer to accept a contract employee's written resignation effective at the end of the school year or submitted after the last day of the school year and before the penalty-free resignation period.

A resignation filed not later than the 45th day before the first day of instruction of the following school year is effective upon filing. The resignation cannot be rejected by the District or withdrawn by the employee, is accepted upon receipt by the Superintendent or other person designated by Board action, and requires no further action by the District.

The authority granted by this resolution is effective until the Board revokes such authority by further action.

Adopted this 27th day of August, 2024, by the Board of Trustees.

Presiding Officer: _____
Sofia M. Peña, President,
Board of Trustees,
McAllen Independent School District

ATTEST: _____
Erica de la Garza-Lopez, Secretary,
Board of Trustees,
McAllen Independent School District

APPROVED AS TO FORM:


JOHNATHAN BALL (Aug 21, 2024 10:54 CDT)

Johnathan Ball, Staff Attorney

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on a Resolution Providing for the Defeasance and Calling for Redemption Certain Currently Outstanding District Obligations; Delegating to Certain District Officials and Staff the Authority to Effect Matters Related Thereto; and Other Matters in Connection Therewith

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Defeasance of eligible outstanding debt, allows the District to decrease or escrow our outstanding debt to manage the Interest and Sinking tax rate. The District's outstanding bonds are eligible for escrow to maturity. Any interest and sinking tax revenues earned beyond the annual required payments will be placed in an escrow account and earn interest that can only be used to payoff outstanding bonded debt.

The current defeasance opportunity exists with currently outstanding Unlimited Tax Refunding Bonds, Series 2020A and Unlimited Tax Refunding Bonds, Taxable Series 2020B. The interest savings for these bonds, if defeased, is \$186 thousand.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The Board of Trustees may authorize the use of District funds realized from prior or prospective interest and sinking fund tax collections for the early redemption and/or escrowing of certain qualifying long-term debt obligations (Defeased Obligations). District administration currently estimates that the principal amount of Defeased Obligations will be approximately \$7,200,000 to \$8,058,000. The final amount of Defeased Obligations will be known to the District subsequent to current taxes becoming delinquent and tax collections available for defeasance are ascertained.

LEGAL REVIEW:

Resolution reviewed by bond counsel McCall, Parkhurst & Horton L.L.P., Attorneys at Law.

BUDGETARY CONSIDERATIONS:

N/A

RECOMMENDED BOARD ACTION:

The motion must read as follow:

I move to approve the District's DEFEASANCE RESOLUTION Providing for the Defeasance and Calling for Redemption Certain Currently Outstanding District Obligations; Delegating to Certain District Officials and Staff the Authority to Effect Matters Related Thereto; and Other Matters in Connection Therewith

Attachment: ☒

SUBMITTED BY: Iris Luna

SUPERVISOR: Lorena Garcia

For further information contact:

Name: Iris Luna, RTSBA

Office: (956) 618-6016

Email: iris.luna@mcallenisd.net

Approved for presentation to the Board of Education:

Rene Gutierrez
RENE GUTIERREZ (Aug 21, 2024 11:56 CDT)

**A RESOLUTION BY THE BOARD OF TRUSTEES OF THE
MCALLEN INDEPENDENT SCHOOL DISTRICT
PROVIDING FOR THE DEFEASANCE TO MATURITY OF
CERTAIN CURRENTLY OUTSTANDING DISTRICT
OBLIGATIONS; DIRECTING THE BOARD SECRETARY,
OR A DESIGNEE THEREOF, TO EFFECTUATE THE
DEFEASANCE OF THESE OBLIGATIONS;
AUTHORIZING THE EXECUTION OF AN ESCROW
AGREEMENT; DELEGATING TO CERTAIN DISTRICT
OFFICIALS AND STAFF THE AUTHORITY TO
EFFECTUATE MATTERS HEREIN RESOLVED; AND
OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the Board of Trustees (the *Board*) of the McAllen Independent School District (the *District*) has previously adopted an order (the *Original Order*) authorizing the issuance of the District's currently outstanding Unlimited Tax Refunding Bonds, Series 2020A and Unlimited Tax Refunding Bonds, Taxable Series 2020B (the *Obligations*); and

WHEREAS, it is in the best interest of the District and its residents to defease certain of the Obligations (the *Defeased Obligations*) to their Stated Maturity, extinguishing the District's payment obligations with respect thereto at the time of defeasance, as herein provided; now, therefore,

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT THAT:

SECTION 1. The Board hereby authorizes an Authorized Official (defined herein) to use District funds realized from prior or prospective interest and sinking fund tax collections or any other lawfully available source (the *Defeasance Proceeds*), in an amount necessary and sufficient to defease, to their Stated Maturity, the Defeased Obligations, which shall be determined by an Authorized Official and set forth in Exhibit A hereto. An Authorized Official shall accomplish the defeasance of the Defeased Obligations by establishing and funding with Defeasance Proceeds prior to the end of the District's 2024-2025 fiscal year the hereinafter-defined Escrow Fund pursuant to the provisions of Section 2 hereof. An Authorized Official shall identify the maximum principal amount of Defeased Obligations that can be defeased after taking into consideration District funds from the sources identified above, interest earnings on Escrow Fund deposits, and final costs related to establishment of the Escrow Fund, with the goal of maximizing the principal amount of the Defeased Obligations. District officials currently estimate that the principal amount of Defeased Obligations will range from \$7,200,000 to \$8,058,000. The final amount available to the District to defease the Defeased Obligations will be known to the District after current taxes become delinquent and the tax collections available for defeasance are ascertained.

SECTION 2. The Escrow and Trust Agreement, dated as of August 27, 2024 (the *Agreement*), by and between the District and the escrow agent therein identified (the *Escrow Agent*), relating to the Defeased Obligations and attached hereto as Exhibit B and incorporated herein by reference as a part of this Resolution for all purposes, is hereby approved as to form and content, and such Agreement, together with such changes or revisions as may be necessary to

accomplish the defeasance of the Defeased Obligations or benefit the District, is hereby authorized to be executed by an Authorized Official, for and on behalf of the District and as the act and deed of this Board. Such Agreement, as executed by said Authorized Official, shall be deemed approved by the Board and constitute the Agreement herein approved.

Furthermore, each Authorized Official, the District's Financial Advisor (Estrada Hinojosa), and the District's Bond Counsel (McCall, Parkhurst & Horton L.L.P.), in cooperation with the Escrow Agent, is hereby authorized and directed to make the necessary arrangements for the deposit of cash and/or the purchase of any securities if applicable, referenced in the Agreement and the delivery thereof to the Escrow Agent upon delivery to the Escrow Agent of the Defeasance Proceeds for deposit to the credit of the "MCALLEN INDEPENDENT SCHOOL DISTRICT 2024 DEFEASANCE ESCROW FUND" (the *Escrow Fund*), as may be modified in name to reference the appropriate Defeasance Obligations, and may include the execution of the subscription forms, if any, for the purchase and issuance of the "United States Treasury Securities – State and Local Government Series" for deposit to the Escrow Fund; all as contemplated and provided by the provisions of Chapter 1207, as amended, Texas Government Code, this Resolution, and the Agreement.

SECTION 3. The President and Secretary of the Board are authorized and instructed to give notice of redemption described herein to the paying agent/registrar(s) for the Defeased Obligations for further delivery thereby to the holders of such Defeased Obligations, as provided in the Original Order.

SECTION 4. An Authorized Official shall select and appoint a qualified verification agent (such party, the *Verification Agent*) to verify the sufficiency of the deposit to the Escrow Fund to accomplish the defeasance of the Defeased Obligations, to the extent such appointment is necessary or desired.

SECTION 5. Each Authorized Official is authorized to evidence adoption of this Resolution and to do any and all things necessary or convenient to effect the redemption of the Defeased Obligations herein described and otherwise give effect to the intent and purpose hereof.

SECTION 6. The Board hereby directs that Defeasance Proceeds shall include amounts sufficient to pay professional fees and expenses of the District's Bond Counsel, the District's Financial Advisor, the Escrow Agent (if any), the Verification Agent, the paying agent/registrar for the Defeased Obligations, respectively, and any other party whose services have been determined by the District to be necessary to accomplish the purpose and intent of this Resolution. Use of Defeasance Proceeds to pay these expenses is hereby approved.

SECTION 7. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Board.

SECTION 8. All orders and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 9. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 10. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Board hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 11. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 12. Though such parties may be identified, and the entry into a particular form of contract may be authorized herein, the Board hereby delegates to the Board President, Board Vice President, Board Secretary, Superintendent of Schools, and the District's Deputy Superintendent for Business and Operations (each of the foregoing, an *Authorized Official*) the authority to independently select the counterparty to any agreement with the Escrow Agent, Verification Agent or any other contract that is determined by an Authorized Official, the District's Financial Advisor, or Bond Counsel to be necessary or incidental to carry out the provisions of this Resolution, as long as each of such contracts has a value of less than the amount referenced in Section 2252.908 of the Texas Government Code, as amended (collectively, the *Ancillary Bond Contracts*); and, as necessary, to execute the Ancillary Bond Contracts on behalf and as the act and deed of the District. The Board has not participated in the selection of any of the business entities which are counterparties to the Ancillary Bond Contracts.

SECTION 13. Capitalized terms used but not otherwise defined herein shall have the same meanings as set forth in the Original Order.

SECTION 14. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

* * *

PASSED AND APPROVED, this the 27th day of August, 2024.

MCALLEN INDEPENDENT SCHOOL
DISTRICT

Sofia M. Pena, President,
Board of Trustees,
McAllen Independent School District

ATTEST:

Erica de la Garza-Lopez, Secretary,
Board of Trustees
McAllen Independent School District

(DISTRICT SEAL)

EXHIBIT A

DEFEASED OBLIGATIONS

McAllen Independent School District Unlimited Tax Refunding Bonds, Series 2020A, dated October 15, 2020, in the original principal amount of \$8,075,000, \$1,290,000 of the February 15, 2030 maturity; and

McAllen Independent School District Unlimited Tax Refunding Bonds, Taxable Series 2020B, dated October 15, 2020, in the original principal amount of \$32,800,000, \$4,000,000 of the February 15, 2028 maturity and \$1,920,000 of the February 15, 2029 maturity.

EXHIBIT B
ESCROW AGREEMENT

ESCROW AND TRUST AGREEMENT

THIS ESCROW AND TRUST AGREEMENT, dated as of August 27, 2024 (together with any amendments or supplements hereto, this *Agreement*), is entered into between the McAllen Independent School District (the *Issuer*), a duly organized and existing body corporate and political subdivision of the State of Texas, and BOKF, NA, as escrow agent (together with any successor in such capacity, the *Escrow Agent*), a national banking association with trust powers duly organized and existing under the laws of the United States of America and authorized to transact business in the State of Texas.

W I T N E S S E T H:

WHEREAS, the Issuer has heretofore issued and there currently remain outstanding the obligations, plus accrued interest thereon (the *Defeased Bonds*) set forth on Schedule I hereto; and

WHEREAS, the Defeased Bonds were issued pursuant to an Order which provides that the Defeased Bonds are stated to mature in such years, bear interest at such rates, and have debt service at the times and in the amounts set forth on Exhibit A attached hereto and made a part hereof for all purposes; and

WHEREAS, when firm banking arrangements have been made for the payment of the principal, premium, if any, and interest to the stated maturity of the Defeased Bonds, the Defeased Bonds shall no longer be regarded as outstanding except for the purpose of receiving payment from the funds provided for such purpose; and

WHEREAS, Chapter 1207, as amended, Texas Government Code (the *Act*) authorizes the Issuer to deposit any lawfully available funds or resources, directly with any place of payment (the paying agent) for the Defeased Bonds or a designated escrow agent for the Defeased Bonds that is not the depository bank of the Issuer, and such deposit, if made before such payment dates, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Defeased Bonds; and

WHEREAS, the Act further authorizes the Issuer to enter into an escrow agreement with any paying agent or trustee or designated escrow agent that is not the depository bank of the Issuer for the Defeased Bonds with respect to the safekeeping, investment, reinvestment, administration, and disposition of any such deposit, upon such terms and conditions as the Issuer and such paying agent or trustee or escrow agent may agree, provided that such deposits may be invested only in Eligible Investments which shall mature and/or bear interest payable at such times and in such amounts as will be sufficient to provide for the scheduled payment of the Defeased Bonds; and

WHEREAS, The Bank of New York Mellon Trust Company, N.A., currently serves as the paying agent for the Defeased Bonds and BOKF, NA, is hereby designated as the Escrow Agent by the District and is not the depository bank of the District; and

WHEREAS, the Escrow Agent is designated as the escrow agent for the Defeased Bonds and this Agreement constitutes an escrow agreement as authorized and permitted by the Act; and

WHEREAS, concurrently herewith the Issuer has adopted a Resolution (the *Resolution*) authorizing the transfer and deposit at the time or times specified therein of certain available funds identified in such Resolution in an amount sufficient to refund, discharge, and make final payment of the principal of and premium, if any, on the Defeased Bonds at their respective stated maturity and interest thereon to such dates; and

WHEREAS, the Defeased Bonds will be paid at on the date specified for payment on Exhibit A; and

WHEREAS, the Issuer desires that, certain lawfully available funds of the District shall be applied to purchase the Escrowed Securities for deposit t the credit of the Escrow Fund (hereinafter defined) created pursuant to the terms of this Agreement and to establish a beginning cash balance (if needed) in this Escrow Fund; and

WHEREAS, the Escrowed Securities shall mature and the interest thereon shall be payable at such times and in such amounts so as to provide money which, together with cash balances from time to time on deposit in the Escrow Fund, will be sufficient to pay interest on the Defeased Bonds as it accrues or accretes and becomes payable and the principal of and premium, if any, on the Defeased Bonds to their stated maturity; and

WHEREAS, a description of the Escrowed Securities and beginning cash balance, if any, is attached hereto as Exhibit B, which Exhibit B is hereby incorporated by reference and made a part of this Agreement for all purposes; and

WHEREAS, the Issuer has completed all arrangements for the purchase of the Escrowed Securities and the deposit and credit of the same to the Escrow Fund as provided herein; and

WHEREAS, to facilitate the receipt and transfer of proceeds of the Escrowed Securities, particularly those in book entry form, the Issuer desires to establish an irrevocable Escrow Fund at the corporate trust office of the Escrow Agent; and

WHEREAS, the Escrow Agent is a national banking association with trust powers duly organized and existing under the laws of the United States of America and qualified to transact business in the State of Texas, and is fully qualified and empowered to enter into the Agreement; and

WHEREAS, the governing body of the Issuer has duly approved and authorized the execution of this Agreement; and

WHEREAS, the Issuer shall take all action necessary to call, pay, redeem, and retire the Defeased Bonds in accordance with the provisions thereof, including, without limitation, all actions required by the Order authorizing the issuance of the Defeased Bonds, the Act, the Resolution, and this Agreement; and

WHEREAS, the Escrow Agent is a party to this Agreement to acknowledge its acceptance of the terms and provisions hereof;

NOW, THEREFORE, in consideration of the mutual undertakings, promises, and agreements herein contained, the sufficiency of which hereby is acknowledged, and to secure the full and timely payment of the principal of, premium, if any, and the interest on the Defeased Bonds, the Issuer and the Escrow Agent mutually undertake, promise, and agree for themselves and their respective representatives and successors, as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

Section 1.01 Definitions. Unless the context clearly indicates otherwise, the following terms shall have the meanings assigned to them below when they are used in this Agreement:

Defeased Bonds means the Issuer's obligations more fully described in Schedule I to this Agreement.

Eligible Investments means (i) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by, the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent; or (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.

Escrow Agent means BOKF, NA, or its successors as Escrow Agent under this Agreement.

Escrow Fund means the fund created by this Agreement to be administered by the Escrow Agent pursuant to the provisions of this Agreement.

Escrowed Securities means the Eligible Investments for the Defeased Bonds described in Exhibit B attached to this Agreement or any substituted securities permitted by the provisions of Section 4.03 hereof. Investments in mutual funds and/or unit investment trusts are prohibited.

Issuer means the McAllen Independent School District.

Paying Agent means The Bank of New York Mellon Trust Company, N.A., or its successors or assigns, as the paying agent/registrars for the Defeased Bonds.

Section 1.02 Interpretations. The titles and headings of the articles and sections of this Agreement have been inserted for convenience and reference only and are not to be considered a part hereof and shall not in any way modify or restrict the terms hereof. This Agreement and all of the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth

herein and to achieve the intended purpose of providing for the refunding of the Defeased Bonds in accordance with applicable law.

ARTICLE II

DEPOSIT OF FUNDS AND ESCROWED SECURITIES

Section 2.01 Deposits in the Escrow Fund. The Issuer has as of June 30, 2025 deposited, or caused to be deposited, in the Escrow Fund the money and Escrowed Securities described in Exhibit B attached to this Agreement.

Section 2.02 Receipt. The Escrow Agent acknowledges receipt of a copy of the Order authorizing the issuance of the Defeased Bonds, the Notice of Redemption, the Verification Report prepared by Causey Demgen & Moore P.C. relating to the Bonds, if any, and the Resolution. Reference herein to or citation herein of any provision of such instruments shall be deemed to be an incorporation of such provision as a part hereof.

ARTICLE III

CREATION AND OPERATION OF ESCROW FUND

Section 3.01 Escrow Fund. The Escrow Agent has created on its books a special trust fund and irrevocable escrow to be known as the “McAllen Independent School District Unlimited Tax Refunding Bonds, Series 2020A and Taxable Series 2020B (2025 Defeasance) Escrow Fund” (the *Escrow Fund*) for the benefit of the holders of the Defeased Bonds. The Escrowed Securities and cash, if any, are being utilized by the Issuer to defease the Defeased Bonds as specified in Exhibit B. The Escrow Agent hereby acknowledges that there has been deposited to the credit of the Escrow Fund the beginning cash balance, if any, and the Escrowed Securities described in Exhibit B. The Escrowed Securities and all proceeds therefrom shall be the property of the Escrow Fund and shall be applied only in strict conformity with the terms and conditions of this Agreement. All of the Escrowed Securities in the Escrow Fund, all proceeds therefrom, and all cash balances and reinvestment of such cash balances in accordance with Sections 4.02 and 4.03 from time to time on deposit in the Escrow Fund are hereby irrevocably pledged to the payment of the principal of, premium, if any, and interest on the Defeased Bonds which payment shall be made by timely transfers of such amounts at such times as are provided for in Section 3.02. When the final transfers have been made for the payment of such principal of, premium, if any, and interest on the Defeased Bonds, any balance then remaining in the Escrow Fund shall be transferred to the Issuer, and the Escrow Agent shall thereupon be discharged from any further duties pertaining to the Escrow Fund.

Section 3.02 Payment of Principal, Premium, if any, and Interest. The Escrow Agent is hereby irrevocably instructed to transfer from the cash balances from time to time on deposit in the Escrow Fund to the Paying Agent the amounts required to pay the principal and premium, if any, of the Defeased Bonds at their stated maturity and interest thereon to such date in the amounts and at the times shown in Exhibit A.

Section 3.03 Sufficiency of Escrow Fund. The Issuer represents that the successive receipts of the principal of and interest on the Escrowed Securities, together with the beginning cash balance, if any, in the Escrow Fund will assure that the cash balance on deposit from time to time in the Escrow Fund will be at all times sufficient to provide money for transfer to the Paying Agent at the times and in the amounts required to pay the interest on the Defeased Bonds as such interest comes due, the principal and redemption premium (as applicable) of the Defeased Bonds as the principal and redemption premium, if any, come due on the Defeased Bonds, all as more fully set forth in Exhibit A attached hereto. If, for any reason, at any time, the cash balances on deposit or scheduled to be on deposit in any Escrow Fund shall be insufficient to transfer the amounts required by the Paying Agent to make the payments set forth in Section 3.02, the Issuer shall timely deposit in the Escrow Fund, from lawfully available funds, additional funds in the amounts required to make such payments. Notice of any such insufficiency shall be given promptly by the Escrow Agent to the Issuer.

Section 3.04 Trust Funds. The Escrow Agent shall hold at all times the Escrow Fund, the Escrowed Securities, and all other assets of the Escrow Fund wholly segregated on its books from all other funds and securities on deposit with the Escrow Agent; it shall never allow the Escrowed Securities or any other assets of the Escrow Fund to be commingled with any other funds or securities of the Escrow Agent; and it shall hold and dispose of the assets of the Escrow Fund only as set forth herein. The Escrowed Securities and other assets of the Escrow Fund shall always be maintained by the Escrow Agent as trust funds for the benefit of the holders of the Defeased Bonds; and the books and records of the Escrow Agent shall reflect the foregoing. The holders of the Defeased Bonds shall be entitled to the same preferred claim and first lien upon the Escrowed Securities, the proceeds thereof, and all other assets of the Escrow Fund to which they were entitled as holders of the Defeased Bonds. The amounts received by the Escrow Agent under this Agreement shall not be considered as a banking deposit by the Issuer, and the Escrow Agent shall have no right to title with respect thereto except as a trustee and Escrow Agent under the terms of this Agreement. The amounts received by the Escrow Agent under this Agreement shall not be subject to warrants, drafts, or checks drawn by the Issuer or, except to the extent expressly herein provided, by the Paying Agent.

Section 3.05 Non-Presentment. If any Defeased Bonds shall not be presented to the Paying Agent for payment when the principal thereof, premium, if any, or interest thereon shall have become due, and if cash shall at such times be held by the Paying Agent in trust for that purpose sufficient and available to pay the principal and premium, if any, of such Defeased Bonds and interest thereon, it shall be the duty of the Paying Agent to hold such cash without liability to the holder of such Defeased Bonds for interest thereon after such stated maturity, if any, in trust for the benefit of the holder of such Defeased Bonds, who shall thereafter be restricted exclusively to such cash for any claim of whatever nature on his part on or with respect to such Defeased Bonds, including for any claim for the payment thereof and interest thereon. All cash required by the provisions hereof to be set aside or held in trust for the payment of the Defeased Bonds, including interest thereon, shall be applied to and used solely for the payment of the Defeased Bonds and interest thereon with respect to which such cash has been so set aside in trust.

Subject to the provisions of the last sentence of Section 3.01, cash held by the Paying Agent in trust for the payment and discharge of any of the Defeased Bonds and interest thereon which

remains unclaimed for a period of three (3) years after such Defeased Bonds shall be returned to the Issuer. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent, as appropriate, to the Issuer shall be subject to any applicable unclaimed property laws of the State of Texas.

Section 3.06 Destruction. Any Defeased Bonds canceled on account of payment by the Paying Agent shall be cremated or otherwise destroyed or handled by the Paying Agent in accordance with the Order authorizing the issuance of the Defeased Bonds.

Section 3.07 Irrevocable Escrow. The escrow created by this Agreement shall be irrevocable, and the holders of the Defeased Bonds shall have an express lien on all money and Escrowed Securities in the Escrow Fund until paid out, used, and applied in accordance with this Agreement.

ARTICLE IV

LIMITATION ON INVESTMENTS

Section 4.01 Duty to Invest. Except for the initial investment of the lawfully available funds of the Issuer in the Escrowed Securities, and except as provided in Sections 4.02, 4.03, and 4.04, the Escrow Agent shall not have any power or duty to invest or reinvest any money held hereunder, make substitutions of the Escrowed Securities, or sell, transfer, or otherwise dispose of the Escrowed Securities.

Section 4.02 Reinvestment of Certain Cash Balances in Escrow Funds by Escrow Agent. Except as provided in Section 4.03 hereof, the Escrow Agent shall have no authority to substitute Escrowed Securities for the Escrowed Securities identified in Exhibit B hereto, provided that if there exists cash in the Escrow Fund on the respective dates identified in Exhibit C, if any, then the District agrees to send written direction to the Escrow Agent to make timely subscriptions for and apply such amounts to the purchase of United States Treasury Securities--State and Local Government Securities having a zero percent (0%) interest rate (Zero Interest SLGS), on the respective dates, in the respective amounts, and scheduled to mature as provided on Exhibit C, if any, by executing and filing subscription forms prepared therefor in such form as may be then required by the United States Department of the Treasury; provided that the then existing rules and regulations and policy of the United States Department of the Treasury permit and authorize such investments. Should the policies, rules, and regulations of the United States Department of the Treasury not permit or authorize the purchase of Zero Interest SLGS at such time or times, such cash balance or balances shall remain uninvested and held in trust for the benefit of the holders of the Defeased Bonds and used for the payment of the Defeased Bonds on the dates and in the amount such money would have been expended had such Zero Interest SLGS been acquired and matured.

Section 4.03 Substitutions and Reinvestments. The Escrow Agent shall be authorized to accept initially and temporarily cash and/or substituted securities pending the delivery of the Escrowed Securities identified in Exhibit B, or shall be authorized to sell, exchange, or redeem the Escrowed Securities and reinvest the proceeds thereof, together with other money held in the Escrow Fund, provided that the Escrow Agent receives the following:

(1) an opinion by an independent certified public accountant to the effect that (i) the initial and/or temporary substitution of cash and/or securities (which shall be Eligible Investments) for one or more of the Escrowed Securities identified in Exhibit B pending the receipt and delivery thereof to the Escrow Agent or (ii) the sale, exchange, or redemption of one or more of the Escrowed Securities and the reinvestment of such funds in one or more substituted securities (which shall be Eligible Investments and permitted by the laws of the State of Texas and the Order authorizing the Defeased Bonds to be held in the Escrow Fund), together with the interest thereon and other available investments and money then held in the Escrow Fund, will, in either case, be sufficient, without reinvestment, to pay, as the same become due in accordance with Exhibit A, the principal of, premium, if any, and interest on, the Defeased Bonds which have not previously been paid, and

(2) with respect to an early sale, exchange, or redemption of Escrowed Securities and the reinvestment of the proceeds thereof, an opinion of nationally recognized municipal bond counsel to the effect that (a) such investment will not cause interest on the Bonds or Defeased Bonds to be included in the gross income of the owners thereof for federal income tax purposes, under the Internal Revenue Code of 1986, as amended, and applicable related regulations, and (b) such reinvestment complies with the laws of the State of Texas and with all relevant documents relating to the issuance of the Defeased Bonds.

Section 4.04 Excess Balances. Except with respect to final transfers of amounts held in the Escrow Fund (which shall be controlled by Section 3.01), the Escrow Agent shall transfer excess amounts held in the Escrow Fund to or on the Order of the Issuer provided that the Issuer delivers to the Escrow Agent the following:

(1) an opinion by an independent certified public accountant that, after the transfer of the excess amounts, the principal amount of securities in the Escrow Fund, together with the interest thereon and other available money then held in the Escrow Fund, will be sufficient, without reinvestment, to pay, as the same become due, in accordance with Exhibit A, the principal of, premium, if any, and interest on the Defeased Bonds which have not previously been paid, and

(2) an unqualified opinion of nationally recognized bond counsel to the effect that (a) such transfer will not make the interest on the Defeased Bonds relating to such Escrow Fund subject to federal income taxation, and (b) such transfer complies with the laws of the State of Texas and with all relevant documents relating to the issuance of such Defeased Bonds and the Bonds.

Section 4.05 Allocation of Certain Escrowed Securities. The maturing principal of and interest on the Escrowed Securities in the Escrow Fund may be applied to the payment of any Defeased Bonds relating to the Escrow Fund, and no allocation or segregation of the receipts of principal or interest from such Escrowed Securities is required.

Section 4.06 Security for Funds. The Escrow Agent shall continuously collateralize the money in the Escrow Fund not invested in Escrowed Securities at the written direction of the District with securities or obligations which

qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for public funds to the extent such money is not insured by the Federal Deposit Insurance Corporation. The Escrow Agent may rely on the written investment direction received from the District as to the suitability and legality of the investments being made.

ARTICLE V

APPLICATION OF CASH BALANCES

Section 5.01 In General. Except as provided in Sections 3.01, 3.02, 4.02, 4.03, and 4.04, no withdrawals, transfers, or reinvestment shall be made of cash balances in the Escrow Fund.

ARTICLE VI

RECORDS AND REPORTS

Section 6.01 Records. The Escrow Agent will keep books of record and account in which complete and correct entries shall be made of all transactions relating to the receipts, disbursements, allocations, and application of the money and Escrowed Securities deposited to the Escrow Fund and all proceeds thereof, and such books shall be available for inspection at reasonable hours and under reasonable conditions by the Issuer, and the holders of the Defeased Bonds.

Section 6.02 Reports. As soon as practicable following each August 31, beginning August 31, 2025, while any amount is held in the Escrow Fund, the Escrow Agent shall prepare and send to the Issuer a written report summarizing all transactions occurring since the preceding September 1 (or since the date of establishment of the Escrow Fund with respect to the initial report) relating to the Escrow Fund, including without limitation credits to the Escrow Fund as a result of interest payments on or maturities of the Escrowed Securities and transfers from the Escrow Fund for payments on the Defeased Bonds or otherwise, together with a detailed statement of all Escrowed Securities and the cash balance on deposit in the Escrow Fund as of the end of each such annual period.

ARTICLE VII

CONCERNING THE PAYING AGENTS AND ESCROW AGENT

Section 7.01 Representations. The Escrow Agent hereby represents that it has all necessary power and authority to enter into this Agreement and to undertake the obligations and responsibilities imposed upon it herein and that it will carry out all of its obligations hereunder.

Section 7.02 Limitation on Liability. The liability of the Escrow Agent to transfer funds for the payment of the principal of, premium, if any, and interest on the Defeased Bonds shall be limited to the proceeds of the Escrowed Securities and the cash balances from time to time on deposit in the Escrow Fund.

The recitals herein and in the proceedings authorizing the Bonds shall be taken as the statements of the Issuer and shall not be considered as made by, or imposing any obligation or

liability upon, the Escrow Agent. The Escrow Agent is not a party to the Order authorizing the Defeased Bonds, other than in its role as Paying Agent/Registrar for the Defeased Bonds, and is not responsible for nor bound by any of the other provisions thereof. In its capacity as Escrow Agent, the Escrow Agent undertakes to perform such duties and only such duties, as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Escrow Agent.

The Escrow Agent makes no representations as to the value, conditions, or sufficiency of the Escrow Fund, or any part thereof, or as to the title of the Issuer thereto, or as to the security afforded thereby or hereby, and the Escrow Agent shall not incur any liability or responsibility in respect to any of such matters.

It is the intention of the parties hereto that the Escrow Agent shall never be required to use or advance its own funds or otherwise incur personal financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

The Escrow Agent shall not be liable for any action taken or neglected to be taken by it in the absence of negligence and/or willful misconduct and believed by it to be within the discretion or power conferred upon it by this Agreement, nor shall the Escrow Agent be responsible for the consequences of any error of judgment; and the Escrow Agent shall not be answerable except for its own negligence and/or willful misconduct, nor for any loss unless the same shall have been through its negligence or willful misconduct.

Unless it is specifically otherwise provided herein, the Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of the Issuer with respect to arrangements or contracts with others, with the Escrow Agent's sole duty hereunder being to safeguard the Escrow Fund, and to dispose of and deliver the same in accordance with this Agreement. If, however, the Escrow Agent is called upon by the terms of this Agreement to determine the occurrence of any event or contingency, the Escrow Agent shall be obligated, in making such determination, only to exercise reasonable care and diligence, and in event of error in making such determination the Escrow Agent shall be liable only for its own willful misconduct or its negligence. In determining the occurrence of any such event or contingency the Escrow Agent may request from the Issuer or any other person such reasonable additional evidence as the Escrow Agent in its discretion may deem necessary to determine any fact relating to the occurrence of such event or contingency, and in this connection may make inquiries of, and consult with, among others, the Issuer at any time.

Section 7.03 Compensation.

(a) The Issuer has agreed to pay the Escrow Agent as set forth in Exhibit D for the administration of this Agreement. In the event that the Escrow Agent is requested to perform any extraordinary services hereunder and the Escrow Agent agrees to perform such request, the Issuer hereby agrees to pay reasonable fees to the Escrow Agent for such extraordinary services and to reimburse the Escrow Agent for all expenses incurred by the Escrow Agent in performing such extraordinary services, including counsel fees, and the Escrow Agent hereby agrees to look only to the Issuer for the payment of such fees and reimbursement of such expenses. The Escrow Agent hereby agrees that in no event shall it ever assert any claim or lien against the Escrow Fund for

any fees for its services, whether regular or extraordinary, as Escrow Agent, or in any other capacity, or for reimbursement for any of its expenses.

(b) The Paying Agent is a place of payment (paying agent) for the Defeased Bonds listed on Schedule I. The Issuer shall pay to the Paying Agent the amounts due and owing for all future paying agency services of the Paying Agent with respect to such Defeased Bonds as provided in the paying agent/registrar agreement relating thereto. The District warrants that it has received from the Paying Agent approval of the arrangements herein made and written acknowledgment that the sum paid to the Paying Agent has been accepted in payment of all future paying agency services of the Paying Agent in connection with the Defeased Bonds listed on Schedule I.

Section 7.04 Successor Escrow Agents. If at any time the Escrow Agent or its legal successor or successors should become unable, through operation of law or otherwise, to act as escrow agent hereunder, or if its property and affairs shall be taken under the control of any state or federal court or administrative body because of insolvency or bankruptcy or for any other reason, a vacancy shall forthwith exist in the office of Escrow Agent hereunder. In such event the Issuer, by appropriate resolution or Resolution, shall promptly appoint an Escrow Agent to fill such vacancy. If no successor Escrow Agent shall have been appointed by the Issuer within 60 days, a successor may be appointed by the holders of a majority in principal amount of the Defeased Bonds then outstanding for purposes of this Agreement by an instrument or instruments in writing filed with the Issuer, signed by such holders or by their duly authorized attorneys-in-fact. If, in a proper case, no appointment of a successor Escrow Agent shall be made pursuant to the foregoing provisions of this Section within sixty (60) days after a vacancy shall have occurred, the holder of any Defeased Bonds or the Escrow Agent may apply to any court of competent jurisdiction, at the sole expense of the District, to appoint a successor Escrow Agent. Such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Escrow Agent.

Any successor Escrow Agent shall be a bank, trust company or other financial institution that is duly qualified under applicable law (the Act, or other appropriate statute) to serve as escrow agent hereunder and authorized and empowered to perform the duties and obligations contemplated by this Agreement and organized and doing business under the laws of the United States or one of the states, authorized under such laws to exercise corporate trust powers, having its principal office and place of business in the State of Texas or in the City of New York, New York having a combined capital and surplus of at least \$50,000,000 and subject to the supervision or examination by federal or state authority.

Any successor Escrow Agent shall execute, acknowledge, and deliver to the Issuer and the Escrow Agent an instrument accepting such appointment hereunder, and the Escrow Agent shall execute and deliver an instrument transferring to such successor Escrow Agent, subject to the terms of this Agreement, all the rights, powers, and trusts of the Escrow Agent hereunder. Upon the request of any such successor Escrow Agent, the Issuer shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Escrow Agent all such rights, powers, and duties. The Escrow Agent at the time acting hereunder may at any time resign and be discharged from the trust hereby created by giving not less than thirty (30) days' written notice to the District. No such resignation shall take effect unless a successor Escrow Agent shall have been appointed as herein provided in this Paragraph 7.05. If within sixty (60) days following the resignation of the Escrow Agent no successor Escrow Agent shall have been

appointed, the Escrow Agent may apply to any court of competent jurisdiction at the expense of the District to appoint a successor Escrow Agent.

Section 7.05 Notice of Redemption and/or Notice of Defeasance. The Paying Agent shall publish or mail the Notice of Redemption for the Defeased Bonds listed on Schedule I attached hereto and as required by the order authorizing such Defeased Bonds. The Escrow Agent also hereby acknowledges receipt of the Notice of Redemption which shall be published and/or mailed to the holders of the Defeased Bonds in the time, form, and manner as provided in the Order authorizing the issuance of such Defeased Bonds, but assumes no responsibilities of any kind with respect to such notice. The District has advised the Escrow Agent that the Defeased Bonds will be escrowed to the date of Stated Maturity specified in Schedule I hereto. The Paying Agent hereby acknowledges the receipt of the Notice of Redemption and its ongoing duties and responsibilities with respect to the Defeased Bonds and that the Notice of Redemption will be provided to the holders of the Defeased Bonds in the form and manner that is customary in the securities industry.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Notice. Any notice, authorization, request, or demand required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when mailed by registered or certified mail, postage prepaid addressed as follows:

To the Escrow Agent:

BOKF, NA
5956 Sherry Lane, Suite 900
Dallas, TX 75225
Attention: BOK Financial- Corporate Trust and Escrow Services

To the Issuer:

McAllen Independent School District
2000 North 23rd Street
McAllen, Texas 78501
Attention: Superintendent of Schools

The United States Post Office registered or certified mail receipt showing delivery of the aforesaid shall be conclusive evidence of the date and fact of delivery. Any party hereto may change the address to which notices are to be delivered by giving to the other parties not less than ten (10) days prior notice thereof.

Section 8.02 Termination of Responsibilities. Upon the taking of all the actions as described herein by the Escrow Agent, the Escrow Agent shall have no further obligations or responsibilities hereunder to the Issuer, the holders of the Defeased Bonds, or to any other person or persons in connection with this Agreement.

Section 8.03 Binding Agreement. This Agreement shall be binding upon the Issuer, the Escrow Agent, and their respective successors and legal representatives and shall inure solely to

the benefit of the holders of the Defeased Bonds, the Issuer, the Escrow Agent, and their respective successors and legal representatives.

Section 8.04 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

Section 8.05 Governing Law. This Agreement shall be deemed to be an agreement made under the laws of the State of Texas and for all purposes shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America.

Section 8.06 Time of the Essence. Time shall be of the essence in the performance of obligations from time to time imposed upon the Escrow Agent by this Agreement.

Section 8.07 Amendments and Modifications. This Agreement shall be binding upon the District and the Escrow Agent and their respective successors and legal representatives and shall inure solely to the benefit of the holders of the Defeased Bonds, the District, the Escrow Agent, and their respective successors and legal representatives. Furthermore, no alteration, amendment, or modification of any provision of this Agreement shall be effective unless (i) prior written consent of such alteration, amendment, or modification shall have been obtained by the District from the holders of all Defeased Bonds outstanding at the time of such alteration, amendment, or modification and (ii) such alteration, amendment, or modification is in writing and signed by the parties hereto; provided, however, the District and the Escrow Agent may, without the consent of the holders of the Defeased Bonds (upon the District's representation to the Escrow Agent that the District has obtained the written confirmation of all rating agencies then rating the Defeased Bonds that the proposed amendment will not result in the ratings on the Defeased Bonds being lowered or withdrawn as a result of the amendment, or that the written confirmation from the rating agencies shall not be required because the proposed amendment is limited to (i) the insertion of inadvertently omitted material or the correction of mistakes or clarification of ambiguities, (ii) the pledging of additional security to the holders of the Defeased Bonds, or (iii) the deposit of additional cash or Escrowed Securities into the Escrow Fund), amend or modify the terms and provisions of this Agreement to cure in a manner determined by the District to be not adverse to the holders of the Defeased Bonds any ambiguity, formal defect, or omission in this Agreement; provided, however, that no such amendment shall adversely affect the firm banking arrangements made for the payment of the principal of, premium, if any, and interest on the Defeased Bonds.

Section 8.08 Holiday. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Agreement, is not a business day, such payment may be made or act performed or right exercised on the next succeeding business day with the same force and effect as if done on the date provided therefor herein and, in the case of any payment, no interest shall accrue for the period after such date.

Section 8.09 Covenants. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Agreement, in any and every Defeased Bonds as executed, authenticated, and delivered, and in all proceedings

pertaining thereto as the Defeased Bonds shall have been modified as provided in this Agreement. The Issuer covenants that it is duly authorized under the laws of the State of Texas to execute and deliver this Agreement, that all actions on its part for the payment of the Defeased Bonds as provided herein and the execution and delivery of this Agreement have been duly and effectively taken, and that the Defeased Bonds in the hands of the holders and owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof as provided in this Agreement.

Section 8.10 Interpretation of Agreement. In the event of any disagreement or controversy hereunder or if conflicting demands or notices are made upon the Escrow Agent growing out of or relating to this Agreement or in the event that the Escrow Agent in good faith is in doubt as to what action should be taken hereunder, the Issuer expressly agrees and consents that the Escrow Agent shall have the absolute right at its election to:

(a) withhold and stop all further proceedings in, and performance of, this Agreement with respect to the issue in question and of all instructions received hereunder in regard to such issue; and

(b) file a suit in interpleader and obtain an order from a court of appropriate jurisdiction requiring all persons involved to interplead and litigate in such court their several claims and rights among themselves. Nothing in this paragraph is intended to create or expand upon any right that the Escrow Agent would otherwise have available to it under applicable law to commence an interpleader or to alter the obligations of the Escrow Agent under this Agreement.

In the event the Escrow Agent becomes involved in a controversy or litigation in connection with this Agreement, the Issuer agrees to indemnify and save the Escrow Agent harmless, to the extent permitted by law, from all loss, cost, damages, expenses, and attorney fees suffered or incurred by the Escrow Agent as a result thereof, except as a result of the Escrow Agent's own negligence or willful misconduct. The foregoing indemnification shall survive the termination of this Agreement or the resignation or removal of the Escrow Agent for any reason. The obligations of the Escrow Agent under this Agreement shall be performable at the corporate office of the Escrow Agent designated in Section 8.01 hereof.

The Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and it shall, in the absence of negligence or bad faith on the part of the Escrow Agent, incur no liability and shall be fully protected in acting in accordance with the opinion and instructions of such counsel.

Section 8.11 Liability; Reliance; Assignment. The Escrow Agent shall not be responsible or liable to any person in any manner whatsoever for the sufficiency, correctness, genuineness, effectiveness, or validity of this Agreement with respect to the Issuer, or for the identity or authority of any person making or executing this Agreement for and on behalf of the Issuer. The Escrow Agent is authorized by the Issuer to rely upon the representations of the Issuer with respect to this Agreement and the deposits made pursuant hereto and as to the Issuer's right and power to execute and deliver this Agreement, and the Escrow Agent shall not be liable in any manner as a result of such reliance. The duty of the Escrow Agent hereunder

shall only be to the Issuer and the holders of the Defeased Bonds. Neither the Issuer nor the Escrow Agent shall assign or attempt to assign or transfer any interest hereunder or any portion of any such interest without the written consent of each of the parties to this Agreement.

The Escrow Agent is also authorized to transfer funds relating to the redemption and defeasance of the Defeased Bonds in the manner disclosed in the closing memorandum as prepared by the District's financial advisor, bond counsel, or other agent. The Escrow Agent may act on an email transmission of the closing memorandum acknowledged by the financial advisor, bond counsel, or the District as the final closing memorandum. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such memorandum or instructions.

The Escrow Agent may act on any order, request, approval or other authority relating to the Defeased Bonds which is provided by the District through an e-mail transmission without the necessity of obtaining an original or executed copy of any such authority.

Section 8.12 Required Contract Verifications. The undersigned company, for purposes of sections 2252.152, 2271.002, 2274.002, and 2276.002, Texas Government Code, as amended, hereby verifies that the company and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:

- 1) Do not boycott energy companies and will not boycott energy companies during the term of this Agreement. "Boycott energy company" has the meaning provided in section 809.001 of the Texas Government Code, as amended.
- 2) Do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of such Agreement. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in section 2274.001(3) of the Texas Government Code, as amended. "Firearm entity" and "firearm trade association" have the meanings provided in section 2274.001(6) and (7) of the Texas Government Code, as amended.
- 3) Do not boycott Israel and will not boycott Israel during the term of such Agreement. "Boycott Israel" has the meaning provided in section 808.001 of the Texas Government Code, as amended.
- 4) Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization, are not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under section 2252.153 or section 2270.0201 of the Texas Government Code, as amended. "Affiliate" means any entity that controls, is controlled by, or is under common control with the company within the meaning of SEC Rule 405, 17. C.F.R. § 230.405 and exists to make a profit.

Notwithstanding anything contained herein, the representations and covenants contained in this section shall survive termination of this Agreement until the statute of limitations has run.

Section 8.13 Counterparts. This Agreement may be executed in any number of

counterparts, each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute one and the same instrument.

Section 8.14 Incorporation of Preamble Recitals. The recitals contained in the preamble to this Agreement are hereby found to be true, and such recitals are hereby made a part of this Agreement for all purposes and are adopted as a part of the judgment and findings of the Issuer.

[The remainder of this page intentionally left blank]

EXECUTED as of the date first written above.

MCALLEN INDEPENDENT SCHOOL
DISTRICT

By _____
Sofia M. Pena, President,
Board of Trustees
McAllen Independent School District

ATTEST:

Erica de la Garza-Lopez, Secretary,
Board of Trustees
McAllen Independent School District

(ISSUER SEAL)

BOKF, NA, as Escrow Agent

By _____

Title _____

Address: 5956 Sherry Lane, Suite 900
Dallas, Texas 75225

ACKNOWLEDGEMENT OF RECEIPT OF NOTICES AND CONTINUING DUTIES

The undersigned acknowledges the receipt of the Resolution and the Escrow and Trust Agreement pertaining to the defeasance of the Defeased Bonds and consents to the provisions of, and acknowledges its ongoing duties and responsibilities with respect to the Defeased Bonds as specified under, Sections 7.03(b) and 7.05 hereof. The undersigned also acknowledges receipt of the order authorizing the issuance of the Defeased Bonds and the Notice of Redemption. The Notice of Redemption described in Section 7.05 will be provided to the holders of the Defeased Bonds in the form and manner that is customary in the securities industry.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.

By: _____

Title: _____

Address: 500 Ross St., Suite 625
Pittsburgh, Pennsylvania 15262

INDEX TO EXHIBITS

Schedule I
Defeased Bonds

Exhibit A
Schedule of Debt Service on the Defeased Bonds

Exhibit B
Escrowed Securities and Cash to pay the Defeased Bonds

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Escrow Fund Cash Flow and Reinvestment

Exhibit D
Escrow Agent Compensation

Schedule I

Defeased Bonds

McAllen Independent School District Unlimited Tax Refunding Bonds, Series 2020A, dated October 15, 2020, in the original principal amount of \$8,075,000, \$1,290,000 of the February 15, 2030 maturity; and

McAllen Independent School District Unlimited Tax Refunding Bonds, Taxable Series 2020B, dated October 15, 2020, in the original principal amount of \$32,800,000, \$4,000,000 of the February 15, 2028 maturity and \$1,920,000 of the February 15, 2029 maturity.

Exhibit A

Schedule of Debt Service to pay the Defeased Bonds

Exhibit B

Escrowed Securities and Cash to pay the Defeased Bonds

1.	OMS/SLGS	\$ _____
2.	Cash Deposit	\$ _____
		<u> </u>

Exhibit C

Escrow Fund Cash Flow and Reinvestment

Exhibit D

Escrow Agent Compensation

**BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT**

August 27, 2024

MEETING DATE: _____

SUBJECT: Discussion and Possible Action on the Approval and Adoption of the Resolution for the 2024 Tax Rate

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Truth-In-Taxation, a guide for setting the District tax rates (Texas Property Tax), the Texas Education Code and Board Policy CCG require every local education agency to set the tax rate for the current tax year.

The current 2023 tax rate for Maintenance and Operations is \$0.8448 and a Debt Service tax rate of \$0.1563. The combined tax rate for tax year 2023 is \$1.0011. House Bill 3 (HB3), as passed by the 86th legislature on June 11, 2019, addresses tax rate compression. As a result of the tax compression the Maintenance and Operations tax rate is proposed at \$0.8350.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District met the truth-in-taxation laws by publishing the Notice of Public Meeting to Discuss Budget and Proposed Tax Rate on June 5, 2024 and by holding a public hearing on June 18, 2024.

Although the previously published total tax rate will remain the same, the increase in the Interest and Sinking rate requires the re-publication of the Notice of Proposed Tax Rate as per Board Policy. A Public Notice was published on August 17, 2024 for a Public Hearing on the adoption of the District's Tax Rate for Tax Year 2024 on August 27, 2024.

THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE & OPERATIONS THAN LAST YEAR'S TAX RATE. THE TAX RATE WILL EFFECTIVELY BE RAISED BY 2.59 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$-9.80. THERE WILL BE AN OVERALL DECREASE IN THE DISTRICT'S PROPOSED TOTAL TAX RATE FOR THE CURRENT 2024 TAX YEAR.

LEGAL REVIEW:

John Ball, Staff Attorney.

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on the Approval and Adoption of the Resolution for the 2024 Tax Rate

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BUDGETARY CONSIDERATIONS:

The District's fiscal year 2024-2025 budget was originally planned using a tax rate of \$0.9966. The budgeted tax rate for Maintenance & Operations was \$0.8448 and \$0.1518 for Debt Service. The proposed 2024 Maintenance & Operations tax rate is \$0.8350 and the proposed Debt Service tax rate is \$0.1616. There will be a decrease in the District's total tax rate for the 2024 tax year totaling \$0.0045. The combined tax rate for tax year 2024 will total \$0.9966.

RECOMMENDED BOARD ACTION:

The motions must read as follows:

I move that the property tax rate be increased by the adoption of a tax rate of \$0.9966, which is effectively a 8.02 percent increase in the tax rate.

I move that the Maintenance & Operations tax rate be decreased for the 2024 tax year by the adoption of a Maintenance and Operations tax rate of \$0.8350.

I move that the District's Debt Tax Rate be increased to a tax rate of \$0.1616.

I move to approve the Resolution Setting the 2024 Tax Rate of the McAllen Independent School District for the Year Beginning January 1, 2024 and Ending December 31, 2024.

Attachment: ☒

SUBMITTED BY: Iris Luna **SUPERVISOR:** Lorena Garcia

For further information contact:
Name: Iris Luna, RTSBA
Office: (956) 618-6016
Email: iris.luna@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 20, 2024 15:13 CDT)

Superintendent of Schools

RESOLUTION

MAKING CERTAIN FINDINGS UNDER TEX. EDUC. CODE § 26.042(e)
CONCERNING SETTING THE MAINTENANCE & OPERATIONS AND DEBT
SERVICE TAX RATES OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT
FOR THE YEAR BEGINNING ON JANUARY 1, 2024, AND ENDING DECEMBER
31, 2024

WHEREAS the valuation of taxable property within the boundaries of the McAllen Independent School District has heretofore been determined by the Hidalgo County Appraisal District and certified to the Board of Trustees; and,

WHEREAS the budget for the McAllen Independent School District was prepared and adopted on June 18, 2024, after the issuance of Public Notice and after a Public Hearing on the matter conducted pursuant to Tex. Educ. Code § 44.04; and,

WHEREAS the tax rate for the McAllen Independent School District was prepared and is scheduled to be adopted on August 27, 2024 by the Board of Trustees; and,

WHEREAS the Board of Trustees of the McAllen Independent School District is scheduled to adopt on August 27, 2024 a Resolution to defease certain General Obligation Bonds previously issued by the District; and,

WHEREAS because of the defeasance the Board directed the re-publication of a Public Notice and for a Public Hearing on the adoption of the District's Tax Rate for Tax Year 2024; and,

WHEREAS a Public Hearing relating to the adoption of the Tax Rate for Tax Year 2024 was conducted by the Board of Trustees of the McAllen Independent School District on August 27, 2024, pursuant to Tex. Educ. Code § 44.04:

***NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES
OF THE MCALLEN INDEPENDENT SCHOOL DISTRICT:***

SECTION 1. That the facts and recitations contained in the preamble of this Resolution are hereby found and declared to be true and correct.

SECTION 2. That, as required by to Tex. Educ. Code § 45.00 I(a)(2) and to Tex. Educ. Code§ 45.0021 the Board must levy Interest and Sinking Fund Taxes in an amount sufficient to pay the principal of and interest on District-issued General Obligation Bonds before the principal and interest due on such bonds which will become due during the 2024-2025 budget year.

SECTION 3. The Maintenance & Operations Tax Rate on the \$100 valuation adopted and levied for the Tax Year beginning January 1, 2024, and ending on December 31, 2024, in the amount of \$0.8350 on a \$100 valuation, payable in lawful currency of the United States, is levied for the support and maintenance of the public schools of the McAllen Independent School District.

SECTION 4. The Debt Service (Interest & Sinking Fund) Tax Rate on the \$100 valuation adopted and levied for the Tax Year beginning on January 1, 2024, and ending on December 31, 2024, in the amount of \$0.1616 on a \$100 valuation, payable in lawful currency of the United States, is levied for the support and maintenance of the public schools of the McAllen Independent School District.

SECTION 5. In adopting such rates the Board finds that:

THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE. THE TAX RATE WILL BE EFFECTIVELY RAISED BY 2.59 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$-9.80.

SECTION 6. The Total District Tax Rate on the \$100 valuation adopted and levied for the Tax Year beginning January 1, 2024 and ending on December 31, 2024 in the amount of \$0.9966 on a \$100 valuation, payable in lawful currency of the United States, is levied for the public schools of McAllen Independent School District.

PASSED, APPROVED AND ADOPTED this the 27th day of August 2024.

McAllen Independent School District

Sofia M. Peña, President,
Board of Trustees,
McAllen Independent School District

ATTEST:

Erica de la Garza-Lopez, Secretary,
Board of Trustees,
McAllen Independent School District

APPROVED AS TO FORM:



JOHNATHAN BALL (Aug 20, 2024 09:18 CDT)
Johnathan Ball, Staff Attorney

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion of Update to MISD Policy CDA (LOCAL)-Other Revenues: Investments (First Reading)

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Public Funds Investment Act requires each local government to have a written investment policy in place that complies with the Public Fund Investment Act, Government Code 2256.005(e).

Administration is proposing an update to local referenced policy.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

A review of the District's investment policy and strategy must be documented by formal action of the Board of Trustees. This action would also record any changes made to either the policy or strategies.

Attached please find the following items:

1. Current Policy CDA (LOCAL)
2. Proposed Policy CDA (LOCAL)

LEGAL REVIEW:

Reviewed by TASB Policy Services.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

No action by the Board is necessary since revised Policy CDA (LOCAL) (First Reading) is submitted for information purposes only.

Attachment: ☒

SUBMITTED BY: Iris Luna

For further information contact:
Name: Iris Luna, RTSBA
Office: 956-618-6017
Email: Iris.luna@mcallenisd.net

SUPERVISOR: Lorena Garcia

Approved for presentation to the Board of Education:

Rene Gutierrez
RENE GUTIERREZ (Aug 21, 2024 10:38 CDT)

Current Policy

Investment Authority

The Superintendent or any other person designated by Board resolution shall serve as the investment officer of the District and shall invest and report District funds as directed by the Board and in accordance with the District's written investment policy and generally accepted accounting procedures. All investment transactions except investment pool funds and mutual funds shall be executed on a delivery versus payment basis.

Approved Investment Instruments

From those investments authorized by the Public Funds Investments Act, Section 2256 of the Government Code, and described further in CDA(LEGAL) under Authorized Investments, the Board shall permit investment of District funds, including bond proceeds and pledged revenue to the extent allowed by law, in only the following investment types, consistent with the strategies and maturities defined in this policy:

1. Obligations of, or guaranteed by, the U.S. government, its agencies and instrumentalities, excluding mortgage-backed securities with a maximum stated maturity of three years, as permitted by Government Code 2256.009.
2. Obligations of any state in the United States and their subdivisions rated A or better by a nationally recognized rating agency, with a maturity not to exceed three years, as permitted by Government Code 2256.009.
3. FDIC-insured or collateralized depository certificates of deposit collateralized in accordance with this policy, as permitted by Government Code 2256.010, to include the Promontory Network's CDARS and ICS deposits, with a stated maturity not to exceed two years.
4. NCUIF-insured share certificates from credit unions in Texas, as permitted by Government Code 2256.10.
5. Fully collateralized repurchase agreements, as defined by Government Code 2256.011. Flexible repurchase agreements for bond proceeds may extend for as long as three years, but not beyond the expenditure plan.
6. Prime banker's acceptances, as defined by Government Code 2256.012, with a stated maturity not to exceed one year.
7. A1/P1 commercial paper, or the equivalent, as permitted by Government Code 2256.013, not to exceed 270 days to stated maturity.

OTHER REVENUES
INVESTMENTS

CDA
(LOCAL)

8. AAA-rated, SEC-registered money market mutual funds, as permitted by Government Code 2256.014, striving to maintain a \$1 net asset value.
9. Texas local government investment pools, as defined by Government Code 2256.016, which strive to maintain a \$1 net asset value.
10. FDIC-insured or collateralized interest-bearing accounts in any bank in Texas.
11. FDIC-insured brokered certificates of deposit securities from a bank in any state in the United States, delivered versus payment, not to exceed one year to maturity. Before a purchase, the investment officer shall verify the FDIC status of the bank.

Safety

The primary goal of the investment program is to ensure safety of principal, to maintain liquidity, and to maximize financial returns within current market conditions in accordance with this policy. Investments shall be made in a manner that ensures the preservation of capital in the overall portfolio, and offsets during a 12-month period any market price losses resulting from interest-rate fluctuations by income received from the balance of the portfolio. No individual investment transaction shall be undertaken that jeopardizes the total capital position of the overall portfolio.

**Investment
Management**

In accordance with Government Code 2256.005(b)(3), the quality and capability of investment management for District funds shall be in accordance with the standard of care, investment training, and other requirements set forth in Government Code Chapter 2256.

**Liquidity and
Maturity**

The total portfolio of the District shall have a maximum dollar weighted maturity (WAM) of two years. The maximum allowable stated maturity of any other investment owned by the District shall not exceed three years from the time of purchase, with the exception of flex repurchase agreements. Matching the WAM and authorized investments, the District shall establish the one-year Treasury Bill and the two-year Treasury Note as the risk benchmarks for the portfolio.

The District's investment portfolio shall have sufficient liquidity to meet anticipated cash flow requirements and buffer against unanticipated cash needs.

**Other Debt
Obligations**

The maintenance tax notes, qualified school construction notes, and any other debt obligations shall be defined as a separate sub-portfolio and shall have a maximum dollar weighted maturity of five years. The maximum allowable stated maturity of such obligations shall not exceed five years from the time of purchase.

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INVESTMENTS

CDA
(LOCAL)

Diversity

The investment portfolio shall be diversified in terms of investment instruments, maturity scheduling, and financial institutions to reduce risk of loss resulting from overconcentration of assets in a specific class of investments, specific maturity, or specific issuer. Under certain market conditions, funds may be maintained in one investment vehicle to ensure preservation and safety of principal.

Monitoring Market Prices

The investment officer shall monitor the investment portfolio and shall keep the Board informed of significant changes in the market value of the District's investment portfolio. Information sources may include financial/investment publications and electronic media, available software for tracking investments, depository banks, commercial or investment banks, financial advisers, and representatives/advisers of investment pools or money market funds. Monitoring shall be done monthly or more often as economic conditions warrant by using appropriate reports, indices, or benchmarks for the type of investment.

Monitoring Rating Changes

The investment officer shall monitor the credit ratings on no less than a monthly basis. If a required credit rating drops, the investment officer shall inform the Superintendent. Depending on the reason for the credit rating drop, the investment officer shall recommend either an immediate or delayed liquidation or sale.

Monitoring FDIC Status

The investment officer shall monitor on no less than a weekly basis the status and ownership of all banks issuing brokered CDs owned by the District, based upon information from the FDIC. If any bank has been acquired or merged with another bank in which brokered CDs are owned, the investment officer shall immediately liquidate any brokered CD that places the District above the FDIC insurance level.

Funds / Strategies

Investments of the following fund categories shall be consistent with this policy and in accordance with the applicable strategy defined below. Under certain market conditions, funds may be consolidated into one investment portfolio to ensure preservation and safety of principal. All strategies described below for the investment of a particular fund should be based on an understanding of the suitability of an investment to the financial requirements of the District and consider preservation and safety of principal, liquidity, marketability of an investment if the need arises to liquidate before maturity, diversification of the investment portfolio, and yield.

Operating Funds

Investment strategies for operating funds (including any commingled pools containing operating funds) shall have as their primary objectives preservation and safety of principal, investment liquidity, and maturity sufficient to meet anticipated monthly cash flow requirements.

OTHER REVENUES
INVESTMENTS

CDA
(LOCAL)

Custodial Funds	Investment strategies for custodial funds shall have as their primary objectives preservation and safety of principal, investment liquidity, and maturity sufficient to meet anticipated monthly cash flow requirements.
Debt Service Funds	Investment strategies for debt service funds shall have as their primary objective sufficient investment liquidity to timely meet debt service payment obligations in accordance with provisions in the bond documents. Successive debt service payments must be funded before any extension.
<i>Other Debt Obligation Funds</i>	Investment strategies for debt obligations such as maintenance tax notes and qualified school construction notes shall have as their primary objectives safety, investment liquidity, and maturity. The funds shall be sufficient to timely meet debt obligations in accordance with provisions in the note documents.
Capital Project Funds	Investment strategies for capital project funds shall have as their primary objective sufficient investment liquidity to timely meet capital project obligations. Investments should meet expected expenditure plans.
Proprietary Funds	Investment strategies for proprietary funds (including any commingled pools containing proprietary funds) shall have as their primary objectives safety, investment liquidity, and maturity sufficient to meet anticipated cash flow requirements. Investments made out of this fund will be considered suitable if they have a highly/actively traded secondary market and can be sold quickly and turned into immediate cash or invested in overnight funds or authorized local government investment pools.
Safekeeping of District-Owned Securities	The District shall retain clearly marked receipts/legal documents providing proof of the District's ownership. All safekeeping shall be executed on a delivery-versus-payment basis.
Sellers of Investments	Prior to handling investments on behalf of the District, local government pools in which the District participates must submit required written documents in accordance with law. [See Sellers of Investments, CDA(LEGAL)] Representatives of brokers/dealers shall be registered with the Texas State Securities Board and must have membership in the Securities Investor Protection Corporation (SIPC) and be in good standing with the Financial Industry Regulatory Authority (FINRA). Investment officers shall maintain information regarding the brokers, and the authorized broker/dealer list shall be reviewed annually by the Board.
Collateralization	The District shall require collateralization on all time and demand deposits and repurchase agreements. In order to anticipate market

OTHER REVENUES
INVESTMENTS

CDA
(LOCAL)

changes and to provide a level of security for all funds, the collateralization level shall be 102 percent of market value of principal and accrued interest. Mortgage-backed collateral for time and demand deposit shall be required to have a 110-percent margin.

**Time and Demand
Deposits**

Collateral for time and demand deposits shall be pledged to the District and shall not be owned by the District. Collateral shall be pledged under a written agreement under the terms of FIRREA. Collateral shall be held by an independent third-party custodian approved by the District outside the holding company of the pledging bank. A clearly marked evidence of ownership (safekeeping receipt/report) shall be supplied to and retained by the District.

The custodian shall be required to provide monthly collateral reports directly to the District. The pledging bank shall be responsible for monitoring and maintaining the margins daily. The right of collateral substitution shall be granted with prior District approval. Acceptable collateral shall include only obligations of the U.S. government, its agencies and instrumentalities, including mortgage-backed securities, municipal bonds of any state rated A or better by two nationally recognized rating agencies, and approved letters of credit.

**Repurchase
Agreements**

Repurchase collateral shall be owned by the District. Collateral shall be held by an independent third party approved by the District. A clearly marked evidence of ownership (safekeeping receipt/report) shall be supplied to and retained by the District. The custodian shall be required to provide timely collateral reports directly to the District. The counter party shall be responsible for monitoring and maintaining the margins daily.

Collateral for repurchase agreements should be worth 102 percent, but never lower than 101 percent. The right of collateral substitution shall be granted. Acceptable collateral shall include only obligations of the U.S. government, its agencies and instrumentalities, including mortgage-backed securities, municipal bonds of any state rated A or better by two nationally recognized rating agencies.

**Soliciting Bids for
CDs**

The District may solicit bids for certificates of deposit in writing, by telephone, or electronically, or by a combination of these methods.

Interest Rate Risk

To report exposure to changes in interest rates and other risks that could adversely affect the value of investments, the District shall report final and weighted-average-maturity data.

The District shall monitor interest rate risk using weighted average maturity, weighted average yield, and use diversification.

Internal Controls

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A system of internal controls shall be established and documented by the investment officer in writing and must include specific procedures designating who has authority to withdraw funds. Also, they shall be designed to protect against losses of public funds arising from fraud, employee error, misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees and officers of the District. Controls deemed most important shall include:

1. Separation of transaction authority from accounting and recordkeeping and electronic transfer of funds;
2. Avoidance of collusion;
3. Custodial safekeeping for collateral and safekeeping of District-owned securities;
4. Clear delegation of authority;
5. Written documentation of all transactions; and
6. Documentation of dealer questionnaires, bids/offers, evaluations, transactions, and rationale.

These controls shall be reviewed by the District's independent auditing firm.

Reports

In accordance with law, the investment officers shall prepare and submit to the Board in a timely manner a written, signed investment report at least quarterly. At a minimum, the report shall include the following:

1. Details of each investment and depository position held by the District.
2. The beginning and ending market and book value of the portfolio for the period reported.
3. Changes to the market value during the period.
4. Fully accrued interest and total investment income for the period.
5. The book and market value of each security and investment position.
6. The stated maturity date for each security and investment position.
7. The dollar weighted average maturity for the portfolio.
8. The yield of the benchmark and the portfolio yield for the comparable period.

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The prices used for valuation of market value shall be obtained from an independent source.

Annual Review

The Board shall review this investment policy and investment strategies not less than annually and shall document its review in writing, which shall include whether any changes were made to either the investment policy or investment strategies.

Annual Audit

In conjunction with the annual financial audit, the District shall perform a compliance audit of management controls on investments and adherence to the District's established investment policies.

Proposed Policy

Investment Authority

The Superintendent or any other person designated by Board resolution shall serve as the investment officer of the District and shall invest and report District funds as directed by the Board and in accordance with the District's written investment policy and generally accepted accounting procedures. All investment transactions except investment pool funds and mutual funds shall be executed on a delivery versus payment basis.

Approved Investment Instruments

From those investments authorized by the Public Funds Investments Act, Section 2256 of the Government Code, and described further in CDA(LEGAL) under Authorized Investments, the Board shall permit investment of District funds, including bond proceeds and pledged revenue to the extent allowed by law, in only the following investment types, consistent with the strategies and maturities defined in this policy:

1. Obligations of, or guaranteed by, the U.S. government, its agencies and instrumentalities, excluding mortgage-backed securities with a maximum stated maturity of ~~three~~ five years, as permitted by Government Code 2256.009.
2. Obligations of any state in the United States and their subdivisions rated A or better by a nationally recognized rating agency, with a maturity not to exceed ~~three~~ five years, as permitted by Government Code 2256.009.
3. FDIC-insured or collateralized depository certificates of deposit collateralized in accordance with this policy, as permitted by Government Code 2256.010, to include the Promontory Network's CDARS and ICS deposits, with a stated maturity not to exceed two years.
4. NCUIF-insured share certificates from credit unions in Texas, as permitted by Government Code 2256.10.
5. Fully collateralized repurchase agreements, as defined by Government Code 2256.011. Flexible repurchase agreements for bond proceeds may extend for as long as three years, but not beyond the expenditure plan.
6. Prime banker's acceptances, as defined by Government Code 2256.012, with a stated maturity not to exceed one year.
7. A1/P1 commercial paper, or the equivalent, as permitted by Government Code 2256.013, not to exceed ~~270~~ 365 days to stated maturity.

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8. AAA-rated, SEC-registered money market mutual funds, as permitted by Government Code 2256.014, striving to maintain a \$1 net asset value.
9. Texas local government investment pools, as defined by Government Code 2256.016, which strive to maintain a \$1 net asset value.
10. FDIC-insured or collateralized interest-bearing accounts in any bank in Texas.
11. FDIC-insured brokered certificates of deposit securities from a bank in any state in the United States, delivered versus payment, not to exceed one year to maturity. Before a purchase, the investment officer shall verify the FDIC status of the bank.

Safety

The primary goal of the investment program is to ensure safety of principal, to maintain liquidity, and to maximize financial returns within current market conditions in accordance with this policy. Investments shall be made in a manner that ensures the preservation of capital in the overall portfolio, and offsets during a 12-month period any market price losses resulting from interest-rate fluctuations by income received from the balance of the portfolio. No individual investment transaction shall be undertaken that jeopardizes the total capital position of the overall portfolio.

**Investment
Management**

In accordance with Government Code 2256.005(b)(3), the quality and capability of investment management for District funds shall be in accordance with the standard of care, investment training, and other requirements set forth in Government Code Chapter 2256.

**Liquidity and
Maturity**

The total portfolio of the District shall have a maximum dollar weighted maturity (WAM) of two years. The maximum allowable stated maturity of any other investment owned by the District shall not exceed ~~three~~ five years from the time of purchase, with the exception of flex repurchase agreements. Matching the WAM and authorized investments, the District shall establish ~~the one-year Treasury Bill and~~ the two-year Treasury Note as the risk benchmarks for the portfolio.

The District's investment portfolio shall have sufficient liquidity to meet anticipated cash flow requirements and buffer against unanticipated cash needs.

**Other Debt
Obligations**

The maintenance tax notes, qualified school construction notes, and any other debt obligations shall be defined as a separate sub-portfolio and shall have a maximum dollar weighted maturity of ~~five~~ two years. The maximum allowable stated maturity of such obligations shall not exceed five years from the time of purchase.

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Diversity

The investment portfolio shall be diversified in terms of investment instruments, maturity scheduling, and financial institutions to reduce risk of loss resulting from overconcentration of assets in a specific class of investments, specific maturity, or specific issuer. Under certain market conditions, funds may be maintained in one investment vehicle to ensure preservation and safety of principal.

Monitoring Market Prices

The investment officer shall monitor the investment portfolio and shall keep the Board informed of significant changes in the market value of the District's investment portfolio. Information sources may include financial/investment publications and electronic media, available software for tracking investments, depository banks, commercial or investment banks, financial advisers, and representatives/advisers of investment pools or money market funds. Monitoring shall be done monthly or more often as economic conditions warrant by using appropriate reports, indices, or benchmarks for the type of investment.

Monitoring Rating Changes

The investment officer shall monitor the credit ratings on no less than a monthly basis. If a required credit rating drops, the investment officer shall inform the Superintendent. Depending on the reason for the credit rating drop, the investment officer shall recommend either an immediate or delayed liquidation or sale.

Monitoring FDIC Status

The investment officer shall monitor on no less than a weekly basis the status and ownership of all banks issuing brokered CDs owned by the District, based upon information from the FDIC. If any bank has been acquired or merged with another bank in which brokered CDs are owned, the investment officer shall immediately liquidate any brokered CD that places the District above the FDIC insurance level.

Funds / Strategies

Investments of the following fund categories shall be consistent with this policy and in accordance with the applicable strategy defined below. Under certain market conditions, funds may be consolidated into one investment portfolio to ensure preservation and safety of principal. [The maximum weighted average of the total portfolio, inclusive of all pooled fund groups, shall be two years.](#) All strategies described below for the investment of a particular fund should be based on an understanding of the suitability of an investment to the financial requirements of the District and consider preservation and safety of principal, liquidity, marketability of an investment if the need arises to liquidate before maturity, diversification of the investment portfolio, and yield.

Operating Funds

Investment strategies for operating funds (including any commingled pools containing operating funds) shall have as their primary objectives preservation and safety of principal, investment liquidity,

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and maturity sufficient to meet anticipated monthly cash flow requirements. **Maximum weighted average maturity shall be two years.**

Custodial Funds

Investment strategies for custodial funds shall have as their primary objectives preservation and safety of principal, investment liquidity, and maturity sufficient to meet anticipated monthly cash flow requirements. **Maximum weighted average maturity shall be two years.**

Debt Service Funds

Investment strategies for debt service funds shall have as their primary objective sufficient investment liquidity to timely meet debt service payment obligations in accordance with provisions in the bond documents. Successive debt service payments must be funded before any extension. **Maximum weighted average maturity shall be two years.**

*Other Debt
Obligation Funds*

Investment strategies for debt obligations such as maintenance tax notes and qualified school construction notes shall have as their primary objectives safety, investment liquidity, and maturity. The funds shall be sufficient to timely meet debt obligations in accordance with provisions in the note documents. **Maximum weighted average maturity shall be two years.**

Capital Project
Funds

Investment strategies for capital project funds shall have as their primary objective sufficient investment liquidity to timely meet capital project obligations. Investments should meet expected expenditure plans. **Maximum weighted average maturity shall be two years.**

Proprietary Funds

Investment strategies for proprietary funds (including any commingled pools containing proprietary funds) shall have as their primary objectives safety, investment liquidity, and maturity sufficient to meet anticipated cash flow requirements. Investments made out of this fund will be considered suitable if they have a highly/actively traded secondary market and can be sold quickly and turned into immediate cash or invested in overnight funds or authorized local government investment pools. **Maximum weighted average maturity shall be two years.**

**Safekeeping of
District-Owned
Securities**

The District shall retain clearly marked receipts/legal documents providing proof of the District's ownership. All safekeeping shall be executed on a delivery-versus-payment basis.

**Sellers of
Investments**

Prior to handling investments on behalf of the District, local government pools in which the District participates must submit required written documents in accordance with law. [See Sellers of Investments, CDA(LEGAL)]

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Representatives of brokers/dealers shall be registered with the Texas State Securities Board and must have membership in the Securities Investor Protection Corporation (SIPC) and be in good standing with the Financial Industry Regulatory Authority (FINRA).

Collateralization

Investment officers shall maintain information regarding the brokers, and the authorized broker/dealer list shall be reviewed annually by the Board.

**Time and Demand
Deposits**

The District shall require collateralization on all time and demand deposits and repurchase agreements. In order to anticipate market changes and to provide a level of security for all funds, the collateralization level shall be 102 percent of market value of principal and accrued interest. Mortgage-backed collateral for time and demand deposit shall be required to have a 110-percent margin.

Collateral for time and demand deposits shall be pledged to the District and shall not be owned by the District. Collateral shall be pledged under a written agreement under the terms of FIRREA. Collateral shall be held by an independent third-party custodian approved by the District outside the holding company of the pledging bank. A clearly marked evidence of ownership (safekeeping receipt/report) shall be supplied to and retained by the District.

The custodian shall be required to provide monthly collateral reports directly to the District. The pledging bank shall be responsible for monitoring and maintaining the margins daily. The right of collateral substitution shall be granted with prior District approval. Acceptable collateral shall include only obligations of the U.S. government, its agencies and instrumentalities, including mortgage-backed securities, municipal bonds of any state rated A or better by two nationally recognized rating agencies, and approved letters of credit.

**Repurchase
Agreements**

Repurchase collateral shall be owned by the District. Collateral shall be held by an independent third party approved by the District. A clearly marked evidence of ownership (safekeeping receipt/report) shall be supplied to and retained by the District. The custodian shall be required to provide timely collateral reports directly to the District. The counter party shall be responsible for monitoring and maintaining the margins daily.

**Soliciting Bids for
CDs**

Collateral for repurchase agreements should be worth 102 percent, but never lower than 101 percent. The right of collateral substitution shall be granted. Acceptable collateral shall include only obligations of the U.S. government, its agencies and instrumentalities, including mortgage-backed securities, municipal bonds of any state rated A or better by two nationally recognized rating agencies.

Interest Rate Risk

The District may solicit bids for certificates of deposit in writing, by telephone, or electronically, or by a combination of these methods.

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To report exposure to changes in interest rates and other risks that could adversely affect the value of investments, the District shall report final and weighted-average-maturity data.

The District shall monitor interest rate risk using weighted average maturity, weighted average yield, and use diversification.

Internal Controls

A system of internal controls shall be established and documented by the investment officer in writing and must include specific procedures designating who has authority to withdraw funds. Also, they shall be designed to protect against losses of public funds arising from fraud, employee error, misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees and officers of the District. Controls deemed most important shall include:

1. Separation of transaction authority from accounting and recordkeeping and electronic transfer of funds;
2. Avoidance of collusion;
3. Custodial safekeeping for collateral and safekeeping of District-owned securities;
4. Clear delegation of authority;
5. Written documentation of all transactions; and
6. Documentation of dealer questionnaires, bids/offers, evaluations, transactions, and rationale.

These controls shall be reviewed by the District's independent auditing firm.

Reports

In accordance with law, the investment officers shall prepare and submit to the Board in a timely manner a written, signed investment report at least quarterly. At a minimum, the report shall include the following:

1. Details of each investment and depository position held by the District.
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5. The book and market value of each security and investment position.

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6. The stated maturity date for each security and investment position.
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The prices used for valuation of market value shall be obtained from an independent source.

Annual Review

The Board shall review this investment policy and investment strategies not less than annually and shall document its review in writing, which shall include whether any changes were made to either the investment policy or investment strategies.

Annual Audit

In conjunction with the annual financial audit, the District shall perform a compliance audit of management controls on investments and adherence to the District's established investment policies.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on Competitive Sealed Proposal No. 2025-1007 Navarro Elementary School Parking Lot Improvements

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited proposals for parking lot improvements for Navarro Elementary.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

One hundred twenty two (122) contractors were invited to submit proposals, eight (8) contractors responded including two (2) no bid. On August 16, 2024, the evaluation committee, comprised of Ruben Treviño, Executive Director of Facilities, Maintenance, and Operations; Roel Moroles Assistant 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:

Funds for this project are available through Fund 620 Maintenance Tax Note ("MTN").

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. 2025-1007 Navarro Elementary School Parking Lot Improvements; and
- B. approve that Administration begin with negotiations with the highest-ranked Contractor. 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
- C. authorize the 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: 

For further information contact:
Name: Mr. Ruben Treviño, Executive Director for
Facilities, Maintenance, and Operations
Office: (956) 632-3200
eMail: ruben.trevino@mcallenisd.net

SUPERVISOR: 

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 21, 2024 10:26 CDT)

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Superintendent of Schools

McAllen Independent School District
CSP 2025-1007 Navarro Elementary School Parking Lot Improvements
Evaluation Matrix

		Vendor # 1	Vendor # 2	Vendor # 3	Vendor # 4	Vendor # 5	Vendor # 6
Vendor Names		Rene Guerra & Son Hauling LLC	Rio United Builders	Blue Dot Site & Utilities, LLC.	Calidad Construction LLC	GST Construction, Inc.	Texas Cordia Construction, LLC
Rank		1	2	3	4	6	5
Maximum points	100.00	89	87	75	69	64	65
Price	60	60	52	52	48	40	30
Base Bid (Includes Contingency)		\$156,907.62	\$182,566.50	\$182,268.75	\$195,145.00	\$232,867.50	\$311,506.69
Offeror's experience and reputation	19	10	19	6.5	3	8	17.5
Three (3) K-12 reference forms	1.5	0.5	1.5	0.5	0.5	0	0
Rating of 2 or better, plus similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)						none provided	none k-12 submitted
Three (3) Supplier Reference Letters (BA160)	1.5	1.5	1.5	0	1.5	1.5	1.5
				none provided		none submitted	
Claims, judgments, arbitration proceedings or suits (BA 67)	1	1	1	1	1	1	1
Three (3) current or past K-12 projects (BA 69-86)	12	4	12	4	0	4	12
Similar scope and size (2 pts for scope; 2 pts for size per reference)		2 scope, 2 size			0 scope, 0 size		
Three (3) current or past Non K-12 projects (BA 88-105)	3	3	3	1	0	1.5	3
Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)					0 scope, 0 size		
Quality of the offeror's goods or services	4	2	2	2	2	2	2
MISD Projects (Vendor History Report)	2	0	0	0	0	2	0
Repeat business (BA106)	2	2	2	2	2	0	2
The impact on the ability of the district to comply with rules relating to historically underutilized businesses - HUB (BA17)	1	1	1	1	1	0	0
Offeror's safety record	6	6	5	6	4.5	3.5	5
Frequency of safety inspections (BA107)	2.5	2.5	2.5	2.5	2.5	2.5	2.5
*OSHA Form 300 Log (BA161)	1.5	1.5	0.5	1.5	0	0	0.5
			submitted for 2023		None provided		submitted 2023
Safety program manual and/or procedures. (BA162)	1	1	1	1	1	1	1
Drug/alcohol prevention policy and/or procedures. (BA163)	1	1	1	1	1	0	1
						none provided	
Offeror's Proposed Personnel	6	6	4	6	6	6	6
Staff experience (firm) (BA112-131)	3	3	1	3	3	3	3
Staff experience (industry) (BA112-131)	3	3	3	3	3	3	3
Whether the offeror's financial capability is appropriate to the size and scope of the project	2	2	2	0	2	2	2
Surety Letter (BA164)	1	1	1	0	1	1	1
				not provided			
Financial Statement (BA165)	1	1	1	0	1	1	1
				not provided			
Any other relevant factors specifically listed in the CSP	2	2	2	2	2	2	2
On-time project completion (BA 53,54; 65,66; 73,74; 78,79; 85,86; 92,93; 98,99; 104,105)	1	1	1	1	1	1	1
Projects currently in progress. (BA133-156)	1	1	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 "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.

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

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

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

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

THE OWNER:

(Name, legal status and address)

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

THE ARCHITECT:

(Name, legal status and address)

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

THE CONTRACTOR/CONSTRUCTION MANAGER

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

ADDITIONS AND DELETIONS:

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

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

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

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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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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 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 Architect requests 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 or 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 charges 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 (Signature)		CONSTRUCTION MANAGER (Signature)
Tony Forina, Board President, Board of Trustees, McAllen Independent School District		
(Printed name and title)		(Printed name and title)

(Paragraphs deleted)

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.

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PAGE 1

(Name, legal status and address)

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

...

(Name, legal status and address)

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

THE CONTRACTOR/CONSTRUCTION MANAGER

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

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~~, 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.

...

§ 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.

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The Contractor shall maintain and make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, field test records (including environmental inspection and test records), inspection certificates or records, manufacturers' certificates. The Documents to be maintained shall be kept in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and ~~Owner~~, Owner or their respective representatives, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

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§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Construction Documents and the Contract Documents remain the Contractor's responsibility.

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§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the ~~Architect~~ Architect, in writing, of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

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

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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall ~~be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents.~~ The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawings are prepared and, if required by the Architect or applicable law, by a licensed engineer The Owner and the Architect shall be entitled to rely upon the ~~adequacy-adequacy, completeness and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and~~

~~design criteria that such services must satisfy. Pursuant to this Section 3.12.10, professionals. Pursuant to this Section 3.12.10.1, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this paragraph, Contractor shall require that the licensed design professional carry commercial general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.~~

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§ 3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ **§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

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

§ 3.13.3 Without prior approval of the Owner, the Contractor shall not permit any workers to use any of Owner's existing facilities at or adjacent to the Project site, including, without limitation, lavatories, toilets, entrance and parking areas other than those designated by the Owner. The Contractor shall comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and District's Buildings.

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§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly, properly, provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Contract Documents. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

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§ 3.15.1 The Contractor ~~shall~~ shall, on a daily basis, keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains,

putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning and replace any damaged or broken glass.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor. Such reimbursement amounts may be deducted from Contractor's Final Payment Application.

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The Contractor shall provide the ~~Owner and Architect~~ Owner, Architect and their designated representatives, with access to the Work in preparation and progress wherever located. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work. Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on an inspection of the Work.

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The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect. THE CONTRACTOR SHALL PAY ALL ROYALTIES AND LICENSE FEES. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES DEFEND AGAINST ANY AND ALL SUITS, CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS ALLEGED TO HAVE RESULTED FROM CONTRACTOR'S INFRINGEMENT, AND SHALL INDEMNIFY AND HOLD THE OWNER THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM LOSS ON ACCOUNT THEREOF, INCLUDING ATTORNEY'S FEES (AS PERMITTED BY STATUTE), BUT SHALL NOT BE RESPONSIBLE FOR DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS, OR PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS, OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS, OR OTHER DOCUMENTS PROVIDED BY THE OWNER OR PREPARED BY THE ARCHITECT. HOWEVER, IF AN INFRINGEMENT OF A COPYRIGHT OR PATENT ATTRIBUTABLE TO THE OWNER OR ARCHITECT, IS DISCOVERED BY, OR MADE KNOWN TO, THE CONTRACTOR, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOSS UNLESS THE INFORMATION IS PROMPTLY FURNISHED TO THE OWNER AND THE ARCHITECT.

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§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND (EXCEPT AS LIMITED BELOW) AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS,

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.

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§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment of the Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, 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, and delivered on time. In addition, the Architect or its structural consultant will (1) provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable; and (2) provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third-party laboratory or testing services to assist the Architect and Owner.

§ 4.2.3 On the basis of the site visits, observations, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and Work. The Architect shall promptly report to the Owner and Contractor orally regarding: (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. An oral notification of defects and deficiencies observed in the Work shall be followed by a notice in writing to the Owner and Contractor specifying the defect(s), non-conforming Work, deviations from the Contract Documents and corrective actions taken or recommended. The Architect shall not have control over or responsibility for the Contractor's construction means, methods, techniques, sequences, procedures, or safety programs and will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not Documents, nor shall the Architect have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. 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.

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§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was~~ When the parties agree on a proposed substitute Subcontractor reasonably capable of performing the Work, the ~~Contract Sum and~~ Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the ~~Contract Sum or~~ Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected ~~if the Owner or Architect makes reasonable objection to such substitution without providing reasonable written notice to the Owner and Architect.~~ If neither the Owner nor Architect submits a reasonable objection to such proposed substitution within ten (10) days following their receipt of written notice the Contractor may proceed with the substitution. If either Owner or Architect submit an objection, the Subcontractor shall proceed in accordance with Section 5.2.3 above.

§ 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.

...

§ 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, 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~~ and/or the Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost ~~as confirmed by the Architect~~, plus the permitted overhead and profit as set forth in Section 7.1.4. When both additions and credits covering related Work or substitutions are involved in a change, both changes shall be shown on the same Change Order and the permitted allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change. Returned materials shall be credited at actual cost and no penalty or restocking fee shall be permitted to be charged to the Owner.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will require as a condition precedent to certification of payment for Work completed under the Construction Change Directive that the Contractor provide the documentation required by Section 7.3.4, and based on such documentation, shall make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect is specifically authorized by this Section 7.3.9 to require submission of such documentation and any other documentation required to evaluate the requested payment, and shall withhold payment certification until such documentation is received and an interim determination is made in accordance with this Section. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

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~~The~~ With prior written notice to the Owner's representative, the Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

...

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

§ 8.1.2 Commencement. ~~The date of commencement of the Work is the date established in the Agreement.~~ shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement (or Guaranteed Maximum Price Amendment, as applicable) has been signed by the Contractor and the Owner, and the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

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

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

§ 8.1.3.2 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) days after the date of Substantial Completion.

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

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the ~~Contractor and Owner.~~ Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

...

§ 8.2.4 Liquidated Damages

§ 8.2.4.1 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set out in the AIA Document A101 (2017) or the AIA Document A133 (2019) into which these General Conditions are incorporated and executed concurrently with these General Conditions, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.4.2 In the event Substantial Completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor all liquidated damages, if any, due Owner in accordance with the Contract Documents.

§ 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 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 may be equitably adjusted by written agreement between the Owner and Contractor, executed prior to an order being placed based on the unit prices.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, as applicable, the Contractor shall submit a schedule of values to the Architect before the first Application for ~~Payment~~, Payment or, in the case of a Guaranteed Maximum Price, concurrent with the Guaranteed Maximum Price Proposal, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702-1992 and G703-1992, Application and Certificate for Payment and Continuation Sheet.

...

§ 9.3.1 At least ten days before the date established for each progress payment, In accordance with the requirements of Section 5.1 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. withheld. The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document G702-1992, Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703-1992, Continuation Sheet.

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

§ 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; 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.

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§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253. Notwithstanding the foregoing, payments received by the Contractor from the Owner for Work properly performed by Subcontractors, or materials properly provided by suppliers, shall be held in trust by the Contractor for the benefit of those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision. Contractor.

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If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. **§ 9.7.1** Pursuant to Texas Government Code Section 2251.051, if the Owner does not pay the Contractor any payment certified by the Architect, which is undisputed, due and owing after the date the payment is due under the Contract Documents, then the Contractor may, upon ten (10) days' written notice to the Owner and Architect, that payment has not been made and the Contractor intends to suspend performance for nonpayment, may stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that: 1) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect to either: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

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§ 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.~~

...

~~§ 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, Fraternization and Sexual Harassment. Contractor shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Contractor shall prohibit fraternization between all persons working under Contractor or any of its subcontractors, students and Owner's employees while on Owner's property. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 10.1.3 Weapons. Owner has also banned use, possession, or display of any firearm, handgun, location-restricted knife, club, or "prohibited weapon", as defined by the Texas Penal Code and Owner's Board Policy FNCG(Legal), except when the Contractor, its representatives, employees, agents, and subcontractors, or anyone else over which the Contractor has control or authority holds a Texas handgun license, stores the handgun or other firearm in a locked vehicle in the Owners parking lot, garage, or other parking area provided by the Owner AND the firearm is not loaded and not in plain view. A copy of such policy is available through a link on the Owner's website. The Contractor further agrees that Contractor's representatives, employees, agents, and subcontractors will abide by these requirements as well as the Federal Gun-Free School Zones Act.

§ 10.1.4 Tobacco and E-Cigarettes. Contractor's employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not use e-cigarettes or tobacco products while on the Project Site.

§ 10.1.5 Small Unmanned Aircraft (Drones). The Contractor shall operate any Small Unmanned Aircraft as required by 14 C.F.R. Part 107, as applicable, and any other applicable federal or state laws and regulations.

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§ 10.2.1 The Contractor shall maintain good order among its employees and its Subcontractors, shall confine its employees and Subcontractors to such work areas, roads and gates as directed by the Owner, take reasonable and necessary precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected thereby; thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility, and taking reasonable precautions to secure any abusable glue, aerosol paint, or any other chemical substance for inhalation being used on the project site;

...

- .3 other property at the site or adjacent thereto, such as fences, trees, shrubs, lawns, walks, athletic fields and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. Contractor's obligations under this Section shall continue to apply during any time period when all or a portion of the Work is suspended for any reason. Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes possession of and occupies that portion of the Project.

...

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.2.4 When use or storage of ~~explosives or other~~ hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel~~ personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 ~~The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18. [Paragraph Deleted.]~~

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~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~ § 10.2.8.1 If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding three (3) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

§ 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.

...

§ 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.

<u>Workmen's Compensation:</u> (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.
<u>Employer's Liability:</u>	Bodily Injury by Accident - \$500,000 Each Accident. Bodily Injury by Disease - \$500,000 Each Employee. Bodily Injury by Disease - \$500,000 Policy Limit.
<u>Commercial General Liability:</u> (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
<u>Property Damage</u> 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)
<u>Automobile Liability:</u> Bodily Injury/Property Damage	\$1,000,000.00 combined single limit \$1,000,000.00 each occurrence
<u>Umbrella or Excess Liability</u>	\$2,000,000.00 - each occurrence \$2,000,000 - aggregate
<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.	Bodily Injury - \$1,000,000 Each Occurrence Aggregate - \$1,000,000.
<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.	
<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 <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 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 the a request inspection of the Work prior to covering or including a requirement for inspection in the Contract Documents is within the Architect's standard of care and the Architect has failed to timely make such request or include the requirement in the Contract Documents, the Architect shall reimburse the Owner for the actual costs of uncovering and recovering such Work and additional costs of correction, if any, caused by covering the Work prior to inspection.

...

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense 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 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: August 27, 2024

SUBJECT: Discussion and Possible Action on Transfer Agreement No. 2025-105 McAllen Independent School District Police Department Canine

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Police canine Cabo, is eight (8) years old and has been on duty as a K9 officer for McAllen Independent School District for over seven (7) years. He is not medically fit for duty.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District has determined that the canine is surplus to the needs of the District due to medical condition and is suitable and eligible for transfer of ownership. Canine will be transferred to Officer Andy Coronado, current officer assigned to canine. Transferee will humanely care for the police canine, including, but not limited to, providing food, shelter, and appropriate medical care.

LEGAL REVIEW:

The Transfer Agreement has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

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

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Transfer Agreement No. 2025-105 McAllen Independent School District Police Department canine.

Attachment: ☒

SUBMITTED BY:  Jose Silva (Aug 27, 2024 16:55 CDT)

For further information contact:
Name: Jose Silva, Chief of Police
Office: 956-928-8990
eMail: jose.silva@mcallenisd.net

SUPERVISOR:  Alberto Canales (Aug 21, 2024 09:36 CDT)

Approved for presentation to the Board of Education:

 RENE GUTIERREZ (Aug 21, 2024 10:22 CDT)



Department of Purchasing Services

Contract No.: 2025-105

Contract Coversheet and Signature Form
for
Forms/Contracts Requiring Superintendent Approval

This form standardizes the contract process and is to be used as the cover sheet to ensure complete review by appropriate department(s)/campus(es).

Police Department

Department/Campus Name

N/A

Sponsor

Signature

Date

N/A

Campus Principal

Signature

Date

Police Department


Jose Silva (Aug 20, 2024 09:49 CDT)

8/20/2024

Department Director

Signature

Date

MCALLEN ISD POLICE CANINE TRANSFER AGREEMENT

This Agreement is entered into on the 27th day of August 2024, by and between McAllen Independent School District ("**MISD or "the District"**") and Officer Andy Coronado ("**Transferee**"), to transfer ownership of Police Canine ("canine") from MISD to Transferee.

RECITALS

Whereas. A Police Canine named Cabo, a male Malinois Belgian, was born on March 20, 2016, and has served the MISD since October of 2016.

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

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

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

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

PURPOSE OF AGREEMENT

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

MISD agrees to:

- Transfer ownership of the Police Canine.

Transferee agrees to:

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

A. Terms and Conditions of acceptance of Police Canine

1. Transferee will take possession of the Police Canine on a date and time to be scheduled with the Transferor's Superintendent of Schools or designee.
2. Transferee shall comply with all state and local laws applicable to keeping domestic animals.
3. Transferee shall humanely care for the Police Canine, including, but not limited to, providing food, shelter, and regular and appropriate medical care.
4. Transferee shall immediately notify MISD if Transferee is no longer able to humanely care

for the Police Canine.

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

B. Indemnity

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

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

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

Transferee represents and agrees that MISD has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever, whether expressed or implied, or written, past, present or future, of, as to, concerning or with respect to (A) the value, nature, quality or condition of the Police Canine, (B) the suitability of the Police Canine for any and all activities and uses which Transferee may conduct thereon, (C) the compliance with ordinances or regulations of any applicable governmental authority or body, (D) the merchantability, marketability, profitability or fitness for a particular purpose of the Police Canine, or (E) any other matter with respect to the Police Canine, and specifically, that Transferor has not made, does not make and specifically disclaims any representations regarding the safety, nature, or viability of the Police Canine for any and all purposes.

Transferee further represents and agrees that having been given the opportunity to inspect the Police Canine, Transferee is relying solely on its own investigation of the Police Canine and not on any information provided by MISD. Transferee further acknowledges and agrees that any information provided or to be provided with respect to the Police Canine was

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

Waiver of Consumer Rights. TRANSFEE WAIVES ITS RIGHTS UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 *ET SEQ.* OF THE TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, TRANSFEE VOLUNTARILY CONSENTS TO THIS WAIVER.

D. Miscellaneous Provisions

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

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

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

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

5. *Choice of Law; Venue; Alternative Dispute Resolution.* This Agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. The venue for any action arising under this agreement shall be Hidalgo County, Texas.

6. *Waiver of Default.* It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays taking any action with respect to the default.

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

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

9. *Ambiguities Not to Be Construed against Party Who Drafted Agreement.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will

not be applied in interpreting this Agreement.

10. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

Approved as to form:

by 
 JOHNATHAN BALL (AUG 20, 2024 09:49 CDT)
 Johnathan Ball, Staff Attorney

TRANSFEROR:
MCALLEN INDEPENDENT SCHOOL DISTRICT

By: _____

Printed name and title: Sofia M. Peña Board of Trustees,
President

Date: _____

TRANSFeree:

By: _____

Printed name and title: _____

Date: _____

**Edinburg • McAllen
Veterinary Services, P.C.**

Lucas O. Hinojosa, D.V.M.
Daniel E. Hinojosa, D.V.M.

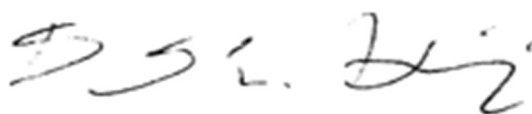
Phone (956) 585-5080
Fax (956) 585-5121

August 14th, 2024

To whom it may concern,

The pet Caba was seen at our clinic today for appearing weak on the hind legs and abdominal bloating. On the Physical exam, Caba was BAR and was still acting aggressively. His body condition was 2.5/9. His heart and lungs were normal on thoracic auscultation. I could palpate something enlarged in the abdomen and feared he could have a mass. Officer agreed to let us run blood work and do an ultrasound. A mass is present on the right side of the abdomen. I suspect that it is one of the liver lobes. There is a lot of free fluid present and does appear to be cellular. I believe that Caba has a hepatocarcinoma in the right liver lobe and this would carry a poor prognosis with the presence of abdominal fluid. However, bloodwork did appear normal except for an increase in WBCs that would indicate infection. So I did tell the Officer I can't guarantee a cancer diagnosis but a Mass is for sure present. Recommended taking Caba to San Antonio Cancer Center of Texas for further testing and treatment options. We could also perform an abdominocentesis and send the fluid for testing to see if cancer cells are present if referral is not an option. We started treatment for palliative care. I did recommend Caba to retire with the mass present in the abdomen. Worry that his life expectancy may be only 1 - 3 months if I am correct with the diagnosis of Hepatocarcinoma.

Should you have any questions or concerns feel free to contact us at 956-383-5080.



Dr. Daniel E. Hinojosa
Edinburg-McAllen Veterinary Services

Location
3620 W. Freddy Gonzalez
Edinburg, Texas 78539

Mailing Address
P.O. Box 3488
Edinburg, Texas 78540

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action to Approve Board of Education Meeting Minutes

REFERENCE:

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The minutes for each meeting of the Board of Education are traditionally brought to the Board for approval. After approval, the minutes become the official record for Board Action.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The Administration asks that the Board of Education consider approval of the attached minutes.

LEGAL REVIEW: None

BUDGETARY CONSIDERATIONS: None

RECOMMENDED BOARD ACTION:

That the Board approve the minutes of the following meeting(s):

Regular Board Meeting August 13, 2024 5:30 PM

Attachment: ☒

SUBMITTED BY: Natalia Goza

For further information contact:
Name: Natalia Goza
Office: 956 618-6094
Email: natalie.goza@mcallenisd.net

SUPERVISOR:  Sol Merced Pena (Aug 19, 2024 10:42 CDT)

Approved for presentation to the Board of Education:

 RENE GUTIERREZ (Aug 19, 2024 14:25 CDT)

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action of Travel for Board of Trustees

REFERENCE: Goal 2 - People Development

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Policy requires Board Members to submit travel requests to the Board in advance when practical. Trustee Aliseda plans to attend the TASB interview for Region 1A position in Austin, Texas September 6, 2024. The Board plans to attend the Texas Association of School Administrators(TASA)/Texas Association of School Boards(TASB) Convention, San Antonio, Texas September 27-29, 2024.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The Board of Trustees will report on the following trip(s):

- TASB interview, Austin, TX September 6, 2024. Travel costs will be \$217 for 1 Board Member
- TASA/TASB Convention, San Antonio, TX September 27-29, 2024 Registration will be \$485.00 for each participant and hotel prices vary from \$189 - \$269 a night.

LEGAL REVIEW:

None

BUDGETARY CONSIDERATIONS:

Funds for this trip have been allocated through the Board of Trustees' Budget

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the travel request to attend

- Trustee Aliseda to attend TASB interview, Austin, Texas September 6, 2024 and
- The Board attend the TASA/TASB Convention, San Antonio, Texas September 27-29, 2024

SUBMITTED BY: Natalia Goza

SUPERVISOR:  Sofia Perced Pena (Aug 20, 2024 11:49 CDT)

For further information contact:

Name: Natalia Goza

Office: (956) 618-6094

eMail: natalie.goza@mcallenisd.net

Approved for presentation to the Board of Education:

 RENE GUTIERREZ (Aug 20, 2024 15:11 CDT)

388

Superintendent of Schools

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on Human Resources Recommendation(s) for School Year 2024-2025

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

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

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

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

LEGAL REVIEW:

Not Applicable

BUDGETARY CONSIDERATIONS:

Provided with individuals identified under separate cover.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve Human Resources Recommendation(s) for School Year 2024-2025.

Attachment: ☐

SUBMITTED BY: 
Alberto Canales (Aug 20, 2024 13:28 CDT)

SUPERVISOR: 

For further information contact:
Name: Dr. Alberto Canales, Chief Human Resources Officer
Office: (956) 618-6009
Email: albert.canales@mcallenisd.net

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 20, 2024 14:40 CDT)

389

Superintendent of Schools

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2024-2025

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

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

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

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

LEGAL REVIEW:

Not Applicable

BUDGETARY CONSIDERATIONS:

Not Applicable

RECOMMENDED BOARD ACTION:

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

Attachment: ☐

SUBMITTED BY: 
Alberto Canales (Aug 20, 2024 13:11 CDT)

SUPERVISOR: 

For further information contact:
Name: Dr. Albert Canales, Chief Human Resources Officer
Office: (956) 618-6009
Email: alberto.canales@mcallenisd.net

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 21, 2024 08:19 CDT)

390

Superintendent of Schools

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 27, 2024

SUBJECT: Discussion and Possible Action on the Job Description for an Assistant Director for Emergency Management

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Texas has specific laws and regulations related to school safety, such as Senate Bill 11, which requires schools to implement and maintain emergency operations plans. Administration recommends the hiring of an Assistant Director for Emergency Management to coordinate the development, implementation and maintenance of the district's High-Quality Multi-Hazard Emergency Operations Plan (EOP). The plan will ensure the district is aligned with emergency management principles of prevention, mitigation, preparedness, response and recovery for all students, staff, and visitors to campuses and facilities in the event of an emergency in order to maintain safe learning environments. The Assistant Director for Emergency Management shall be responsible for developing and conducting regular safety drills and training programs for students, staff, and administrators.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The Assistant Director for Emergency Management shall ensure that the district is prepared to respond effectively to a variety of risk situations, minimizing harm to students, staff, and property. The Assistant Director for Emergency Management shall identify potential risks and vulnerabilities within the district and develop strategies to mitigate these risks. After an emergency, the Assistant Director for Emergency Management shall lead recovery efforts, including providing support to affected individuals, restoring normal operations, and reviewing the incident to improve future response plans. The Assistant Director for Emergency Management shall report to the Chief of Police.

LEGAL REVIEW:

Not required.

BUDGETARY CONSIDERATIONS:

Administration recommends re-purposing the vacancy for Emergency Management Officer (\$50,588 at the midpoint) for this new position. The Assistant Director for Emergency Management is recommended at pay-grade AM-07 (\$94,617 at the midpoint). Funds for this position will be paid for from local funds.

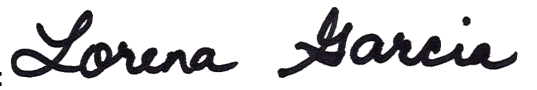
RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the new position and job description for an Assistant Director for Emergency Management.

Attachment: ☒

SUBMITTED BY: 
Alberto Canales (Aug 21, 2024 09:27 CDT)

For further information contact:
Name: Dr. Alberto Canales, Chief Human Resources Officer
Office: (956) 618-6009
Email: albert.canales@mcallenisd.net

SUPERVISOR: 

Approved for presentation to the Board of Education:


RENE GUTIERREZ (Aug 21, 2024 10:24 CDT)
391

Superintendent of Schools

JOB TITLE: Assistant Director, Emergency Management

JOB CODE:

REPORTS TO: To Be Determined

PAY GRADE: AM-07

DEPARTMENT/CAMPUS: MISD Police Department

DATE REVISED: August 27, 2024

WAGE/HOUR STATUS: Exempt

FUNDING SOURCE: 199

PRIMARY PURPOSE:

To coordinate the development, implementation and maintenance of the district's High-Quality Multi-Hazard Emergency Operations Plan (EOP). The plan will ensure the district is aligned with emergency management principles of prevention, mitigation, preparedness, response and recovery for all students, staff, and visitors to the McAllen ISD campuses and facilities in the event of an emergency to maintain safe learning environments. The Assistant Director for Emergency Management is responsible for developing and conducting regular safety drills and training programs for students, staff, and administrators.

QUALIFICATIONS:

Education/Certification:

Bachelor's degree preferred

Minimum Associates degree in emergency management, criminal justice, public administration, or other related field or an equivalent of three (3) years of directly related job experience is required.

Special Knowledge/Skills:

Incident Command System Training 100, 200, 700 and 800

Incident Command System Training 300, 400, G191, G402, and G2300 within 12 months

Knowledge of standard methods and procedures of emergency and disaster operations

Knowledge of federal and state regulations governing emergency and disaster plans.

Possess the ability to interpret NIMS, state and local emergency management documents preferred.

Demonstrate ability to work effectively with students, staff and the public

Construct and deliver clear, concise and professional presentations to a variety of audiences and/or individuals.

Has the ability to convey technical information in lay terms that can be understood by people with a variety of educational levels and working backgrounds.

Ability to analyze data, create charts and graphs and write reports

Proficient in computer operations to include hardware, and software platforms

Ability to maintain confidentiality and integrity of information

Knowledge of:

- Standard Response Protocols/Standard Reunification Method
- School Safety and Security Audit
- High-Quality Multi-Hazard Emergency Operation Plan
- Behavioral Threat Assessment

Experience:

Three (3) years of work experience in emergency management is required

School district experience preferred

Experience in public speaking preferred

MAJOR RESPONSIBILITIES AND DUTIES/ESSENTIAL FUNCTIONS:

1. Oversee the development and update of district's High-Quality Multi-Hazard Emergency Operation Plan, Annexes, including Campus Emergency Operations Plan.
2. Ensure compliance with applicable Texas Education Code (TEC), Texas Administrative Code, federal and state laws and compatibility with city, county, state and federal plans.
3. Ensure compliance with state mandates and regulations as required by the Texas Education Agency and Texas School Safety Center.
4. Develop and maintain inventory of disaster- related resources within the school district.
5. Assist with site-visits to perform campus safety and security audits at each campus.
6. Collect, analyze and submit safety and security data for annual audit report.
7. Assist with management of the district's workshops, table-top exercises, functional exercises and drills.
8. Collaborate with the Chief of Police in developing district wide safety and security training program.
9. Identify potential risks and vulnerabilities within the district and develop strategies to mitigate these risks.
10. Leads recovery efforts, including providing support to affected individuals, restoring normal operations, and reviewing the incident to improve future response plans.
11. Oversee and participate in the development of annual budget and safety grants; monitor expenditures for accuracy and conformance to budget and district priorities.
12. Establish and maintain positive relationships, formal agreements, and cooperative activities in emergency management with local, regional, state, and national emergency management stakeholders as required.
13. Coordinate activities and participate on the school safety and security committee.
14. Investigate opportunities, prepare grants and apply for external funding opportunities.
15. Assist with preparation and management of contracts with school district's, agencies and vendors.
16. Collaborate with partnering school districts, emergency managers, first responders, parents, volunteer agencies and all others involved in community-wide emergency management efforts.
17. Perform Behavioral Threat Assessments as required.
18. Follow McAllen ISD customer service standards.
19. Perform other duties assigned by immediate supervisor (primary evaluator).

SUPERVISORY RESPONSIBILITIES:

None

EQUIPMENT USED:

Radios, computer, multimedia equipment, printer, and copier

WORKING CONDITIONS:

Mental Demands:

Ability to communicate effectively (verbal and written) in English; maintain emotional stress under control; exhibit rapid mental decision-making ability to effectively handle disturbances or distractions. Requires mental fortitude and preparedness for all that can arise as Incident Commander. Coordinate multiple projects and meet deadlines

Physical Demands/Environmental Factors:

Occasionally lift and/or move up to (100) pounds and reaching; keyboarding and reading; prolonged and irregular hours.

Job Description
Assistant Director, Emergency Management

The foregoing statements describe the general purpose and responsibilities assigned to this job and are not an exhaustive list of all responsibilities and duties that may be assigned or skills that may be required.

Approved by _____ Date _____

Reviewed by _____ Date _____

Draft