



Agenda of Special Board Meeting

The Board of Trustees McAllen Independent School District

VISION	The McAllen Independent School District is a multicultural community in which students are enthusiastically and actively engaged in the learning process. Students demonstrate academic excellence in a safe, nurturing and challenging environment enhanced by technology and the contributions of the total community.
MISSION	The mission of the McAllen Independent School District is to educate all students to become lifelong learners and productive citizens in a global society through a program of educational excellence utilizing technology and actively involving parents and the community.
GOALS	<ol style="list-style-type: none">1. Student Achievement/Student Focus2. People Development3. Facility Priorities4. Financial Priorities
STRATEGIES	<ol style="list-style-type: none">1. Branding2. Attract/Retain High Quality Staff3. Engaging Learning Environment4. Rigorous/World Class Standards to Customize for Every Learner5. Partnerships with Business/Civic/Education/Organizations6. Future Ready Students7. Financial Priorities

A Special Board Meeting of the Board of Trustees of the McAllen Independent School District will be held Monday, November 8, 2021, beginning at 5:30 PM 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. **PUBLIC COMMENTS**
3. **APPROVAL OF REQUEST FOR OFFERS No. 2022-1020 ANCHOR SPONSORSHIP AND ADVERTISING FOR THE MCALLEN VETERANS MEMORIAL STADIUM SCOREBOARD** **3**
Item Submitted: Jacob Berry, Director Community Information
Presenter: Dr. J. A. Gonzalez, Superintendent
4. **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.

The notice for this meeting was posted in compliance with the Texas Open Meeting Act on November 5, 2021 at 3:00 P.M.

*Natalia Goza
on behalf of the Board of Trustees*

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: November 8, 2021

SUBMITTED BY:  Jacob Berry (Nov 4, 2021 18:28 EDT)

SUPERVISOR: 

Approved for presentation to the Board of Education:



3 Superintendent of Schools

MCALLEN INDEPENDENT SCHOOL DISTRICT SCOREBOARD SIGN

ADVERTISING AGREEMENT NO. 2022-155

This Scoreboard Sign Advertising Agreement (the "Agreement") is made and entered in to as of the 8th day of November, 2021 (hereinafter referred to as the "Effective Date"), by and between the **McAllen Independent School District** (hereinafter referred to as "District"), at 2000 North 23rd Street McAllen, TX 78501, and **McAllen Hospitalist Group, PLLC dba South Texas Health System Clinics** (hereinafter referred to as "Sponsor").

WHEREAS, District has the exclusive right to market, sell, and control all advertising displayed at McAllen Veterans Memorial Stadium (hereinafter referred to as "Stadium") located at 2001 Bicentennial Boulevard, McAllen, TX 78501;

WHEREAS, District has the exclusive right to grant licenses to parties, including Sponsor, to use scoreboard, marquees and venues or display materials at or on District property including the Stadium and to grant licenses to parties, including Sponsor, to permit use of District intellectual property and promotional materials;

WHEREAS, Sponsor desires to purchase from District the right to display certain advertising and to conduct or participate in certain promotions on the electronic scoreboard (the "Scoreboard") at the Stadium for the purposes of promoting Sponsor, the attendance at District events, and the Sponsor's products and service lines.

NOW THEREFORE, in consideration of the foregoing, incorporated herein by reference as provisions of this Agreement, the mutual promises set out below, and other good and valuable consideration, the parties agree as follows:

1. **Grant of Advertising and Promotional Rights.** Subject to the terms and conditions of this Agreement, the Board Policies of District, state and federal law, all as may be from time to time amended, District hereby grants and sells to Sponsor, and Sponsor hereby purchases and accepts from District, the advertising and promotional rights described on Exhibit A attached hereto (collectively, the "Rights").
2. **Term of Agreement.** The term of this Agreement ("Term") is stated on Exhibit A attached hereto. If the Sponsor desires to renew this Agreement for an additional term, Sponsor shall provide written notice to District of such desire no later than one hundred eighty (180) days prior to the expiration of the term of this Agreement.
3. **Rights Fees.** In consideration of the Rights granted to Sponsor under Paragraph I of this Agreement, Sponsor shall pay to District the sum stated on Exhibit A attached hereto (collectively, the "Rights Fee").
4. **Partial Non-Exclusivity.** Nothing in this Agreement may be construed to imply that Sponsor has the exclusive right to provide District goods and services or sponsor District or any District event. During the term of this Agreement, District reserves the right to use all available resources to procure other goods, services, and/or advertisers/sponsors as deemed in the best interest of District in District's sole discretion and doing so will not violate any rights of Sponsor.

5. Notwithstanding anything to the contrary in this Agreement Sponsor agrees, acknowledges and understands the following:

- a. District makes no guarantees of the visibility of the Scoreboard or other advertising Rights from outside the Stadium. District makes no guarantees of the visibility of the Scoreboard or other advertising rights from within the Stadium when the Stadium lights are off.
- b. Content of all Rights are subject to approval by both Sponsor and District. All advertising content shall be provided at the sole cost of Sponsor.
- c. Any costs associated with changes to advertising content, artwork, or formatting once District has accepted the submitted content, artwork or formatting of same, shall be the responsibility of the Sponsor.

6. Notwithstanding anything to the contrary herein Sponsor agrees that in the event District is unable to perform for any reason the granting of the Rights granted to Sponsor, there shall be no refund, prorata or otherwise, of any Rights Fee.

7. Termination:

- a. **Termination for the Best Interest of District.** District reserves the right to terminate this Agreement, in the sole discretion of District if District determines it is in the Best Interest of District to terminate this Agreement for any reason and without cause at any time during the Term and without penalty by providing thirty (30) days written notice to the Sponsor. Best Interest, as used in this numbered paragraph 7, includes, but is not limited to, Sponsor prior to or during the term of this Agreement, engaging in any immoral or financially irresponsible conduct, or any other conduct that in the sole opinion of District, might tend to bring Sponsor into public disrepute, contempt, scandal, or which might otherwise tend to reflect unfavorably upon Sponsor, its employees, subsidiaries, or affiliated companies; or if Sponsor files for protection under any chapter of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., or commits any felonious act under federal, state, or local law. If the Agreement is terminated for Best Interest, District will have the right to seek appropriate remedies at law or equity. District reserves all legal rights and remedies not otherwise specified in this clause. Upon termination under this numbered paragraph 7, District shall have no obligation to pay or refund to Sponsor any amount paid to District under this Agreement. In the event that District determines, in its sole discretion, that the 30-day notice required by this Paragraph 7(a) would pose a hardship or that immediate termination of this Agreement would be in the Best Interest of District, District may provide notice of immediate termination and this Agreement shall terminate upon notice. Upon termination under this numbered paragraph 7, District shall have no obligation to pay or refund to Sponsor any amounts paid to District under this Agreement.

b. **Termination for Cause.** Either party may terminate this Agreement for cause at any time that the other party breaches any of its obligations under this Agreement. Notwithstanding the foregoing, a breach shall not be deemed to have occurred if either party is delayed or interrupted in fulfillment of its obligations as a result of a Force Majeure as defined in Paragraph 10(a). In the event of breach, the non-breaching party shall have the option to immediately cease all performance under this Agreement. If such breach results from the failure by Sponsor to pay the Rights Fees or any other monetary obligations of Sponsor hereunder by the dates when due under this Agreement, District may exercise its right to terminate this Agreement, retain all Rights Fees or other payments previously made by Sponsor, and pursue any and all remedies available in equity or at law. In the case of a breach of this Agreement for any reason other than non-payment, the non-breaching party shall provide the breaching party with written notice of the alleged breach and the breaching party shall have five (5) business days in which to commence curing the breach, and thirty (30) days within which to cure the breach to the reasonable satisfaction of the non-breaching party. If the breaching party fails to cure to the reasonable satisfaction of the non-breaching party within thirty (30) days after the date such written notice is given, the non-breaching party may, in addition to any other remedies which may be available to it under the circumstances, terminate this Agreement effective immediately by providing written notice of such termination to the breaching party. Upon termination, District shall have no obligation to refund to Sponsor any amounts paid to District under this Agreement.

c. **Default.** If Sponsor fails to pay, when due, any amount owing under this Agreement, and such failure continues for a period of thirty (30) days after Sponsor receives written notice of the default from District, or if either party to this Agreement fails to perform any of its covenants and obligations under this Agreement, and such failure continues for a period of thirty (30) days after the non-performing party receives written notice of the default from the other party, and such non-performance remains uncured after such thirty (30) day period, then such aggrieved party may terminate this Agreement by giving notice of termination. All parties' rights under this Section are in addition to, and are not a limitation on or in substitution for, any other rights which either party has by reason of any non-performance, including, without limitation, any claim for damages under law or equity. All rights are cumulative. Upon termination, all rights and obligations of the parties under this Agreement shall cease. Time is of the essence in the performance of all duties and obligations imposed by this Agreement. Each party's course of dealing, or forbearance from, or delay in, the exercise of any of their rights, remedies, privileges or right to insist upon strict performance of any provisions contained in this Agreement, shall not be construed as a waiver by either party, unless any such waiver is in writing and is signed by the party. Upon termination, District shall have no obligation to refund to Sponsor any amount of any Rights Fees paid.

8. **Provisions Regarding Advertising Copy.** Provisions regarding advertising, sideline signs, static digital impressions, PA announcements, etc. (hereinafter referred to as "Advertising Copy"), approval of Advertising Copy, and standards of approval are set forth in District Board Policy and applicable Regulations which may from time to time be amended which are incorporated herein as if set forth in full and state and federal law.

9. **Retained Rights to Intellectual Property.** Sponsor's logo, trademark, service mark, composite mark, design work, and other creative content prepared by or for Sponsor that is displayed on or in the Advertising Copy, and all trademark rights or copyrights in such Advertising Copy (collectively, "Sponsor Intellectual Property"), shall be and remain the sole and exclusive property of Sponsor. Throughout the Term of this Agreement, Sponsor grants with written consent to District a non-exclusive limited license to publish, distribute and display Sponsor Intellectual Property on and/or in the Advertising Copy or on any other items or materials consistent with the terms and purposes of this Agreement. District's name, logo, service marks, composite marks, creative content, trademark rights, copyrighted material and related materials and work, including without limitation any such property that is displayed on or in Advertising Copy with the written consent of District (collectively, "District Intellectual Property") shall be and remain the sole and exclusive property of District. Any and all advertising or promotional materials displayed or distributed by Sponsor pursuant to this Agreement in conjunction with any District Intellectual Property shall be subject to the prior written approval of District, and, if approved, shall be subject to the grant of non-exclusive limited license that automatically expires upon the expiration or termination of this Agreement. Neither party shall have the right to use in any way or reproduce for any purpose the corporate or trade names, trademarks, service marks, logos, or other proprietary symbols of the other party without that party's prior written consent.

10. **Force Majeure.**

a. **Definition of "Force Majeure".** For purposes of this Agreement, "Force Majeure" shall mean and include, any event beyond District's reasonable control (including, but not limited to fire; flood; explosions; weather events; pandemics; damage by third parties, whether negligently or intentionally caused; work stoppages; picketing; lockouts and/or any other concerted action by any employees; acts of God or other casualties; the laws or actions of any governmental authority; or any other event or cause that is beyond the reasonable control of District), as a result of which, at any time and from time to time during the Term, (1) the display of the Advertising Copy is suspended or prevented; or (2) any event, including a District athletic event, is not held, is interrupted, or is suspended, at the Stadium. Notwithstanding the above, Force Majeure will not be extended beyond six (6) months.

b. **Options in Event of Force Majeure.** If a Force Majeure occurs during any contract year during the Term, District may, upon written notice to Sponsor and approved by Sponsor, (i) extend the Term of this Agreement beyond its expiration to make up for lost exposure by the Sponsor; (ii) terminate this

Agreement, or (iii) provide to Sponsor advertising and/or promotional rights of substantially equivalent value, as reasonably determined by District.

11. **Indemnification.** To the extent allowed or allowable by law, each party agrees to and hereby defends, indemnifies, and holds the other party and its present and future board members/trustees, officers, administrators, employees, stakeholders, other representatives, successors and assigns, and their respective subsidiaries, affiliates, partners, officers, directors, employees, stakeholders, shareholders, agents, other representatives, successors and assigns (collectively the "indemnitees") harmless from and against any and all losses, liabilities, damages, claims, demands, suits, and judgments (collectively, "claims"), including, without limitation, attorneys' fees, and the costs of any legal action, arising out of: (i) the use of any trademark, service mark, logo, design, and other intellectual property right materials provided by Sponsor; (ii) the character, content, and subject matter of any advertising copy displayed by District; (iii) any act or omission of the other party related to or in connection with the rights, privileges, or obligations under this Agreement; and (iv) any breach of this Agreement. The indemnification obligations under this Agreement shall survive expiration or earlier termination of this Agreement.

12. **Assignment.** Sponsor shall not have the right or power to assign any of its rights or obligations under this Agreement to any other party without the prior written consent of District in its sole discretion. District shall not assign any of its rights or obligations under this Agreement to any other party without the prior written consent of Sponsor. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.

13. **Immunity.** The execution of this Agreement and/or the performance by District of its obligations hereunder does not, and is not intended to waive or relinquish, and District shall not waive or relinquish, any governmental, sovereign immunity or defense from liability or prosecution available to District, its trustees, officers, employees, or agents under federal or Texas laws.

14. **Governing Law.** The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the state of Texas, without regard to its choice or law or conflict of law provisions. Exclusive venue for any proceeding that may be instituted in connection with this Agreement and the parties' rights and liabilities hereunder shall be in a court of competent jurisdiction located in Hidalgo County, Texas.

15. **Notices.** All notices or other communications, which are required or contemplated by this Agreement ("Notices"), shall be in writing. All other may be sent by any delivery method which provides a tracking number and delivery receipt. Notices shall be addressed as provided below (unless a party changes its addresses or addresses through a written notice to the other party that complies with this Paragraph 15):

If to the District:

McAllen Independent School District
Attention: Superintendent
2000 North 23rd Street
McAllen, Texas 78501
Telephone: (956) 618-6000

If to Sponsor:

McAllen Hospitalist Group, PLLC dba South Texas Health System Clinics
PO Box 843204
Dallas, TX 75284-3204

16. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which shall be deemed to be the same instrument.

17. **Relationship of Parties.** This Agreement does not create, and shall not be construed by the parties or any third person as creating, any agency, partnership, joint venture, or employment relationship between the parties. The relationship of the parties under this Agreement shall be solely that of independent contractors. Each party shall be solely responsible for the conduct of its respective agents and employees in connection with that party's performance of this Agreement.

18. **Merger Clause.** This Agreement (including the attached Exhibit) is the final, complete, and exclusive statement and expression of the Agreement among the parties hereto with relation to the subject matter of this Agreement, and supersedes all prior communications with respect to the subject matter contained herein. It is understood that there are no oral representations, understandings, or agreements covering the same subject matter as this Agreement.

19. **Entire Agreement.** This Agreement contains the entire agreement between District and Sponsor, and there are no other terms, conditions, promises, undertakings, statements or representations, express or implied, concerning this Agreement.

20. **Incorporation of Exhibits.** Any and all Exhibits referenced in this Agreement shall be attached to the Agreement, made a part of the Agreement, and incorporated into the Agreement by reference for all purposes including without limitation the following Exhibit:

Exhibit A – Advertising, Promotional Rights, and Fees

21. **Severability.** In case any provision of this Agreement shall be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement. The validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

22. **Nondiscrimination.** It is mutually agreed that there shall be no discrimination on the basis of a person's race, color, creed, religion, national origin, ancestry, citizenship, gender, sexual orientation, age, or disability.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by an authorized representative as of the Effective Date.

Sponsor:
McAllen Hospitalist Group, PLLC
dba South Texas Health System Clinics

Christian Martinez, Marketing Director

Date: _____

District:

Sam Saldivar, Jr., Board of Trustees President

Date: _____

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

By: Stephen L. Crain
Stephen L. Crain (Nov 4, 2021 11:25 GMT)
Stephen Crain

EXHIBIT A

Advertising, Promotional Rights, and Fees

Term: The Term of this Agreement is for five (5) years commencing November 9, 2021 through December 31, 2026.

"RIGHTS"

1. **Terms and Conditions.** Under the terms and conditions as set forth herein District grants the advertising rights to the Sponsor, as follows:

Anchor Sponsor

"Anchor Sponsor" receives the following advertising rights:

- Prime Anchor Spot Estimated at approximately 8'x8' in size;
- Backlit illuminated display face;
- Fifteen (15) second video commercial played on scoreboard at all home games for a minimum of two times (at least once per half);
- Scorebug on televised games displayed through one (1) quarter of the game;
- Minimum 3 public address mentions in each game;
- Eight (8) reserved home season tickets for the District high school of your choice; and
- Two (2) VIP parking passes.

2. **Rights Fee.** The right fee is a minimum of One Hundred Thousand and no one hundred dollars (\$100,000.00) payable to McAllen ISD as follows:

- **Agreement Year 1:** For services rendered November 16, 2021 to December 31, 2022
 - Offer/Payment 1: \$25,000 due on November 16, 2021 (\$20,000 minimum)
- **Agreement Year 2:** For services rendered January 1, 2023 to December 31, 2023
 - Offer/Payment 2: \$25,000 due on or before November 16, 2022 (\$20,000 minimum)
- **Agreement Year 3:** For services rendered January 1, 2024 to December 31, 2024
 - Offer/Payment 3: \$25,000 due on or before November 16, 2023 (\$20,000 minimum)
- **Agreement Year 4:** For services rendered January 1, 2025 to December 31, 2025
 - Offer/Payment 4: \$25,000 due on or before November 16, 2024 (\$20,000 minimum)
- **Agreement Year 5:** For services rendered January 1, 2026 to December 31, 2026
 - Offer/Payment 5: \$25,000 due on or before November 16, 2025 (\$20,000 minimum)