



Agenda of Special Board Meeting

The Board of Trustees McAllen Independent School District

A Special Board Meeting of the Board of Trustees of the McAllen Independent School District will be held Thursday, August 3, 2023, beginning at 5:00 PM Dr. Ricardo Chapa Board Room/Administration Building of the McAllen Independent School District, 2000 North 23rd Street, McAllen, TX 78501.

Items listed on this agenda may be taken in an order other than as shown on this agenda. Unless removed from the consent agenda, items identified within the consent agenda will be acted on at one time.

At this meeting there may be discussion and action by the Board on the item(s) and subject(s) listed as follows:

1. **CALL MEETING TO ORDER**
2. **PUBLIC COMMENTS**
3. **INSTRUCTIONAL SERVICES, INSTRUCTIONAL LEADERSHIP, HUMAN RESOURCES, DISTRICT OPERATIONS, BUSINESS OPERATIONS, AND BOARD OF TRUSTEES ITEMS**
 - A) Discussion and Possible Action on Memorandum of Understanding No. 2024-014 Texas Reading Academies with Region 1 Education Service Center 4
Item Submitted: Dr. Rosalba De Hoyos, Acting Superintendent
Presenter: Dr. Rosalba De Hoyos, Acting Superintendent
 - B) Discussion and Possible Action on Agreement No. 2024-069 Teach for America, Inc. 2023-2024 School Year 13
Item Submitted: Todd Miller, Assistant Superintendent for Human Resources
Presenter: Dr. Rosalba De Hoyos, Acting Superintendent
 - C) Discussion and Possible Action of Recommended Adjustment to Substitute Teacher Pay 53
Item Submitted: Todd Miller, Assistant Superintendent for Human Resources
Presenter: Dr. Rosalba De Hoyos, Acting Superintendent
 - D) Discussion and Possible Action on Request for Cooperative Quotes No. 2023-1051 Network Operations Center (“NOC”) at Facilities, Maintenance, and Operations Center 54

Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

Presenter: Dr. Rosalba De Hoyos, Acting Superintendent

- E) Discussion and Possible Action on Contract No. 2023-045 Legal Services Agreement (Walsh Gallegos Trevino Kyle & Robinson P.C.) for Request for Proposals/Qualifications RFQ 2023-1000 General Legal Counsel Services 127

Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

Presenter: Dr. Rosalba De Hoyos, Acting Superintendent

- F) Discussion and Possible Action on the Second Amendment to Agreement No. 2020-113 Sperry Commercial Global Affiliates dba The Arriaga Group 133

Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

Presenter: Dr. Rosalba De Hoyos, Acting Superintendent

- G) Discussion and Possible Action of Agreement No. 2024-070 Legal Consultation Services with O'Hanlon, Demerath & Castillo, P.C. 146

Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

Presenter: Dr. Rosalba De Hoyos, Acting Superintendent

- H) Discussion and Possible Action on Request for Proposal No. 2023-1055 One-to-One Initiative, Technology Equipment with Service (RE-BID) 149

Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

Presenter: Dr. Rosalba De Hoyos, Acting Superintendent

4. **RECESS TO CLOSED SESSION: Board of Trustees may go into Closed Session pursuant to Section(s) 551.071, 551.072, 551.074, 551.076, and 551.089 Texas Government Code, to discuss the following:**

- A) Discussion of Human Resources Recommendation(s) for School Year 2023-2024
- B) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2022-2023
- C) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2023-2024
- D) Discussion of Recommendation for the Director of Transportation
- E) Discussion of Recommendation for the Position of Principal at Homer J. Morris Middle School
- F) Pending and/or Potential Litigation
- G) Possible Real Estate Acquisition

5. **RECONVENE IN OPEN SESSION**

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

- A) Discussion and Possible Action of Human Resources Recommendation(s) for School Year 2023-2024 152

Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. Rosalba De Hoyos, Acting Superintendent

- B) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2022-2023 153

Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. Rosalba De Hoyos, Acting Superintendent

- C) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2023-2024 154

Item Submitted: Todd Miller, Assistant Superintendent for Human Resources

Presenter: Dr. Rosalba De Hoyos, Acting Superintendent

- D) Discussion and Possible Action Regarding the Recommendation for the Director of Transportation 155

Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

Presenter: Dr. Rosalba De Hoyos, Acting Superintendent

- E) Discussion and Possible Action on Recommendation for Position of Principal at Homer J. Morris Middle School 157

Item Submitted: Todd Miller, Assistant Superintendent for Human Resources

Presenter: Dr. Rosalba De Hoyos, Acting Superintendent

- F) Pending and/or Potential Litigation

- G) Possible Real Estate Acquisition

7. 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 July 31, 2023 at 5:00 p.m.
Natalia Goza
on behalf of the Board of Trustees*

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 3, 2023

SUBMITTED BY: *Patricia Pena*

SUPERVISOR: _____

Approved for presentation to the Board of Education:

Rosalba De Hoyos

4 _____
Acting Superintendent of Schools

MEMORANDUM OF UNDERSTANDING
Texas Reading Academies TEA Project
Local Implementation Option

RECITALS

WHEREAS, Region 1 Education Service Center ("Region 1 ESC") serves as an Authorized Provider to conduct Reading Academies as required by House Bill 3 (2019) (the "Reading Academies");

WHEREAS, the provision of Reading Academies is being regulated by the Texas Education Agency ("TEA") with the cooperation of Region 1 Education Service Center; and

WHEREAS, to accomplish the outcome of every Kindergarten through Third Grade teacher and principal receiving Reading Academy training, TEA has published guidance in the form of letters to school districts and FAQ guidance to Education Service Centers; and

WHEREAS, the most recent guidance to Education Service Center regarding their provision of Reading Academies to school districts and is incorporated for all purposes into this MOU as if reproduced in its entirety; and

WHEREAS, TEA states that school districts have the following two options relating to ensuring their teachers obtain Reading Academies training:

1. **Use an Authorized Provider** for Comprehensive and/or Blended training for teachers and principals.
 - District pays per participant (\$3,000 for Comprehensive teacher pathways; \$400 for Blended administrator pathway).
2. **Sign an MOU with an Authorized Provider, then employ staff to act as Cohort Leaders and provide Comprehensive training locally to teachers and principals.**
 - District pays a flat fee per year to the Authorized Provider of \$12,000 per Cohort Leader for Comprehensive model.
 - All Cohort Leaders must pass the Cohort Leader Screening; and

WHEREAS, Region 1 ESC, as an Authorized Provider, desires to comply with the guidance set forth by TEA by entering into this MOU with school districts that opt to provide Reading Academy training for their teachers and principals through Options 1 and 2 above; and

WHEREAS, Region 1 ESC and McAllen Independent School District (hereinafter the

"District") agree that the provisions set forth in this MOU are intended to set forth the respective responsibilities of the parties regarding the provision of Reading Academies to the District;

NOW, THEREFORE, in consideration of the mutual promises and subject to the terms and conditions set forth herein, the Parties hereto agree as follows:

I. Designation by District of Reading Academies Services to be Provided by Region 1 ESC:

The District opts for Region 1 ESC to provide Reading Academies training to the District as follows:

Use Region 1 ESC as an Authorized Provider, and District will employ staff to act as Cohort Leaders and provide Comprehensive training locally to teachers.

II. Responsibilities of the Parties.

a. For Region 1 ESC:

- 1) Ensure all Cohort Leaders meet qualifications as determined by TEA.
- 2) Conduct program evaluation as determined by TEA.
- 3) Provide registration assistance, logistical support, and regional technical assistance.
- 4) Monitor quality of implementation of Texas Reading Academies by district and cohort leader and provide targeted intervention if necessary.
- 5) Provide learner progress data and targeted intervention, as needed, to ensure achievement of TEA metrics.

b. For the District:

- 1) Ensure all Cohort Leaders meet the screening requirements determined by TEA and meet the following prerequisite requirements prior to being hired by the district:
 - i. Have served as a reading teacher in K-3 for three or more years across career (special education, general education, or specialized reading teacher).
- 2) Hire Cohort Leaders and assume responsibility for providing salary and benefits.
- 3) Ensure all Cohort Leaders attend the Cohort Leader training provided by TEA.
- 4) Ensure all cohort leaders abide by cohort leader roles and responsibilities as defined by Texas Reading Academies.
- 5) Ensure all Cohort Leaders abide by the established participant limitations for each cohort:
 - i. The leader of a Comprehensive Cohort may manage a cohort pathway up to 60 participants, or
 - ii. The leader of a Comprehensive Cohort may manage multiple cohort pathways with a combined total of up to 60 participants.
- 6) Ensure other duties and or responsibilities do not impede a cohort leader's ability to deliver fact to face sessions, coaching and additional Reading Academies responsibilities.
- 7) Monitor learner progression and provide targeted intervention to ensure achievement

of TEA metrics.

III. TERM OF AGREEMENT

This Agreement shall be effective on September 1, 2023, and terminate, except as provided herein, on August 31, 2024, unless sooner terminated upon 30 days prior written notice by either party or upon completion of all training by Region 1 ESC of the District's personnel (the "Term"). Upon termination hereof, each party agrees to cooperate with the other to fulfill any action required by TEA in its regulation of Reading Academies

IV. FEES

Pay a flat fee to Region 1 as an Authorized Provider for the 2023-2024 school year of \$12,000 per Comprehensive Cohort Leader.

V. ADDITIONAL TERMS AND CONDITIONS.

1. **Assignments.** Neither Party may assign this Agreement without the prior written consent of the other.

2. **Entire Agreement.** This Agreement contains all of the agreement between the Parties with respect to the matters contained herein and no prior agreement or understanding pertaining to any such matters shall be effective for any purpose.

3. **Independent Contractor Status.** Each party and its people are independent contractors in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties.

4. **Third Party Beneficiaries.** Nothing in this Agreement creates, or will be deemed to create, third party beneficiaries of or under this Agreement.

5. **Governing Law.** This Agreement shall be governed, construed, and enforced according to the laws of the State of Texas, without giving effect to principles of conflicts of laws, and the Parties agree to resolve any dispute in the state and federal courts having jurisdiction in Hidalgo County, Texas.

6. **Notices.** Notices sent to either party shall be effective when delivered in person or transmitted by fax machine; one (1) day after being sent by overnight courier; or two (2) days after being sent by first class mail postage prepaid, to the address or fax number, as the case may be, set forth in this Agreement. A facsimile of this Agreement and notices generated in good form by a fax machine (as well as a photocopy thereof) shall be treated as "original" documents admissible into evidence unless a document's authenticity is genuinely placed in question.

7. **Counterparts.** This Agreement and any amendment or supplement to this Agreement may be executed in two or more counterparts, each of which will constitute an original but all of which will together constitute a single instrument. Transmission by facsimile of an executed counterpart signature page hereof by a party hereto shall constitute due execution and delivery of this Agreement by such party.

8. **Sovereign Immunity.** Nothing in this Agreement shall be deemed to waive the sovereign

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8. **Sovereign Immunity.** Nothing in this Agreement shall be deemed to waive the sovereign

immunity of Region 1 ESC, of the staff and employees of Region 1 ESC, or of the District.

9. **Dispute Resolution.** The Executive Director of Region 1 ESC or his/her designee and the authorized agent of the District shall resolve disputes that develop under this Agreement.

10. **Amendments.** This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by each of the Parties

IN WITNESS WHEREOF, for adequate consideration and intending to be legally bound, the Parties hereto have caused this AGREEMENT to be executed by their duly authorized representatives.

The individuals signing below are authorized to do so by the respective Parties to this Agreement.

FOR AND ON BEHALF OF THE DISTRICT

FOR AND ON BEHALF OF REGION 1 ESC

By: _____

Debbie Crane Aliseda

Board of Trustees President

Title

Date

Patricia Pena

District Contact Person

Director of Professional Learning & Literacy

Title of Contact

1601 N. 27th

Street Address

McAllen, Texas 78501

City, State

Zip

956-632-8414

Contact's Telephone Number

patricia.pena2@mcallenisd.net

Contact's email address

By: _____

Authorized Signature

Title

Date

Region 1 ESC Contact Person

Title of Contact

Street Address

City, State

Zip

Contact's Telephone Number

Contact's email address

Approved as to form:

Walsh Gallegos Treviño Kyle & Robinson P.C.

by: Leandra C. Ortiz
Leandra C. Ortiz (Jul 24, 2023 18:07 CDT)

Leandra C. Ortiz

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 3, 2023

SUBMITTED BY: *Science*

SUPERVISOR: *Jedd Miller*

Approved for presentation to the Board of Education:

Rosalba De Hoyos

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Acting Superintendent of Schools

DISTRICT EDUCATIONAL PROFESSIONAL SERVICES AGREEMENT

This educational professional services agreement (this “Agreement”) is dated July 10, 2023 and is entered into between TEACH FOR AMERICA, INC. (“Teach For America”), a Connecticut non-profit with regional office located at 801 N. Bryan Rd., Mission, TX 78572 and McAllen Independent School District, a political subdivision of the state of Texas (“School District”) (each individually “a Party” and collectively “the Parties”).

RECITALS

WHEREAS, Teach For America is a national leader in recruiting, selecting, training and providing ongoing professional development to individuals committed to closing the achievement gap by serving as effective classroom teachers specifically equipped to enhance student achievement in under-resourced school systems.

WHEREAS, McAllen Independent School District seeks to recruit new teachers who are trained to lead students to academic achievement and to equip such teachers with ongoing professional development and support to further develop and sustain their professional practice.

NOW THEREFORE, School District and Teach For America agree to be bound by the terms and conditions of this Agreement.

AGREEMENT

I. TEACHER CANDIDATE RECRUITMENT, SELECTION AND HIRING:

School District Responsibilities:

A. Hiring Commitment.

- i. Teach For America will use its reasonable efforts to provide the number of teacher candidates for employment with School District (“Teachers”) (the “Agreed Number”), but Teach For America cannot and does not guarantee its ability to provide the full Agreed Number of Teachers to School District. Failure to provide the Agreed Number of Teachers for any academic year shall not constitute a breach of this agreement. In the event that Teach For America

supplies the School District with any Teachers above the Agreed Number, School District agrees to pay the fee for each additional Teacher. Each cohort of Teachers employed pursuant to this clause is in addition to the Teachers from prior cohorts.

- a. 2 teachers for the 2023-2024 academic school year. For additional detail on the Agreed Number, please see **Exhibit A**.
- b. 2-4 teachers for the 2024-2025 academic school year. For additional detail on the Agreed Number, please see **Exhibit A**.
- ii. Whether or not Teach For America is able to provide the full Agreed Number, School District shall consider for hire each Teacher provided by Teach For America who meets the district eligibility requirements.
- iii. Any Teach For America Teacher hired by the School District shall be hired as the classroom teacher of record and not for substitute, auxiliary, resource or teacher's aide positions.
- iv. Teach For America Teachers will be hired by School District for vacancies across the full range of grades and subject matters and not restricted or limited to so-called "critical" or "shortage" subjects or grade level vacancies. School District agrees that Teach For America Teachers will not provide any religious instruction.
- v. To the extent reasonably practicable, School District will employ two or more Teachers per individual Partner School.
- vi. School District and Teach For America shall collaborate in good faith to identify individual schools within School District appropriate for Teachers. School District agrees that it will not place Teach For America Teachers at any for-profit schools within its district.

B. Hiring Process.

- i. School District and Teach For America will collaborate in good faith to facilitate the efficient hiring of individual Teachers, in accordance with the School District's established District hiring practices.

- ii. School District shall use its reasonable efforts to hire Teachers in a timely manner throughout the preceding spring and summer. School District shall employ Teachers no later than 30 days before the first day of the academic school year. School District agrees that where possible, Teach For America shall be informed of individual Teacher's grade and subject level assignments prior to the start of their Pre-Service Training (as defined below).
- iii. Subject to its obligations under pre-existing contracts, or applicable law, School District will offer alternative employment to any Teacher who is not employed by the first day of the academic school year. "Alternative employment" includes, but is not limited to substitute teaching positions, "pool" teaching positions, classroom aides or other temporary category of employment available within School to individuals with teaching credentials. The purpose of an alternative employment placement is to provide a salary until such time as School District can secure permanent employment as a full-time classroom teacher of record.

II. TEACHER CANDIDATE RECRUITMENT, SELECTION AND HIRING:

Teach For America Responsibilities:

- A. Candidate Recruitment and Selection. Teach For America will utilize its reasonable efforts to recruit, select for participation in the Teach For America program, and present to the School District for employment Teachers from a broad range of academic majors and career fields. Teach For America will use reasonable efforts to recruit Teachers from diverse backgrounds. In connection with the foregoing, Teach For America will not knowingly engage in any unlawful acts of discrimination in its recruiting or selection of candidates.
- B. Pre-Service Training. Prior to entering the classroom, all Teachers will undergo pre-service training with Teach For America ("Pre-Service Training), in order to prepare Teachers for this work.

C. Certification Status. Teach For America will provide the Pre-Service Training to Teachers presented to School District for the purpose of ensuring that such Teachers meet applicable federal, state and/or local educational standards or requirements such as those set forth in the federal Every Student Succeeds Act and other applicable state certification regulations (together, the “Requirements”). For purposes of this Section, only those Requirements in effect at the time that the Teacher is offered employment by School District will be applicable.

III. TEACHER PLACEMENT AND PROFESSIONAL DEVELOPMENT COMMITMENTS:
School District Responsibilities

A. Employment Status.

- i. Every Teacher employed by School District as described in this Agreement shall be a full-time employee of School District with all of the rights, responsibilities and legal protections attendant to that status and not an employee of Teach For America. Nothing in this Agreement shall be construed to grant additional employment rights to individual Teachers.
- ii. Nothing in this Agreement shall be construed to make Teach For America party to any Teacher employment agreement, permit Teach For America to interfere in the employment relationship between School District and an employed Teacher, or permit Teach For America to function as the representative of any Teacher absent an express agreement among the parties and the Teacher that Teach For America may operate in such capacity in a particular circumstance.
- iii. Nothing in this Agreement shall be construed to imply that an employer-employee relationship exists between Teach For America and any individual Teacher.
- iv. Nothing in this Agreement shall be construed to imply that any Teacher employed by the School District is an agent of Teach For America or has any right or authority to create or assume any obligation of any kind, express or implied, on behalf of Teach For America.

- v. Notwithstanding the foregoing, School District may continue to employ individual Teacher(s) beyond the two-year commitment by mutual agreement between School District and such Teacher(s).

B. Compensation of Teachers. School District shall provide to every Teacher employed by School District pursuant to this Agreement the same salary and benefits as are provided to other teachers employed by School District who are similarly situated under factors routinely used by School District in making such decisions. Notwithstanding the above, Teach For America acknowledges it exercises no control of the salary and benefits offered to Teachers per this Agreement.

C. Reductions in Force. School District shall use reasonable efforts not to terminate any employed Teacher from their teaching position in the event of a reduction in force (RIF), layoffs, “leveling” or other elimination or consolidation of teaching positions within School District. School District shall treat any Teacher employed in connection with this Agreement whose teaching position is eliminated at least as favorably as other teachers with the same job classification, certification status, and/or seniority rights.

D. Compliance with Anti-Harassment and Non-Discrimination Regulations. Teach For America believes all Teachers should be able to work in a safe, inclusive and equitable environments free from all forms of unlawful discrimination based on characteristics or protected status. To that end, School District will provide a copy of their internal harassment policies and/or procedures prior to signing this Agreement. School District acknowledges that not consistently enforcing their policies and procedures constitutes a breach of this Agreement, and that such judgment is at the sole discretion of Teach For America.

E. Prohibited Activities and AmeriCorps Service Requirements. School District acknowledges that Teachers serving at district schools may be serving as members of AmeriCorps, and as such, are subject to the rules and requirements of AmeriCorps and the Serve America Act and are required to refrain from engaging, directly or indirectly in certain activities while teaching, accumulating service hours towards an education award

or otherwise engaging in activities supported by the AmeriCorps program (45 CFR § 2520.65). These restrictions pertain to when Teachers are enrolled in the AmeriCorps program and are on the clock at their school, including teaching time, passing and planning periods and professional development sessions. A full list of prohibited activities can be found in attached **Exhibit B** but in general, Teachers may not (1) attempt to influence legislation or (2) participate in or endorse political events or activities.

- i. School District will not require Teachers to engage in any Prohibited Activities and shall post a list of Prohibited Activities in all locations where Teachers serve, when possible.
- ii. School District acknowledges they may be asked to complete AmeriCorps Service Verification forms for Teachers.
- iii. For the avoidance of doubt, Teachers may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non- CNCS funds.

IV. TEACHER PLACEMENT AND PROFESSIONAL DEVELOPMENT COMMITMENTS: Teach For America Responsibilities

A. Professional Development and On-Line Data Storage Services.

- i. Teach For America shall provide on behalf of School District various professional development services and activities for participating Teachers as well as on-line data storage services to facilitate such professional development services during the Teachers first two years in the classroom (the “Professional Development Services”). These services may include periodic classroom observations by regional program staff, videotaping/recording of instruction in in-person or virtual spaces with review of instructional technique, co-investigative discussions to facilitate Teacher capacity for self-reflection and evaluation of instructional practice using student achievement data, and content area/grade-level workshops facilitated by veteran teachers. In addition, Teach

For America shall facilitate Teacher access to an assortment of resources including sample lesson plans, assessments, grade tracking systems, and content area/grade level instructional materials. If professional development services must be provided virtually, at Teach For America’s discretion, Teach For America shall provide equivalent services to the extent possible. To facilitate provision of these professional development services, Teach For America may provide on-line data storage services, including transfer and storage of identifiable student information on Teach For America’s software and servers.

- ii. To facilitate provision of the Professional Development Services, School District may disclose to Teach For America student-related records and personally identifiable information contained in such records (collectively, “Student Records”). Pursuant to its obligations under the Family Educational Rights and Privacy Act, 20 USC §1232g, and its implementing regulations, 34 CFR pt. 99, as each may be amended from time to time (“FERPA”), in the course of providing the Professional Development Services, Teach For America is a school official with legitimate educational interests in the Student Records disclosed to Teach For America, pursuant to 34 CFR §99.31(a)(1).
- iii. Teach For America agrees to use, maintain, and redisclose Student Records only in accordance with the requirements of FERPA, as permitted by this Agreement and/or otherwise authorized by the School District or by law, and in compliance with the student data privacy requirements contained in the Data Sharing Agreement, a form of which is attached and incorporated here to as, **Attachment A** to this Agreement, and only for the purposes for which disclosure was made.
- iv. Teach For America may re-disclose Student Records to third parties pursuant to Teach For America’s provision of the Professional Development and Data Storage Services, as provided in 34 C.F.R. § 99.33(b), provided that Teach For America shall, in advance, provide the names of such parties and a brief description of such parties’ legitimate educational interest in receiving such information.

- v. Pursuant to 34 CFR § 99.7(a)(3)(iii), School District shall include, in its annual notification of rights under FERPA, criteria that qualify Teach For America, in its capacity as a provider of professional development and data storage services, as a school official with a legitimate educational interest.

B. Certification and Credentialing Services.

- i. Teach For America shall facilitate the enrollment of individual Teachers in an alternative certification/licensure program that will enable the individual Teacher to obtain appropriate credentials to be a classroom teacher of record according to the requirements of the Every Student Succeed Act and applicable state regulations in existence at the time of signature of this agreement..
- ii. Teach For America shall not be responsible for, and shall not be in breach of any provision of this Agreement, in the event of any failure by an individual Teacher to fulfill their obligations to maintain their teaching credentials or obtain necessary waiver(s) to remain a classroom teacher of record.

V. GENERAL PROVISIONS

A. Fees-for-Service.

- i. School District shall pay Teach For America an annual fee for each Teacher employed under this Agreement to defray expenses Teach For America incurred in recruiting, selecting, providing Pre-Service Training and continuing professional development services to the Teachers employed by School District under this agreement. All payments for fees shall be in the form of check delivered to Teach For America or wire transfer to an account designated by Teach For America in writing.
- ii. With respect to each Teacher whose employment by School District is to commence in the 2023-2024 academic year, School District shall pay Teach For America an annual amount of \$6,000 for each year in which such Teacher

is employed by School District, up to two years from the date such employment is to commence

- iii. With respect to each Teacher whose employment by School District is to commence in the 2024-2025 academic year, School District shall pay Teach For America an annual amount of \$6,000 for each year in which such Teacher is employed by School District, up to two years from the date such employment is to commence

B. Non-refund. Teach For America shall have no obligation to refund to School District any amount paid by School District in respect of any Teacher for any reason whatsoever.

C. Invoicing and Payment. Teach For America will invoice School District for all amounts due hereunder with respect to any academic year within thirty (30) days of the start of the academic school year, provided that Teach For America's failure to timely do so, will not constitute a waiver of any of Teach For America's rights or constitute a breach by Teach For America.

D. Term. The term of this Agreement will cover all Teachers whose employment begins with the School District during the 2023-2024 and 2024-2025 academic years. This Agreement will expire on the last school day of the 2025-2026 academic year.

E. Termination. This Agreement may be terminated as follows:

- i. at any time by mutual written agreement of the Parties;
- ii. by either Party, upon thirty (30) days' prior written notice to the other Party, provided that the terminating Party provides that notice no later than 120 days prior to the end of the current academic year; or
- iii. by either Party upon written notice to the other Party in the event of a material breach of this Agreement that is incapable of being cured or, if capable of being cured, is not cured within thirty (30) days following

receipt by the breaching Party of written notice of such breach from the non-breaching Party.

F. Survivability and Effect of Termination. In the event of the expiration or termination of this Agreement, this agreement shall become void, with the exceptions that Section IIIA-E (School District placement and professional development responsibilities) shall survive and will remain in effect until such time as there are no Teachers employed under this contract. In addition, Sections VG (No Warranty), V.H (Indemnification), and V.I (Limitation of Liability) shall survive the expiration or termination of this Agreement indefinitely. Additionally, Teach For America will be entitled to all outstanding amounts due up to the date of expiration or termination.

No Warranty. School District hereby agrees and acknowledges that Teach For America does not make and has not made any representation and warranty (express or implied) as to the fitness of any Teacher presented or provided by Teach For America

G. Indemnification. To the extent permitted by law, each Party shall indemnify and hold harmless the other party and its officers, directors, employees and agents (the "Indemnitees") from and against any and all losses, liabilities, claims, damages, costs and expenses (including attorneys' fees) ("Losses") to which such Indemnitee may become subject arising out of a breach of this Agreement by the indemnifying party, except to the extent such Losses result from the willful misconduct or gross negligence of such Indemnitee.

H. Limitation of Liability. Neither Party nor any of its officers, directors, employees or agents shall be liable to the other Party in connection to this Agreement, except for a Loss resulting from willful misconduct or gross negligence on the part of such Party; provided that in no event any such liability be in excess of the aggregate amount of the value of this Agreement. To the extent permitted by applicable state laws and regulations, neither Party shall have any liability to the other Party with respect to Losses asserted after 6 months of the expiration or termination of this Agreement, whichever is earliest.

- I. Surveys. School District acknowledges that Teach For America may survey individual constituents, teachers, etc. at the partner school sites regarding its programming and professional development of Teachers in the classroom.
- J. Amendment/Modification/Extension. Any amendment, modification, extension must be in writing and signed by each Party.
- K. Counterparts. This Agreement may be executed in any number of counterparts (including by electronic transmission).
- L. Governing Law. This Agreement and all matters relating hereto shall be governed by, construed and interpreted in accordance with the laws of the State of Texas,
- M. Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid in whole or in part for any reason, such provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability or validity of the remainder of this Agreement. Such stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision as is legally possible.
- N. Notices. Any notices to either Party under this Agreement shall be in writing and delivered by hand or sent by nationally recognized messenger service, or by registered or certified mail, return receipt requested, to the addresses set forth below or to such other address as that Party may hereafter designate by notice.

DISTRICT CONTACT

Name: Stan Crouse
Title: Director of Human Resources
Address: 2000 N. 23rd Street
: McAllen, TX 78501
Email: Stan.Crouse@mcallenisd.net

**TEACH FOR
AMERICA:**

With an electronic copy to:

Name: Ana Gonzalez
Executive Director
Title: _____
Address: 801 N. Bryan Rd., Ste. 152
Mission, TX 78572

Email: Ana.gonzalez@teachforamerica.org

Name: TFA Legal Affairs
LegalAffairs@teachforamerica.org
Email: g
**Send only notices related to breach of contract and indemnity.*

- O. Waiver. A waiver or a breach or default under this Agreement shall not be a waiver of any other subsequent breach or default. The failure or delay in enforcing compliance with any term or condition of this Agreement shall not constitute a waiver unless expressly waived in writing .
- P. Authority. This Agreement supersedes all communications between the parties related to the subject matter of this Agreement.
- Q. CONTRACT PROVISIONS FOR CONTRACTS UNDER FEDERAL AWARDS. For Contracts awarded under Federal Awards, Vendor agrees to comply with the terms and conditions set out in Attachment B addendum of this Contract entitled “Federal Terms and Conditions”, Attachment B addendum is incorporated herein fully by reference.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of School District and Teach For America has caused its duly authorized representative to sign this Agreement in the space provided below.

McAllen Independent School District

By: _____

Name: Debbie Crane Aliseda

Title: President, Board of Trustees

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

Approved as to form:
Walsh Gallegos Treviño Kyle & Robinson P.C.
by: *Leandra C. Ortiz*
Leandra C. Ortiz (July 24, 2023 15:43 CDT)

Leandra C. Ortiz

Teach For America

By: _____

Name: _____

Title: _____

Address _____
: _____

Teach For America

Contract Owner Attestation:

This contract required legal changes to the required terms and was reviewed/approved by TFA Legal Affairs in this final form.

This contract did not require legal changes and was not reviewed by TFA Legal Affairs.

Name: Jonathan Stevens

Title: SMD, Networks and Strategy

EXHIBIT A

Certification (subject) Area	Grade Level	Agreed Number of Teachers	Academic Year of Employment
Core Subjects: English Language Arts and Reading, Math, Science, Social Studies, English as a Second Language, Special Education	Secondary	2	2023-2024 and 2024-2025
Core Subjects: English Language Arts and Reading, Math, Science, Social Studies, English as a Second Language, Special Education	Secondary	2-4	2024-2025 and 2025-2026
Other Subject Areas: inclusive of Bilingual Education and Career and Technical Education	Elementary and Secondary	As needed	2023-2024 and 2024-2025 2024-2025 and 2025-2026

- i. Each cohort of Teachers employed pursuant to this clause is in addition to Teachers from prior cohorts employed by the District and who are returning for their second year of employment.
- ii. If Teach For America provides District with a number of Teachers that is lower than the Agreed Number, the actual number of Teachers provided will constitute the Agreed Number for purposes of determining any fees that the District owes Teach For America.
- iii. In the event that Teach For America supplies the District with any Teachers above the Agreed Number, District agrees to pay the agreed upon fees for the additional Teacher.

EXHIBIT B
AMERICORPS PROHIBITED ACTIVITIES

While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or CNCS, staff and members may not engage in the following activities:

- a. Attempting to influence legislation;
- b. Organizing or engaging in protests, petitions, boycotts, or strikes;
- c. Assisting, promoting, or deterring union organizing;
- d. Impairing existing contracts for services or collective bargaining agreements;
- e. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
- f. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
- g. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
- h. Providing a direct benefit to—
 - i. A business organized for profit;
 - ii. A labor union;
 - iii. partisan political organization;
 - iv. A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 related to engaging in political activities or substantial amount of lobbying except that nothing in these 9 provisions shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and
 - v. An organization engaged in the religious activities described in paragraph 3.g. above, unless CNCS assistance is not used to support those religious activities;
- i. Conducting a voter registration drive or using CNCS funds to conduct a voter registration drive;
- j. Providing abortion services or referrals for receipt of such services; and
- k. Such other activities as CNCS may prohibit.

Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non- CNCS funds. Individuals should not wear the AmeriCorps logo while doing so.

ATTACHMENT A
DATA SHARING AGREEMENT

Data Sharing Agreement with additional attachments:

- Attachment A: TFA NDA Template
- Attachment B: Confidentiality Agreement for Data Use
- Attachment C: Teacher Consent Form

McAllen Independent School District and Teach For America, Inc. Data Sharing Agreement

This Data Sharing Agreement (“DSA”), effective on the date of execution by the last signing Party (the “Effective Date”), is made and entered into by and between Teach For America, Inc. (“Teach For America,” or “Recipient”), and the McAllen Independent School District (“McAllen I.S.D.” or “School District”), (each a “Party” and collectively, the “Parties”).

WHEREAS, on July 10, 2023, the McAllen Independent School District and Teach For America entered into a Professional Services Agreement (“PSA”) whereby Teach For America agreed to recruit, select, train and provide ongoing professional development to individuals committed to closing the achievement gap by serving as effective classroom teachers specifically equipped to enhance student achievement in under-resourced school systems (“Corps Members”). As such, under 34 CFR 99.31(a) Teach For America has a legitimate educational interest in accessing and using, and (b) McAllen Independent School District may share with Teach For America, the School District Data described herein;

WHEREAS, Teach For America desires to use the School District Data to track the growth and achievement of students taught by Teachers supported by Teach For America and to measure the impact of these Teachers within their contexts in order to provide: tailored support and professional development programming for these Teachers, report to funders and board members, and to evaluate and evolve our model for selecting new teachers into the program, and support McAllen I.S.D. in improving teacher development, effectiveness and student outcomes.

WHEREAS, The Parties wish to enter into this DSA, which sets forth the terms under which the Parties will share School District and Teach For America data consistent with appropriate confidentiality obligations and applicable laws;

NOW THEREFORE, The Parties agree as follows:

1. Definitions

- A. “Breach” will mean any actual or reasonably suspected unauthorized access, acquisition, use, disclosure, loss, modification, destruction, or inability to account for McAllen I.S.D. Data.
- B. “McAllen I.S.D. Student Record Data” means and refers to the data described more fully in **Appendix A** that School District provides to Teach For America in connection with this DSA.
- C. “School District Video Data” means and refers data described as videotaping or recording of instruction in in-person or virtual spaces for review of instructional technique, which are manually transferred or uploaded to Teach For America’s software and servers by Corps Members in connection with this DSA.
- D. “School District Data” collectively refers to both the School District Student Record Data and Video Data.
- E. “FERPA” means and refers to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and implementing regulations set forth in 34 CFR Part 99.
- F. “Personal Data” means and refers to any information that identifies or that can reasonably be used to identify a specific individual, including but not limited to any information that meets the definition of “Personally Identifiable Information” set forth in 34 C.F.R. § 99.3
- G. “Privacy and Security Laws” means and refers to (i) all applicable U.S. federal, state, and local laws, rules, regulations, directives, and governmental requirements currently in effect and as they become effective relating in any way to privacy, confidentiality, security, or breach notification of Personal Data, including but not limited to FERPA and (ii) all applicable industry standards concerning privacy, data protection, confidentiality or information security.

II. Description of Data Access, Exchange and Use

- A. McAllen I.S.D. will provide the McAllen I.S.D. Student Record Data described in **Appendix A** to Teach For America in a form, format, frequency, and security feature mutually agreed by the Parties and laid forth in **Appendix A**.
- B. Corps Members will transfer or upload School District Video Data to Teach For America in a form, format, frequency, and security mutually agreed by the Parties and laid forth in **Appendix B**
- A. Corps Members will receive a unique link for student survey administration through UChicago Impact's Survey Administration Tool; link will be shared with students and responses will be kept confidential and stored on secure servers. Only UChicago Impact staff and agents necessary for administration of the survey will have access to student and teacher identifiers during administration as described in **Appendix B**.
- B. The restricted School District Data will be used solely for the purposes agreed upon by the two parties.
- C. Teach For America may request additional data or use of data, in writing, from McAllen I.S.D. at any point. If School District agrees to provide such data or to its use, all terms of this agreement apply to the additional data. This includes ongoing data for subsequent cohort years, in which Teach For America and McAllen I.S.D. have entered into a PSA, after the original DSA is signed.
- D. Access to Teach For America Data will be limited solely to the appropriate School District staff designated in writing (after executing **Attachment A**) and the data may not be loaned or otherwise conveyed to anyone other than authorized recipients of the parties.
- E. Teach For America Agrees as follows:
 1. Provide School District with a dataset (after executing Attachment A) that will allow for the identification of Teach For America Teachers in the existing district data system ("Teach For America Data"). Teach For America and School District agree that both parties will follow appropriate data protection protocols in transferring this data to representatives of School District as well as protect any and all personal data.
 2. Access to School District Teacher Evaluation/Observation data at the identified individual teacher level will be limited solely to Teach For America regional and national staff (after executing Attachment C) and the data may not be loaned or otherwise conveyed to anyone other than authorized recipients of the parties to this agreement.
 3. Access to School District Student Record Data at the individual student level will be limited solely to appropriate Teach For America national analytics staff designated in writing (after executing Attachment B) and the data may not be loaned or otherwise conveyed to anyone other than authorized recipients of the parties to this agreement.
 4. Access to School District Student Record Data aggregated by class/teacher will be limited solely to Teach For America employees, funders, and board members. Teach For America agrees that the data may not be loaned or otherwise conveyed to anyone other than authorized recipients of the parties to this agreement.
 5. Access to McAllen I.S.D. Survey Data will be limited solely to Teach For America employees and Corps Members for ongoing coaching and development of current and future Corps Members. Further, no student identifiable information will be reported and all data will be reported in the aggregate or disaggregated by race/ethnicity /gender (with subgroups not less than 5). Teach For America agrees that the Survey Data may not be loaned, used or otherwise conveyed to anyone other than internal staff, current and future Corps Members, using software services to securely house and host this data.
 6. Access to School District Video Data will be limited solely to Teach For America employees and Corps Members for ongoing coaching and development of current and future Corps Members. Teach For America agrees that the Video Data may not be loaned, used or otherwise conveyed to anyone other

than internal staff, current and future Corps Members, using software services to securely house and host this data.

7. Upon execution of Attachment B, Teach For America will not share School District aggregate student data for student cohorts less than five (5).
8. Teach For America will not externally share or publish conclusions from any analyses that identifies the district, without the prior consent of School District.
9. Teach For America agrees to share any findings from its analyses and/or aggregate reports with School District.

III. DUTIES

A. The School District will perform the following duties:

- i. Provide data for the purposes of this Agreement in compliance with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. section 1232g and 34 C.F.R, section 99, and related Texas Education Code provisions.
- ii. Provide Teach For America with information security specifications required to transmit pupil record information electronically in the form, format, frequency, and security features laid out in **Appendix A**.
- iii. Authorizes Teach For America and Corps Members, by the execution of this Agreement, to administer student surveys to students in grades 5-12 in corps member classrooms, in the form, format, frequency and security features laid out in **Appendix B**.
- iv. Upon execution of a separate authorization and publicity release form, School District authorizes Teach For America to use photography and/or video of its students by naming Teach For America as an approved affiliate or partner and third party beneficiary of the School District with regard to all publicity/model releases signed by student and/or parents, especially as they relate to videos and photographs of student of schools in which Teach For America Corps Members teach.
- v. Authorizes Teach For America and Corps Members, by the execution of this Agreement, to coordinate all necessary parental/guardian FERPA and media releases to allow the videotaping of in-person and/or virtual instruction in order to obtain School District Video Data.

B. Teach For America will perform the following duties:

- i. Comply with all FERPA and Texas Education Agency Provisions, including the following:
 - a. Teach For America further agrees not to share data received under this DSA with any other entity not set forth in this Agreement. Teach For America agrees to allow McAllen I.S.D. access to any relevant Teach For America records for purposes of completing authorized audits of the parties.
 - b. Require all employees, contractors and agents of any kind to comply with all applicable provisions of FERPA [and other federal, state and local laws] with respect to the data shared under this agreement. Teach For America agrees to require and maintain an appropriate confidentiality agreement from each employee, contractor or agent with access to data pursuant to this agreement and Attachment B.
 - c. Maintain all data obtained pursuant to this agreement in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this agreement except as necessary to fulfill the purpose of the original request. All copies of data of any type, including any modifications or additions to data from any source that contains information regarding students, are subject to the provisions of this agreement in the same manner as the original data. The ability to access or maintain data under this agreement shall not under any circumstances transfer from Teach For America to any other institution or entity.

- d. Not disclose any School District Data obtained under this agreement in a manner that could identify an individual student to any other entity in published results of data use authorized by this agreement.
 - e. Use data in a manner that does not permit personal identification of parents and students by anyone other than representatives of Teach For America authorized by this Agreement with legitimate educational interests for purposes of this Agreement.
 - f. Destroy all personally identifiable School District Data obtained under this agreement when it is no longer needed for the purpose for which it was obtained. Nothing in this agreement authorizes Teach For America to maintain personally identifiable data beyond the time period reasonably needed to complete the purpose of the request. After creating and verifying the final merged data set, all personally identifiable data shall be destroyed in compliance with 34 CFR Section 99.31 (a) (6). Teach For America agrees to require all employees, contractors, or agents of any kind to comply with this provision. Consistent with FERPA, Teach For America will retain a de-identified data set to conduct analyses for specific projects that have been approved in advance and in writing by School District.
- ii. Teach For America shall comply with the School District's information security specifications prior to receiving any electronic transfers of pupil record information. School District may require Teach For America to provide documentation of compliance prior to any transmittal.
 - iii. Teach For America shall designate in writing a single authorized representative able to request data under this agreement. The authorized representative shall be responsible for transmitting all data requests and maintaining a log or other record of all data requested and received pursuant to this agreement, including confirmation of the completion of any projects and the return or destruction of data as required by this agreement. School District or its agents may, upon request, review the records required to be kept under this section. Teach For America's authorized representative must sign and complete the Confidentiality Agreement, (Attachment B) which is incorporated by reference,
 - iv. If Teach For America experiences a Breach, Teach For America will immediately take steps to mitigate any harm resulting from such Breach and/or as are required under applicable Privacy and Security Laws. Teach For America will report in writing to School District without unreasonable delay, but in no event later than forty-eight (48) hours of determining that a Breach of School District Data has occurred. Teach For America will cooperate with any reasonable School District requests for information regarding such Breach.

IV. GENERAL PROVISIONS

- A. **TERM.** The Term of this Agreement shall begin on the Effective Date, cover all Corps Members hired under the PSA originally dated July 10, 2023 and shall expire on the last day of the 2025-2026 academic year
- B. **TERMINATION.** This Data Sharing Agreement may be terminated as follows:
 - i. At any time by mutual agreement of the parties;
 - ii. By either party upon thirty (30) days prior written notice to the other Party;
 - iii. By either party upon written notice to the other in the event of a material breach of this Agreement that is not cured within thirty (30) days following the receipt by the breaching party of written notice from the non-breaching party.
- C. **EFFECT OF TERMINATION.** If this Agreement expires or is terminated by either party, it shall become void. The expiration or earlier termination of this specific Agreement shall not serve to terminate the associated PSA.

- D. **GOVERNING LAW** The validity, interpretation and performance of this agreement shall be determined according to the laws of the State of Texas.
- E. **INDEMNIFICATION** Teach For America shall indemnify and hold McAllen I.S.D. and its Board Members, administrators, employees, agents, attorneys, and contractors (Indemnitees) harmless against all liability, loss, damage and expense (including reasonable attorneys' fees) resulting from or arising out of this agreement or its performance, whether such loss, expense, damage or liability was proximately caused in whole or in part by the negligent or willful act or omission of Teach For America, including, without limitation, its agents, employees, subcontractors or anyone employed directly or indirectly by it.
- F. **NOTICES** All notices required or permitted by this Agreement shall be in writing and shall be either personally delivered or sent by nationally-recognized overnight courier, facsimile or by registered or certified U.S. mail, postage prepaid, addressed to the individuals as set forth below (except that a party may from time to time give notice changing the address for this purpose). A notice shall be effective on the date personally delivered, on the date delivered by a nationally-recognized overnight courier, on the date set forth on the receipt of a telecopy or facsimile, or upon the earlier of the date set forth on the receipt of registered or certified mail or on the fifth day after mailing.

AGENCY 1:	TEACH FOR AMERICA	AGENCY 2:	MCALLEN INDEPENDENT SCHOOL DISTRICT
Name, Title	Ana Gonzalez, Executive Director	Name, Title	Stan Crouse Director of Human Resources
ADDRESS:	801 N. Bryan Rd., Ste. 152 Mission, TX 78572	ADDRESS:	2000 N. 23rd Street McAllen, TX 78501
TELEPHONE:	956-631-6781	TELEPHONE:	(956) 618-6005
EMAIL:	ana.gonzalez@teachforamerica.org	EMAIL:	stan.crouse@mcallenisd.net

- G. The points of contact for technical issues regarding the exchange, storage and security of the School District Data and related technical issues are:

Teach For America: Dana Nguyen

McAllen I.S.D.: Stan Crouse, Director of Human Resources

- H. **AMENDMENT, MODIFICATION, EXTENSION.** Any amendment, modification or extension must be in writing and signed by both Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last day noted below.

AGENCY 1:	TEACH FOR AMERICA	AGENCY 2:	MCALLEN INDEPENDENT SCHOOL DISTRICT
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ADDRESS:	801 N. Bryan Rd., Ste. 152 Mission, TX 78572	ADDRESS:	2000 N. 23rd Street McAllen, TX 78501
TELEPHONE:	956-631-6781	TELEPHONE:	(956) 618-6005
EMAIL:	ana.gonzalez@teachforamerica.org	EMAIL:	debbie.aliseda@mcallenisd.net
SIGNATORY NAME (PRINT):	Ana Gonzalez	SIGNATORY NAME (PRINT):	Debbie Crane Aliseda
SIGNATORY TITLE:	Executive Director	SIGNATORY TITLE:	President, Board of Trustees
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

Approved as to form:
Walsh Gallegos Treviño Kyle & Robinson P.C.
by: Leandra C. Ortiz
Leandra C. Ortiz (Att. 24, 2023 1543 CDT)
Leandra C. Ortiz

APPENDIX A - DATA ELEMENTS, FORM, FORMAT, FREQUENCY, AND SECURITY FEATURES

Data Elements

McAllen I.S.D. will, to the fullest extent possible, include the following data and specified variables in the School District Data sets provided to Teach For America (limited only by what is available through the method of access);

- a. The following teacher data and variables are essential to Teach For America's data request:
 - i. district, district code, school, school code
 - ii. Subject name, subject ID, course name, course ID, section ID
 - iii. grade level name, grade level code

- b. The following teacher data and variables are helpful but not essential to Teach For America's data request:
 - i. years employed with partner
 - ii. TFA affiliation (current CM/ alumni)
 - iii. certification/ license level
 - iv. gender
 - v. race
 - vi. ethnicity
 - vii. teacher evaluation rating/ observation data (where available)
 - viii. student/parent survey summary results (where available)

- c. The following student data and variables are essential to Teach For America's data request:
 - i. interim assessment scores (BOY, MY, EOY) (all scores including growth goals/targets, grade level equivalency, mastery, percentile rank, or other scales available)
 - ii. state test scale scores (all scores including scale score, proficiency/ performance level, raw scores, percentile rank, or other scales available)
 - iii. student survey results (all scores including individual question scores, aggregate construct scores, raw scores, any deidentified open ended responses or other scales available)
 - iv. test grade
 - v. test subject
 - vi. test year
 - vii. State Student ID number

- d. The following student data and variables are helpful but not essential to Teach For America's data request:
 - i. race/ ethnicity
 - ii. ELL status
 - iii. special education/ disability status
 - iv. low socioeconomic-status (SES)
 - v. attendance data (e.g. daily absence or tardiness, number of absences/tardies over a specified time period, days attended and missed, average daily attendance);
 - vi. behavior/discipline data (e.g. number of detentions, suspensions, office referrals)

- e. The following aggregate data are essential to Teach For America's data request:
 - i. School District average scores for all interim assessment tested grades and subjects (all scores including growth goals/targets, grade level equivalency, mastery, percentile rank, or other scales available)

- ii. School District average scores for all state tested grades and subjects (all scores including scale score, proficiency/ performance level, raw scores, percentile rank, or other scales available).
- iii. School District average scores for all student surveys, if applicable, surveyed grades and subjects (all scores including individual question scores, aggregate construct scores, raw scores, any deidentified open ended responses or other scales available)

Data Security

Teach For America employs a number of strategies to secure data and limit unnecessary access during transfer, storage, and processing. We encrypt data in transfer as well as at rest, when it is being stored in a data repository. For our internal data storage, we change encryption keys on a regular basis to avoid stale credentials and unwanted legacy access. Data is regularly obfuscated for analytics and reporting purposes, and is only presented to stakeholders (e.g., TFA staff, board members, funders, SEAs/LEAs) in aggregate, rolled up at the classroom, instructor, school, or district level. We use best practices for data isolation, including limiting accounts for vendors who push data to our systems and centralized oversight of user accounts for external systems when we need to pull the data ourselves. We use a “least privilege granted” model for access to internal systems, employing multi-factor authentication where feasible, and monitor access across these systems with auditable logs. Additionally, we have blanket data privacy training for all staff that covers key elements of working with PII, sensitive data, and student data in particular.

Teach For America shall also have a written incident response plan, which shall include but is not limited to, prompt notification to McAllen I.S.D. in the event of a security or privacy incident, as well as procedures for responding to a breach of any of School District’s Data that is in Teach For America’s possession. Teach For America agrees to share its incident response plan upon request.

System Description:

Other Systems Description:

Docebo Description:

The onset of the Covid-19 pandemic fast-forwarded Teach For America's (TFA) work to create a more personalized corps member experience, through a standardized platform and other digital offerings. The charge: leverage technology to help us unblock and enable a digital transformation. After a robust RFQ process Docebo proved to meet all of the identified needs for an enterprise Learning Management System (LMS) including the ability to: track course and assignment completion, track progress through an asynchronous course, respond to discussion prompts simply within an asynchronous course, easily and intuitively navigate assignments (due dates, ability to upload files, daily to-dos), customize and automate data reporting, assigned learning plans for individuals or groups of users, communicate key announcements through the system, and share classroom teaching videos and receive feedback from expert practitioners and coaches.

This **Appendix B** shall serve as Teach For America Rio Grande Valley's official notification of the use of the Docebo platform for corps member teacher coaching and training. While instruction may be in-person, virtual, or follow a hybrid model this school year, we believe it is important that we innovate and remain agile in our approach to the coaching and training we provide corps members. Below we've outlined the various ways Teach For America Rio Grande Valley and corps members will utilize the Docebo platform, including but not limited to:

- Uploading and reviewing classroom recordings and other content in order to engage in discourse and feedback on teaching practices.
- Foster strong dialogue and collaboration with other corps members and Teach For America staff as they share resources, ideas, and feedback.
- Streamline coaching conversations centered on individual teacher development, rooted in evidence from their classrooms, and use evidence-based practices modeled by other teachers.

As part of our use of Docebo, Teach For America corps members will be uploading their classroom recordings. Although these recordings are focused and framed around the teacher, there may be times they include student images. Teach For America will obtain parental consent waivers for any videos which include student images.

Docebo Security Features:

Although corps members will upload classroom recording videos, these videos are not sharable outside of the platform and only the corps member who uploaded the video and Teach For America coaches have rights to download it. Our partnership with Docebo meets rigorous data security and privacy standards as a closed and private platform and Docebo has affirmed their compliance with laws and regulations concerning the privacy, security and notification of breaches.

Cultivate Description:

This **Appendix B** shall serve as Teach For America Rio Grande Valley's official notification of the use of the UChicago Impact Cultivate for Coaches student survey for professional development and organizational reporting. Cultivate for Coaches is a professional development program designed to support coaches and Corps members in creating learning environments that positively affect what students believe about themselves as learners and the strategies they employ in their classrooms, ultimately improving student academic performance. This program includes student surveys for grades 5-12 administered by UChicago Impact. The survey is crucial because it will provide Corps members with important information on students' perceptions of the classroom learning environments that, in turn, can support their understanding of strengths and areas of growth. Below we've outlined the various ways Teach For America Rio Grande Valley and corps members will utilize Cultivate student survey data, including but not limited to:

- Corps members review student feedback to prioritize areas for growth.
- Coaches utilize data to support individual teacher development, based on evidence from student surveys, and incorporate evidence-based best practices provided by University of Chicago.
- Teach for America reports aggregate data as a key performance indicator for continuous improvement of programmatic supports.

Cultivate Survey Security Features:

UChicago Impact will administer the Cultivate for Coaches Survey to students of TFA Corps members in grades 5-12. The surveys will be administered using UChicago Impact's Survey Administration Tool. Each teacher will receive a unique link for student survey administration.

- Student identification will be kept confidential and stored on secure servers for both outreach and survey administration. Only UChicago Impact staff and agents necessary for administration of the survey will have access to student and teacher identifiers during administration.
- Students will select their birthdate, gender, grade level, school and teacher using a combination of drop-down lists or radio buttons. This data is collected solely for the purposes of reconciling multiple surveys from the same students. Students have the right to omit responses to any question. Once data collection and reporting are complete, student identifying information will be permanently deleted.
- Students will also have the option of selecting their race/ethnicity in order for teachers to understand how student perceptions vary by race/ethnicity.
- To receive student data, CMs must have at least 50% of students (based on student count provided by TFA) complete the survey and have at least 10 valid respondents per item to receive full report data. Partial survey responses will also be accepted.
- Only aggregate data (for classrooms with at least 10 students) will be reported to teachers on a password-protected basis
- TFA will have access to aggregate student data without any identifiable information through a password-protected system.
- UChicago Impact has the right to keep all non-identifiable student scores for national benchmarking purposes but cannot report on any aggregate results without explicit permission from TFA.

UChicago Impact employs a number of industry standard practices to secure data and prevent unauthorized access. Data is encrypted both while in transit during the survey process, and while at rest when stored in the data repository. Encryption keys are changed on a regular basis to avoid stale credentials and unwanted legacy access. Data is regularly obfuscated for analytics and reporting purposes and is aggregated by being rolled up at the classroom, instructor, school or district level. The server management team enforces data isolation and oversight of all user accounts accessing data, including continuous monitoring of access across our systems using centralized, auditable logs.

ATTACHMENT A NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT dated as of July 10, 2023 (this "Agreement"), is entered into by and between Teach For America, Inc. ("Teach For America"), and the McAllen Independent School District (the "McAllen I.S.D." or "School District").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Confidential Information. "Confidential Information" means any personally identifiable information related to Teach For America corps members, corps member applicants, donors, alumni, employees, agents and/or volunteers obtained by or furnished to the School District; all findings, analysis, data, reports or other information learned or developed and based thereon, whether in oral, written, graphic, or machine-readable form; and all information marked "confidential." Confidential Information includes, but is not limited to, names, addresses, contact information, school or school attended, school district, grades or other reviews, credits, scores, analysis or evaluations, records, correspondence, activities or associations, financial information, social security numbers or other identifying numbers or codes, date of birth or age; regardless of whether such information was disclosed prior to, concurrent with or subsequent to this Agreement. "Confidential Information" shall not include any information that is: (i) lawfully in the public domain at the time of receipt or which lawfully comes into the public domain thereafter through no act of the School District in breach of this Agreement, (ii) disclosed with the prior written approval of Teach For America, and/or (iii) disclosed as required by court order, subpoena, other validly issued administrative or judicial notice or order and/or as a matter of applicable law, provided, however, that in the event disclosure is required of the School District under the provision of any law or court order, the School District will (a) promptly notify Teach For America of the obligations to make such disclosure sufficiently in advance of the disclosure, if possible, to allow Teach For America to seek a protective order, and (b) disclose such Confidential Information only to the extent allowed under a protective order, if any, or necessary to comply with the law or court order.
2. Use of Confidential Information. The School District shall hold in confidence and shall not disclose to any third party any Confidential Information disclosed to it by Teach For America, except as expressly permitted under this Agreement. The School District shall use such Confidential Information only in connection with identifying Teach For America corps members and alums within the Texas Education Agency database (the "Matching Services") and shall not exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of Teach For America. The School District shall disclose Confidential Information of Teach For America only to its employees who have a need to know such Confidential Information in order to perform the Matching Services and who are legally bound to protect the confidentiality of such Confidential Information. The School District shall ensure that all such employees comply with the terms of this Agreement. The School District shall neither retain nor incorporate any of the Confidential Information into any database or any medium other than may be required for the Matching Services. Teach For America may audit the School District's maintenance of the Confidential Information for security purposes
3. Protection of Confidential Information. The School District shall protect the Confidential Information by using the same degree of care, but not less than a reasonable degree of care, to prevent the unauthorized use, dissemination, publication of, or access to, Confidential Information as it uses to protect its own confidential information.
4. Property Rights in Confidential Information. Confidential Information will remain the property of Teach For America notwithstanding disclosure hereunder. Disclosure of Confidential Information hereunder shall not be deemed to constitute a grant, by implication or otherwise, of a right or license to the School District of the Confidential Information other than for use in connection with providing the Matching Services.
5. Notice of Breach. In the event the School District or its affiliates become aware of any breach or threatened breach by the School District or its affiliates of any of the provisions of Sections 2 or 3 hereof, School District shall, within a commercially reasonable time under the circumstance, notify Teach For America of such breach or threatened breach, and shall fully cooperate with Teach For America, at the School District's expense, as reasonably requested by Teach For

America, to remedy such breach or prevent such threatened breach and to prevent any further breach or threatened breach.

6. Non-Public, Private Information. The School District acknowledges that the Confidential Information includes non-public, personal information (“NPPI”) pertaining to residents of various states, the laws and regulations of which impose certain notice requirements if such NPPI has been acquired, accessed or otherwise compromised. Notwithstanding Section 5, the School District agrees to notify Teach For America in writing, in accordance with the requirements of Section 13 hereof, within twenty-four (24) hours after the School District becomes aware of any actual or suspected occurrence of any such acquisition, access or compromise and shall work with Teach For America to take all measures reasonably necessary, in Teach For America’s sole discretion, to restore the security of such NPPI. Teach For America shall have the exclusive right to provide notice to any person or entity as required by law and regulation (i) if Teach For America reasonably believes that NPPI under the School District’s control or accessible by the School District was acquired, accessed or otherwise compromised by an unauthorized party and (ii) Teach For America determines that notice must be provided to comply with the applicable law and regulations concerning the person whose NPPI was acquired, accessed or otherwise compromised. The School District shall reimburse Teach For America for the reasonable and actual costs of such notice per “incident” (i.e., breach of the security resulting in a reasonable probability that the NPPI of such person was acquired, accessed or otherwise compromised by an unauthorized party) and any additional remediation costs, if: (A) Teach For America’s determination that notice was required under applicable law and regulations was reasonable; (B) any breach was caused by the School District’s failure to comply with its obligations under this Agreement; and (C) Teach For America exercises reasonable efforts to minimize the costs of providing the notice. Even if the School District reimburses Teach For America for the costs of the notice and remediation with respect to any such incident as provided herein, Teach For America shall be entitled to seek all other remedies against the School District hereunder and at law and equity with respect to such incident.
7. Indemnification. The School District shall defend, indemnify and hold harmless Teach For America from any and all claims brought by third parties to the extent arising from, or in connection with, any negligent acts or omissions of the School District or any other representatives for whom the School District is legally responsible for, in connection with the performance of this Agreement.
8. Destruction of Confidential Information. Following a request by Teach For America or upon the termination of this Agreement, the School District shall promptly, but in no event more than fifteen (15) days following such request or the termination of this Agreement, destroy all or any part of the Confidential Information, that is within the possession or control of the School District, and shall, upon request by Teach For America, provide certification of such destruction.
9. Term. The term shall be effective as the date first referenced above and shall expire on the last day of the 2025-2026 academic year.
10. Termination. Teach For America shall have the right at its sole discretion to terminate the School District’s access to the Confidential Information upon fifteen (15) days written notice to the School District. Teach For America shall have the right at its sole discretion to terminate the School District’s access to the Confidential Information immediately upon the School District’s breach of any confidentiality obligations herein. No claim for damages will be made or allowed to the School District because of said termination. Notwithstanding anything to the contrary, the confidentiality obligations of the School District under this Agreement shall survive any termination or expiration of this Agreement.
11. No Reverse Engineering. The School District shall not reverse-engineer, decompile, or disassemble any software or other Confidential Information disclosed to it and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of the Confidential Information.
12. Disclaimer of Warranties. CONFIDENTIAL INFORMATION IS PROVIDED “AS IS” WITH ALL FAULTS. IN NO EVENT SHALL TEACH FOR AMERICA BE LIABLE FOR THE ACCURACY OR COMPLETENESS OF ANY CONFIDENTIAL INFORMATION.

13. Assignment. This Agreement and the School District's rights, duties and obligations under this Agreement are not transferable or assignable by the School District without the express prior written consent of Teach For America. Any attempt to transfer or assign this Agreement or any of the rights, duties or obligations under this Agreement without such consent is void.
14. Notices. Any notice, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed delivered to a party (a) when delivered by hand or courier, or (b) five (5) days after the date of mailing if mailed by United States certified mail, return receipt requested, postage prepaid, in each case to the address of such party set forth below (or at such other address as the party may from time to time specify by notice delivered in the foregoing manner):
- If to Teach For America, to:
Ana Gonzalez
Teach For America Rio Grande Valley
801 N. Bryan Rd., Ste. 152
Mission, TX 78572
- *with an electronic copy to:
LegalAffairs@teachforamerica.org
in cases of breach or indemnity
- If to the School District, to:
Stan Crouse, Director of Human Resources
McAllen Independent School District
2000 N. 23rd Street
McAllen, TX 78501
15. Modification. This Agreement can only be modified by a written agreement duly signed by all the parties hereto.
16. Severability. If any term, provision or covenant of this Agreement shall be held to be invalid or unenforceable for any reason (a) the remaining provisions shall continue to be valid and enforceable and (b) each party directs that such court interpret and apply the remainder of this Agreement in the manner that it determines most closely effectuates the parties' intent in entering into this Agreement, and in doing so particularly take into account the relative importance of the term, provision, covenant or restriction being held invalid, void or unenforceable.
17. Interpretation. All questions concerning the validity, interpretation and performance of this Agreement shall be governed by and decided in accordance with the laws of the State of Texas, without regard to any conflicts of laws and principles thereof. The parties irrevocably agree to submit to the jurisdiction and venue of the appropriate Federal or State courts located in Hidalgo County, Texas for the purpose of any suit, action or other proceeding brought in connection with this Agreement, and the parties hereby waive any objection which they may have based on improper venue or forum non conveniens and consent that service of process in any such suit, action or proceeding shall be served according to the applicable court rules and rules of civil procedure for the State of Texas.
18. Entire Agreement/Authority/Bindingness. This Agreement is the complete and exclusive statement of the agreement between the parties as to the subject matter hereof and supersedes all communications between the parties related to the subject matter of this Agreement. Each party represents and warrants to the other that it has full power and authority to enter into and perform this Agreement. This Agreement shall be binding upon the parties hereto and inure to the benefit of the parties hereto, their respective successors and permitted assigns.
19. Waiver. A waiver of a breach or default under this Agreement shall not be a waiver of any other or subsequent breach or default. The failure or delay in enforcing compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition unless such term or condition is expressly waived in writing.

20. Injunctive Relief. In the event of a breach or threatened breach by the School District of any of the provisions of this Agreement, Teach For America, in addition to any other remedies available to it under law, shall be entitled to seek an injunction restraining the School District from the performance of acts which constitute or may constitute a breach of this Agreement.
21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first above written.

AGENCY 1:	TEACH FOR AMERICA	AGENCY 2:	McAllen Independent School District
ADDRESS:	801 N. Bryan Rd., Ste. 152 Mission, TX 78572	ADDRESS:	2000 N. 23 rd Street McAllen, TX 78501
TELEPHONE:	956-631-6781	TELEPHONE:	(956) 618-6005
EMAIL:	ana.gonzalez@teachforamerica.org	EMAIL:	debbie.aliseda@mcallenisd.net
SIGNATORY NAME (PRINT):	Ana Gonzalez	SIGNATORY NAME (PRINT):	Debbie Crane Aliseda
SIGNATORY TITLE:	Executive Director	SIGNATORY TITLE:	Board of Trustees, President
SIGNATURE:		SIGNATURE:	
DATE:		DATE:	

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

by: Leandra C. Ortiz
Leandra C. Ortiz (Jul 24, 2023 15:43 CDT)

Leandra C. Ortiz

ATTACHMENT B CONFIDENTIALITY AGREEMENT FOR DATA USE

I am working as an authorized representative for Teach For America (“TFA”) on a project involving the McAllen Independent School District (the “McAllen I.S.D.” or “School District”) students and teachers affiliated with TFA. I understand that my work on this project involves the use of School District data that is confidential under state law, federal law, or both state and federal law.

All personally identifiable information is to be protected in adherence with FERPA guidelines. I will refrain from including personally identifiable information in any form of communication with anyone outside the project or outside Teach For America. This includes emails, instant messaging, faxes, other written correspondence, and any type of oral conversation. When conversing with any School District or school employees about any students, staff, schools, or local education agency (“LEA”) in the execution of my assigned duties, I will take all precautions to protect the confidentiality of all personally identifiable information.

I understand that I can be removed from this project if it is determined that I either intentionally violated or was willfully negligent on any aspect of the Confidentiality Agreement. Further, my violation of or negligence regarding this Confidentiality Agreement may put in jeopardy the working relationship between TFA and the School District. I also understand that my violation of this Confidentiality Agreement could result in my being held liable for damages in a civil lawsuit.

The term of this Agreement is effective as of the date signed, below, and shall expire on the last day of the 2025-2026 academic year.

McAllen I.S.D.. shall have the right at its sole discretion to terminate my access to the Confidential Information upon fifteen (15) days written notice to Teach For America. School District shall have the right at its sole discretion to terminate my access to the Confidential Information immediately upon my breach of any confidentiality obligations herein. Notwithstanding anything to the contrary, my confidentiality obligations under this Agreement shall survive any termination or expiration of this Agreement.

AGENCY:	TEACH FOR AMERICA
ADDRESS:	801 N. Bryan Rd., Ste. 152 Mission, TX 78572
TELEPHONE:	956-631-6781
EMAIL:	
SIGNATORY NAME (PRINT):	
SIGNATORY TITLE:	
SIGNATURE:	
DATE:	

COMPLIANCE WITH FERPA. To effect the transfer of data subject to FERPA, authorized representative agrees to:

1. In all respects comply with the provisions of FERPA. For purposes of this agreement, “FERPA” includes any amendments or other relevant provisions of federal law, as well as all requirements of Chapter 99 of Title 34 of the Code of Federal Regulations. Nothing in this agreement may be construed to allow either party to maintain, use, disclose or share student information in a manner not allowed by federal law or regulation.
2. Use the data shared under this agreement for no purpose other than work authorized under Section 99.31(a)(6) of Title 34 of the Code of Federal Regulations. Agent further agrees not to share data received under this MOU with any other entity without the School District approval. Agent agrees to allow the Office of the State Auditor, subject to FERPA restrictions, access to data shared under this agreement and any relevant records of Agent for purposes of completing authorized audits of the parties.
3. Maintain all data obtained pursuant to this agreement in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this agreement except as necessary to fulfill the purpose of the original request. All copies of data of any type, including any modifications or additions to data from any source that contains information regarding individual students, are subject to the provisions of this agreement in the same manner as the original data. The ability to access or maintain data under this agreement shall not under any circumstances transfer from Agent to any other institution or entity.
4. Not to disclose any data obtained under this agreement in a manner that could identify an individual student, except as authorized by FERPA, to any other entity. Agent agrees to abide by the TFA’s reporting policy of deleting all data items that include any group of students less than five (5).
5. Not to provide any data obtained under this agreement to any party ineligible to receive data protected by FERPA or prohibited from receiving data from any entity by virtue of a finding under Section 99.31(6)(iii) of Title 34, Code of Federal Regulations.
6. Destroy all data obtained under this agreement when it is no longer needed for the purpose for which it was obtained. Nothing in this agreement authorizes the Agent to maintain data beyond the time period reasonably needed to complete the purpose of the request. All data no longer needed shall be destroyed or returned to School District in compliance with 34 CFR Section 99.35(b)(2).

PERSONALLY IDENTIFIABLE INFORMATION (PII): Any information about an individual maintained by an agency, including any information that can be used to distinguish or trace an individual's identity such as name, social security number, date or place of birth, mother's maiden name, biometric records, and any other personal information that is linked or linkable to an individual.

Personally Identifiable Evaluation Results and Supporting Documentation Data Disclosure Consent Form

I hereby give permission to the McAllen Independent School District to release my evaluation results and any documentation related for the 2023- 2024 and 2024- 2025 school year(s) to the following principal investigator, [STAFF NAME] from the following research institution, [REQUESTING ORG/ AGENCY], for the purpose of [PURPOSE].

I understand that my participation in the aforementioned study is voluntary. I understand that I will not be penalized in any way for refusing to participate.

I understand that the aforementioned researcher(s) will ensure that my evaluation results and any documentation related are confidential and will not be released or shown to any person except authorized members of the research team.

I understand that the aforementioned researcher(s) will store my evaluation results and any documentation related in a secure manner that limits access to authorized personnel.

It is my understanding that if my evaluation results and any documentation related are to be used for purposes other than this project, the institution will need to request that I sign a separate consent form.

I agree that I will not sue, or make any kind of claim whatsoever against, the McAllen Independent School District, and any of their directors, officers, employees, agents, and representatives for any costs, expenses, damages, injury or loss, including reasonable attorney's fees, to which they or any of them may be subject as a result, directly or indirectly, of any disclosure or re-disclosure of any of my information, including but not limited to personally identifiable evaluation results and any documentation related provided by the McAllen Independent School District to the aforementioned researchers.

Teaching Certificate #:	
SIGNATORY NAME (PRINT):	
SIGNATORY TITLE:	
SIGNATURE:	
DATE:	

Attachment “B” to Contract –
Federal Terms and Conditions
Addendum

FEDERAL TERMS AND CONDITIONS

EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS (EDGAR)

Contracts Under Federal Awards Terms and Conditions

Pursuant to 2 CFR § 200.326, all contracts, including small purchases, awarded by McAllen Independent School District (“DISTRICT”) and the DISTRICT’S subcontractors shall contain the procurement provisions of Appendix II to Part 200, as applicable. Accordingly, in addition to other terms and conditions herein provided, the following provisions are incorporated into the Agreement, as applicable, and Contractor agrees to comply with these provisions:

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

Pursuant to Federal Rule (A) above, when the DISTRICT expends federal funds, the DISTRICT reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

- (B) All contracts in excess of \$10,000.00 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Pursuant to Federal Rule (B) above, when the DISTRICT expends federal funds, the DISTRICT reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. The DISTRICT also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if the DISTRICT believes, in its sole discretion that it is in the best interest of the DISTRICT to do so. Vendor will be compensated for work performed and accepted and goods accepted by the DISTRICT as of the termination date if the contract is terminated for convenience of the DISTRICT. Any award under this procurement process is not exclusive and the DISTRICT reserves the right to purchase goods and services from other vendors when it is in the DISTRICT’S best interest.

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

Pursuant to Federal Rule (C) above, when the DISTRICT expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000.00 awarded by non-Federal entities must include a provision for compliance with the Davis- Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when the DISTRICT expends federal funds during the term of an award for all contracts and subgrants for construction or repair, Vendor will be in compliance with all applicable Davis-Bacon Act provisions.

- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000.00 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work

week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when the DISTRICT expends federal funds, Vendor certifies that Vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by the DISTRICT resulting from this procurement process.

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

Pursuant to Federal Rule (F) above, when federal funds are expended by the DISTRICT, Vendor certifies that during the term of an award for all contracts by the DISTRICT resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (“EPA”).

Pursuant to Federal Rule (G) above, when federal funds are expended by the DISTRICT, Vendor certifies that during the term of an award for all contracts by the DISTRICT resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

- (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (*see* 2 C.F.R. 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (“SAM”), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contain the names of parties debarred, suspended,

or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by the DISTRICT, Vendor certifies that during the term of an award for all contracts by the DISTRICT resulting from this procurement process, Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000.00 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (I) above, when federal funds are expended by MISD, Vendor certifies that during the term and after the awarded term of an award for all contracts by MISD resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

- (1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

- (J) Contract Cost and Price - §200.323. (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals. (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there

is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles. (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Pursuant to Federal Rule (J) above, when federal funds are expended by the DISTRICT, Vendor certifies that during the term of an award for all contracts by the DISTRICT resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (J) above.

- (K) Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment - §200.216. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. See Public Law 115-232, section 889 for additional information. See also §200.471.

Pursuant to Federal Rule (K) above, when federal funds are expended by the DISTRICT, Vendor certifies that during the term of an award for all contracts by the DISTRICT resulting from this procurement process,

Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (K) above.

- (L) Domestic Preferences for Procurements - §200.322. (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. (b) For purposes of this section: (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Pursuant to the Federal Rule above, the DISTRICT has a preference for goods, products, or materials produced in the United when spending federal funds. Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (L) above.

- (M) Procurement of Recovered Materials. For all contracts greater than \$10,000.00, Vendor agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and any implementing regulations where applicable and provide such information and certifications as the District may require to confirm estimates and otherwise comply. The requirements of Section 6002 includes (1) procuring only items designated in guidelines of the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.00 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.00; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (3) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Pursuant to the Federal Rule above, when federal funds are expended by the District, as required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6962(c) (3) (A) (i)), the vendor certifies, by signing this document, that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the contract will be at least the amount required by the applicable contract specifications or other contractual requirements.

- (N) Small, Minority, Women's Business Enterprises, and Labor Surplus Affirmative Steps. If any subcontracts are to be let by the Contractor, Contractor will be required to shall take affirmative steps to encourage participation by and facilitate contracting with small and minority businesses, women's business enterprises and labor surplus area business firms as set out in 2 C.F.R. 200.321. The affirmative steps include the following: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are

- potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.
- (O) Records Retention Requirements for Contracts Involving Federal Funds. When federal funds are expended by DISTRICT for any contract resulting from this procurement process, Vendor agrees to comply with the record retention requirements detailed in 2 CFR § 200.333. Vendor further certifies that it will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.
- (P) Equal Employment Statement. It is the policy of DISTRICT not to discriminate on the basis of race, color, national origin, sex, religion, age, (applies to individuals who are 40 years of age or older), disability, or genetic information in its programs. Vendor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Provider will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract.
- (Q) Certification of Access to Records – 2 C.F.R. § 200.336. Vendor agrees that the District's Inspector General or any of their duly authorized representatives shall have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.
- (R) Copyright. All contracts paid from state or federal grants administered by the Texas Education Agency ("TEA") must retain copyright for TEA and for the federal government (if a federally funded contract) unless otherwise negotiated in writing with TEA. Pursuant to the provisions in 2 C.F.R. 200.315, title to intangible property vests in the District as long as such property is used for authorized purposes. However, TEA and the federal awarding agency reserve a royalty-free, nonexclusive and irrevocable right to reproduce, public, or otherwise use the work for federal purposes, and to authorize others to do so.
- (S) Certification of Compliance with the Energy Policy and Conservation Act. When DISTRICT expends federal funds for any contract resulting from this procurement process, Vendor certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).
- (T) Certification of Compliance with Buy America Provisions. DISTRICT has a preference for domestic end products for supplies acquired for use in the United States when spending federal funds (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act.
- (U) For all professional services contracts paid with federal funds, the contract contains the following provisions:
1. All services will be completed during the effective dates of the contract.
 2. All services will be paid only upon receipt of a proper invoice that coincides with the contract upon verification that the services were satisfactorily performed in accordance with the description in the contract. For ongoing services, payment may be made at the end of every month upon receipt of the invoice. Contractors will not be paid in advance.
 3. The invoice provided by the contractor will include the list of services provided, dates of services, and location(s) where services were provided during the billing period.
 4. The District complies with the regulations pertaining to procurement in 2 C.F.R. § 200.318 - .323.
 5. The District complies with the provisions in 2 C.F.R. § 200.459 pertaining to allowable professional service costs.
 6. The contract will identify the funding source(s) that will be charged for the services provided, including the specific amount and/or percentage of the total contract amount to be charged to each funding source.
 7. The contract will identify and list only reasonable, necessary, and allocable services to be provided in accordance with the funding sources that will be charged.
 8. The administrative costs charged to the grant in the contract must be reasonable and must comply with any statutory limitations for administrative costs specified in the federal program funding source.
- (V) Applicability to Subcontractors. Vendor agrees that all contracts it awards pursuant to the contract shall be bound by the foregoing terms and conditions.
- (W) The Vendor also represents and warrants compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances. It is further acknowledged that Vendor certifies compliance with all provisions, laws, acts, regulations, etc. as

specifically noted below:

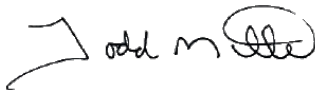
1. Americans with Disabilities Act, P. L. 101-336, 42 U.S.C. section 12101, and the regulations effectuating its provisions contained in 28 C.F.R. Parts 35 and 36, 29 C.F.R. Part 1630, and 47 C.F.R. Parts 0 and 64.
2. Title VI of the Civil Rights Act of 1964, as amended (prohibition of discrimination by race, color, or national origin), and the regulations effectuating its provisions contained in 34 C.F.R. Part 100.
3. Title IX of the Education Amendments of 1972, as amended (prohibition of sex discrimination in educational institutions), and the regulations effectuating its provisions contained in 34 C.F.R. Part 106, if the Vendor is an educational institution.
4. Section 504 of the Rehabilitation Act of 1973, as amended (nondiscrimination on basis of handicapping condition), and the regulations effectuating its provisions contained in 34 C.F.R. Part 104.
5. Age Discrimination Act of 1975, as amended (prohibition of discrimination on basis of age), and any regulations issued thereunder, including the provisions contained in 34 C.F.R. Part 110.
6. Family Educational Rights and Privacy Act ("FERPA") of 1975, as amended (ensures access to educational records for students and parents while protecting the privacy of such records), and any regulations issued thereunder, including Privacy Rights of Parents and Students (34 C.F.R. Part 99), if the Vendor is an educational institution (20 U.S.C. 1232g).
7. Section 509 of H.R. 5233, as incorporated by reference in P. L. 99-500 and P. L. 99-591 (prohibition against the use of federal grant funds to influence legislation pending before Congress).
8. Pro-Children Act of 2001, which states that no person shall permit smoking within any indoor facility owned or leased or contracted and utilized for the provision of routine or regular kindergarten, elementary, or secondary education or library services to children (P. L. 107-110, Section 4303[a]). In addition, no person shall permit smoking within any indoor facility (or portion of such a facility) owned or leased or contracted and utilized for the provision of regular or routine health care or day care or early childhood development (Head Start) services (P. L. 107-110, Section 4303[b][1]). Any failure to comply with a prohibition in this Act shall be considered to be a violation of this Act, and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty, as determined by the Secretary of Education (P. L. 107-110, Section 4303[e][1]).
9. Buy America Act: DISTRICT, to the greatest extent practicable, has a preference for domestic end goods, products, or materials for supplies acquired for use in the United States when spending federal funds (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). The Vendor certifies that it is in compliance with the Buy America Act in that each end product purchased under any federally funded supply contract exceeding \$2,500.00 is considered to have been substantially produced or manufactured in the United States. End products exempt from this requirement are those for which the cost would be unreasonable, products manufactured in the U.S. that are not of satisfactory quality, or products for which the agency head determines that domestic preference would be inconsistent with the public interest. The Vendor also certifies that documentation will be maintained that documents compliance with this requirement (FAR 25.1-25.2).
10. P.L. 103-227, Title X, Miscellaneous Provisions of the GOALS 2000: Educate America Act; P.L. 103- 382, Title XIV, General Provisions of the Elementary and Secondary Education Act, as amended; and General Education Provisions Act, as amended.
11. Prohibition of Text Messaging and E-mailing while Driving during Official Federal Grant Business: Personnel funded from federal grants and their subcontractors and subgrantees are prohibited from text messaging while driving an organization-owned vehicle, or while driving their own privately owned vehicle during official grant business, or from using organization-supplied electronic equipment to text message or email while driving. Recipients must comply with these conditions under Executive Order 13513, "Federal Leadership On Reducing Text Messaging While Driving," October 1, 2009 (pursuant to provisions attached to federal grants funded by the U.S. Department of Education).
12. Trafficking Victims Protection Act of 2000 ("TVPA"), as amended (22 U.S.C. 7104[g]): In accordance with 2 C.F.R. 175, this award may be terminated unilaterally, without penalty, if Contractor or an employee of Contractor violates any of the applicable prohibitions of this award term through conduct that is either associated with performance under this award or imputed to Contractor using the standards and due process for imputing the conduct of an individual to an organization that are provided in 34 C.F.R. 85.630. Contractor and Contractor's employees may not (i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect; (ii) Procure a commercial sex act during the period of time the award is in effect; or (iii) Use forced labor in the performance of the award or subaward.
13. Fair Labor Standards Act (29 U.S.C. 207), as applicable, and their implementing regulations in 29 CFR 500-899.
14. Energy Policy and Conservation Act (42 USC 6321 et seq.; 49 CFR Part 18) and the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the EPCA.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 3, 2023

Attachment:

SUBMITTED BY: _____

SUPERVISOR: 

Jul 31, 2023

SUBMITTED BY: _____

Approved for presentation to the Board of Education:

Rosalba De Hoyos

53


Acting Superintendent of Schools

Jul 31, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 3, 2023

SUBMITTED BY: *Judith Escamilla*

SUPERVISOR: 
Alejandra Gonzalez (Jul 31, 2023 16:06 CDT)

Approved for presentation to the Board of Education:

Rosalba De Hoyos

54 Acting Superintendent of Schools

AIA[®] Document A104[™] – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

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)

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

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

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.

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EXHIBIT A DETERMINATION OF THE COST OF THE WORK



Note: ANY reference to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos 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 WORK OF THIS CONTRACT

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

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

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

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

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

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

- Not later than calendar days from the date of commencement of the Work.
- By the following date:

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

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

ARTICLE 3 CONTRACT SUM

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

(Check the appropriate box.)

- Stipulated Sum, in accordance with Section 3.2 below
- Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below
- Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

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

§ 3.2 The Stipulated Sum shall be _____ AND _____ /100 DOLLARS (\$ _____), subject to additions and deductions as provided in the Contract Documents.

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

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

Item	Units and Limitations	Price per Unit (\$0.00)
_____	_____	_____

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

Item	Price
_____	_____

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

(Paragraphs deleted)

§ 3.4.3 Guaranteed Maximum Price

§ 3.4.3.1

(Paragraphs deleted)

[Paragraph Deleted.]

§ 3.4.3.2

(Paragraphs deleted)

[Paragraph Deleted.]

§ 3.4.3.3 Unit Prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
_____	_____	_____

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

Item	Price
_____	_____

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

§ 3.4.3.6 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents

and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

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

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

If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the following per diem amounts commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work: FIVE HUNDRED AND 00/100 DOLLARS (\$500.00).

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

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

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

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

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

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

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

(Federal, state or local laws may require payment within a certain period of time.)

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

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

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5%). Pending final determination of the cost to the Owner of changes in the Work, amounts not in dispute shall be included;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5%);
- .3 Subtract the aggregate of previous payments made by the Owner;
- .4 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate of Payment a provided for in this Contract; and
- .5 Upon Substantial Completion of the Work, add a sum sufficient to increase the total payments to ninety-five percent (95%) of the full amount of the Contract Sum, less such amounts as the owner shall determine is necessary for incomplete work and unsettled claims.

§ 4.1.5 Undisputed payments due and unpaid under the Contract shall bear interest *(Paragraphs deleted)*

in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

§ 4.2 Final Payment

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with a Guaranteed Maximum Price;
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1;
- .4 Contractor has provided the following documents:
 - .1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state, or local standards, laws, codes, rules, and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;
 - .2 Final list of Subcontractors (AIA Document G705);

- .3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, if required;
- .4 Contractor's warranties;
- .5 Maintenance and Instruction Manuals;
- .6 Owner's Final Completion Certificate;

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

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

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

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

- Arbitration pursuant to Section 21.6 of this Agreement
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.

This Agreement is governed by the laws of the State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue shall be in Hidalgo County, Texas.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

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

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

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203–2013 incorporated into this Agreement.)

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
_____	_____	_____	_____

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

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

Section	Title	Date	Pages
_____	_____	_____	_____

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

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

Number	Title	Date
_____	_____	_____

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
_____	_____	_____

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

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

.1 Other Exhibits:

(Check all boxes that apply.)

- Exhibit A, Determination of the Cost of the Work.
- AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)
- The Sustainability Plan:

Title	Date	Pages
_____	_____	_____

- Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
_____	_____	_____	_____

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

.2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents.)

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

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

§ 7.1.1 The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, Project Manual and the Bid or Proposal Documents prepared and submitted by the Owner and the Contractor's Bid or Proposal submitted by the Contractor, to the extent they do not conflict with the terms of this Agreement, and other documents listed in this Agreement and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

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

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

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

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

§ 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 7.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

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

§ 7.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 7.7 Building Information Models Use and Reliance

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

§ 7.8 Severability

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

§ 7.9 Notice

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

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

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

§ 7.10 Relationship of the Parties [Paragraph Deleted.]

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

(Paragraph deleted)

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

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

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

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

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

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

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is defective or not in accordance with the requirements of the Contract Documents, fails to timely carry out the Work in accordance with the Contract Documents, or is in default of any of its material obligations hereunder, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 8.3 Owner's Right to Carry Out the Work

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

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. The Contractor shall assign a Superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The Superintendent shall be on the Project, in this capacity, at all times while work on the Project is in progress.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

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

§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient worker and labor, eligible to work in accordance with state and federal law. Contractor shall appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 9.3.2.1 The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

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

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

(Paragraphs deleted)

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

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

§ 9.3.6.1 PREVAILING WAGES

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

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

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

§ 9.4 CRIMINAL HISTORY RECORDS CHECKS

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

- .1 "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.
- .2 "Covered Employees", shall mean, all employees of Contractor, as well as employees of Contractor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

§ 9.4.2 Unless otherwise exempt from providing such information by any provision in Texas Education Code, Section 22.08341 (the "Statute"), the Contractor agrees, that prior to commencement of work under this Agreement, using the form promulgated by the Owner or such other form approved by the Owner, Contractor will arrange with the Owner to obtain any national criminal history record information ("CHRI") required pursuant to the Statute on all of Contractor's employees, independent contractors, agents, or Subcontractors, Contractor's Subcontractors of every tier ("Subcontractors"), Subcontractors' employees, independent contractors, agents, or sub-subcontractors, if any of these

persons is a "Covered Employee" as defined in Section § 9.4.1 and shall reimburse the Owner for the costs and expenses associated with obtaining the required CHRI.

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

- .1 the public work does not involve the construction, alteration, or repair of an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code ("Instructional Facility);
- .2 for a public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first date the facility will be used for instructional purposes; or
- .3 for a public work that involves an existing Instructional Facility:
 - (a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and
 - (b) the Contractor adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

§ 9.4.4 Any Covered Employee that has during the preceding thirty (30) years, been convicted of one of the following offenses, if at the time of the offense the victim was under eighteen (18) or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense to (a) or (b) under federal law or the laws of another state ("Disqualifying Criminal History Offense") shall be disqualified and prohibited from performing any contract duties or services and neither the Contractor nor its Subcontractor may permit such person to provide services at an instructional facility. If a Covered Employee is determined by the Owner's review of the CHRI to have a Disqualifying Criminal History, Contractor will exclude that person from assignment to the Project. Contractor understands that it will not have access to the results of such criminal history records check, based on statewide regulations beyond the control of the Owner, and agrees to rely solely on the judgment of the Owner as to whether the Covered Employee must be excluded from the Project.

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

- .1 has requested a Criminal History Records Check through the District on all Covered Employees, if any, of every tier, has provided the required information to the District to do so and reimbursed the District for same;
- .2 has obtained written certification from its independent contractors, and Subcontractor's s (of any tier) that they have provided the required information to the Contractor, necessary to secure the information from the District and reimbursed the Contractor for same; and
- .3 have excluded any Covered Employee reported by the District to have a Disqualifying Criminal History from assignment to the Project.

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

§ 9.5

(Paragraphs deleted)

Warranty

§ 9.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or

equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

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

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

§ 9.5.4 The warranty provided in Section 9.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

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

§ 9.5.6 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, shall have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, the dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner on re-inspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the re-inspection. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the work without interruption until accepted by the Owner, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 9.5.7 Warranties shall become effective on a date established by the Owner in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties, except for work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the work is completed or corrected and accepted by the Owner or the date of final payment.

§ 9.6 Taxes

The Contractor shall not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY

SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

(Paragraphs deleted)

§ 9.7

(Paragraphs deleted)

Permits, Fees, Notices, and Compliance with Laws

§ 9.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

§ 9.8 Allowances

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

(Paragraphs deleted)

§ 9.9 Contractor's Construction Schedules

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

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

(Paragraph deleted)

§ 9.10

(Paragraphs deleted)

Submittals

§ 9.10.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

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

§ 9.10.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or

certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.11 Use of Site

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

§ 9.12 Cutting and Patching

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

§ 9.13 Cleaning Up

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

§ 9.14 Access to Work

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

§ 9.15 Royalties, Patents and Copyrights

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

(Paragraphs deleted)

§ 9.16 Indemnification

§ 9.16.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND (EXCEPT AS LIMITED BELOW) AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES (HEREINAFTER IN THIS SECTION 3.18 "OWNER"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), ARISING OUT OF OR

RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM 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 9.16.

§ 9.16.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 9.16 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 9.16.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

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

§ 9.16.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 9.16.1..

§ 9.16.5 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, the Architect and their respective agents, consultants, and representatives pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, the Architect and their respective agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

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

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

ARTICLE 10 ARCHITECT

§ 10.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date of the Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 [Paragraph Deleted.]

§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents, and delivered on time. In addition, the Architect or its structural consultant will (1) provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable; and (2) provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third-party laboratory or testing services to assist the Architect and Owner.

§ 10.4 On the basis of the site observations, the Architect will keep the Owner reasonably informed about the progress and quality of the Work. The Architect shall promptly report to the Owner and Contractor orally regarding: (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. An oral notification of defects and deficiencies observed in the Work shall be followed by a notice in writing to the Owner and Contractor specifying the defect(s), non-conforming Work, deviations from the Contract Documents and corrective actions taken or recommended. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

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

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.8 Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

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

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, in writing, of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

§ 11.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive. Acceptance of a Change

Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the Change Order.

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

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

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

ARTICLE 14 TIME

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

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

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

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

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

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

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

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

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

§ 15.1.2 [Paragraph Deleted.]

§ 15.2 Control Estimate [Paragraph Deleted.]

(Paragraphs deleted)

§ 15.3 Applications for Payment

§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect withheld; and include any revised cost control information required by the terms of this Agreement. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor has not been invoiced by a Subcontractor or supplier, unless such Work was self-performed; in such case, only portions of Work actually performed shall be included on the Contractor's request for payment.

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

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

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

§ 15.4 Certificates for Payment

§ 15.4.1 In each Application for Payment, Contractor shall certify that 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 subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner that the Architect has observed the progress of the Work and determined that, in the Architect's professional opinion based

on the Architect's evaluations of the Work and the data in the Application for Payment, that, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect in writing to the Owner. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data unless requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

§ 15.4.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of subcontractors and insurance requirements;
- .9 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract Time;
- .10 evidence of financial inability to perform the Contract fully;
- .11 failure to submit record documents required by the Contract; or
- .12 failure of the Contractor to perform any other obligations of the Contract.

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

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

§ 15.5 Progress Payments

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

Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

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

§ 15.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

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

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

§ 15.6 Substantial Completion

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

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

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

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

§ 15.7 Final Completion and Final Payment

§ 15.7.1 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner (at Owner's option) will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Work has been completed in accordance with the Contract Documents and that the remainder of the Contract Sum, including all retainage, less any amount withheld pursuant to the Contract and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Except with the

consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

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

§ 15.7.3 The
(Paragraphs deleted)

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

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

§ 15.7.5 AUDIT

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

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.

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

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

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

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. If such notice is provided orally, written confirmation of such notice by Contractor shall be provided not later than one (1) business day following such notification. Owner shall not be responsible for materials or substances brought to the site by the Contractor. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.2 [Paragraph Deleted.]

§ 16.2.3 [Paragraph Deleted.]

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain in force insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the table below, the Agreement, or elsewhere in the Contract Documents. No work will be commenced, and no equipment or materials may be shipped, until all requirements of Article 17 have been satisfied, satisfactory evidence of insurance has been provided, and all required insurance is in full force and effect. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Texas. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others. Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 17.1.2. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4.

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

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;

- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 9.16.

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

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

§17.1.2.2 Owner's Protective Liability Insurance Policy – The successful Contractor must obtain an owner's liability insurance policy, at Contractor's expense, naming the District and its employees insured with the following limits: Bodily Injury - \$1,000,000 Each Occurrence and \$1,000,000 Aggregate.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

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

§17.1.5.1 Workers' Compensation Insurance Coverage

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

§ 17.1.6 Employers' Liability with policy limits not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) each employee, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) policy limit.

§ 17.1.7 [If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than _____ DOLLARS (\$ _____) per claim and _____ DOLLARS (\$ _____) in the aggregate.] **OR** [Paragraph Deleted.]

§ 17.1.8 [If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than _____ DOLLARS (\$ _____) per claim and _____ DOLLARS (\$ _____) in the aggregate.] **OR** [Paragraph Deleted.]

§ 17.1.9 [Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than _____ DOLLARS (\$ _____) per claim and _____ DOLLARS (\$ _____) in the aggregate.] **OR** [Paragraph Deleted.]

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

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

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage and automobile liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured

coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within ten (10) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

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

§ 17.1.14 Other Insurance Provided by the Contractor

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

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

- .1 be written for no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others,
- .2 provide coverage for direct physical loss or damage resulting from all perils, and shall not exclude the risks of fire, lightning, explosion, theft, vandalism, malicious mischief, collapse, earthquake, hurricane, flood, or windstorm,

(Table deleted)

- .3 provide coverage for ensuring loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials,
- .4 provide protection on a full replacement cost basis for boiler and machinery equipment during installation, during testing, and until acceptance by Owner,
- .5 cover debris removal, including demolition occasioned by enforcement of any applicably legal requirements,
- .6 cover reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses,
- .7 provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup,
- .8 include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds.

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

§ 17.2 Owner's Insurance [Paragraphs Deleted.]

(Table deleted)

(Paragraphs deleted)

§ 17.3 Performance Bond and Payment Bond

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

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

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

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

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

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

§ 17.3.5 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power-of-Attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

§ 17.3.6 Upon the request in writing of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 17.3.7 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the Contractor's bonds becomes insufficient, Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) business days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld.

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

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not

fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense and will be subject to offset by the Owner at Final Payment.

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

§ 18.2 In addition to the Contractor's obligations under Section 9.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Owner shall give such notice of the condition to the Contractor with reasonable promptness after discovery of the condition. The Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition.

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

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

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

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

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

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

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

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Governing Law

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

§ 19.3 Tests and Inspections

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

§ 19.4 The Owner’s representative:

(Name, address, email address and other information)

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

§ 19.5 The Contractor’s representative:

(Name, address, email address and other information)

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

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

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

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

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

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

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

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 because the Owner has not made payment within the time stated in the Contract Documents.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents;
- .5 fails to furnish the Owner, upon written request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in or permits serious or repeated worker misconduct in violation of Article 9.3;
- .7 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .8 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 20.2.2 When any of the above reasons exist the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's Surety, if any, seven (7) days written notice, terminate employment of the Contractor and may, subject to any prior rights of Surety:

- .1 Take possession of the site and of all materials, equipment, tools, and construction equipment, and machinery thereof owned by the Contractor.
- .2 Accept assignment of subcontracts.
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

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

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

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and
(Paragraphs deleted)
profit only on that portion of the Work executed.

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims by the Contractor must be initiated within twenty-one (21) days after occurrence or of the event giving rise to such Claim.

§ 21.2 Notice of Claims

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

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

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this

Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law. The Contractor waives all claims and causes of action not commenced in accordance with this Section 21.3.

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

§ 21.5 MEDIATION

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

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

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

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

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

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

§ 21.8 [Paragraph Deleted.]

§ 21.9 [Paragraph Deleted.]

§ 21.10 Continuing Contract Performance

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

§ 21.11 CALCULATING CLAIMS FOR DAMAGES

Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

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

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

MCALLEN INDEPENDENT SCHOOL DISTRICT

OWNER (Signature)

CONTRACTOR (Signature)

Tony Forina, Board President, Board of Trustees,
McAllen Independent School District

(Printed name and title)

(Printed name and title)



Additions and Deletions Report for AIA[®] Document A104[™] – 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 17:41:39 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

...

The Owner and Contractor agree as ~~follows~~:follows:

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EXHIBIT A DETERMINATION OF THE COST OF THE WORK

Note: ANY reference to an AIA[™] Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

PAGE 3

[] 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

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§ 3.2 The Stipulated Sum shall be (\$ _____), AND _____ /100 DOLLARS (\$ _____), subject to additions and deductions as provided in the Contract Documents.

...

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

§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed (\$) subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. *(Insert specific provisions if the Contractor is to participate in any savings.)*

[Paragraph Deleted.]

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

[Paragraph Deleted.]

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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).

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

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

§3.5.3 Commitment of Current Revenues Only. In the event that during any term hereof, the governing body of any local government party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of

this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each government party hereto pursuant to the provisions of Texas Local Government Code §271.903

...

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

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

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

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the ___ day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the ___ day of the ___ month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than ___ (___) days after the Architect receives the Application for Payment. The Architect shall have seven (7) business days from the date of its receipt of a properly documented Application for Payment from the Contractor to approve or reject all or any part of the Application for Payment and submit its Certificate for Payment to the Owner. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within forty-five (45) days, if Owner's Board of Trustees meets once a month, or thirty (30) days, if Owner's Board of Trustees meets twice a month, of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

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§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the payment, the Owner may withhold retainage from the payment otherwise due as follows:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

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

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5%). Pending final determination of the cost to the Owner of changes in the Work, amounts not in dispute shall be included;

- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5%);
- .3 Subtract the aggregate of previous payments made by the Owner;
- .4 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate of Payment a provided for in this Contract; and
- .5 Upon Substantial Completion of the Work, add a sum sufficient to increase the total payments to ninety-five percent (95%) of the full amount of the Contract Sum, less such amounts as the owner shall determine is necessary for incomplete work and unsettled claims.

~~§ 4.1.5 Payments~~ Undisputed payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

~~%~~ in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

...

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

...

- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with ~~or without~~ a Guaranteed Maximum Price; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section ~~45.7.1, 15.7.1;~~
- .4 Contractor has provided the following documents:
 - .1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state, or local standards, laws, codes, rules, and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;
 - .2 Final list of Subcontractors (AIA Document G705);
 - .3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, if required;
 - .4 Contractor's warranties;
 - .5 Maintenance and Instruction Manuals;
 - .6 Owner's Final Completion Certificate;

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

~~§ 4.2.2~~ The Owner's final payment to the Contractor shall be made no later than ~~30~~ 31 days after the ~~issuance~~ Owner's receipt of the Architect's final Certificate for Payment, ~~or as follows:~~

and satisfaction of all conditions set out in § 4.2.1.

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[] 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 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.

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

...

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

...

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

(List here any additional documents that are intended to form part of the Contract Documents.)

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

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The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. § 7.1.1 The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, Project Manual and the Bid or Proposal Documents prepared and submitted by the Owner and the Contractor's Bid or Proposal submitted by the Contractor, to the extent they do not conflict with the terms of this Agreement, and other documents listed in this Agreement and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

- .1 Contract Modifications signed by Contractor and Owner.
- .2 Addenda, with those of later date having precedence over those of earlier date.

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

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

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

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

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

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

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§ 7.10 Relationship of the Parties

~~Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.~~ [Paragraph Deleted.]

...

~~§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.~~

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

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

~~§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.~~

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

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section ~~9.6.1, 9.7.1,~~ the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

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

...

If the Contractor fails to correct Work which is that is defective or not in accordance with the requirements of the Contract Documents, or repeatedly fails to timely carry out the Work in accordance with the Contract Documents, or is in default of any of its material obligations hereunder, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

...

If the Contractor defaults or neglects to is in default in any of its material obligations hereunder, neglects to timely carry out the Work in accordance with the Contract Documents, and or fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect or non-conforming or defective Work with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 15.4.3, such non-conforming or defective Work and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor. The Owner may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21. deficiencies.

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§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. The Contractor shall assign a Superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The Superintendent shall be on the Project, in this capacity, at all times while work on the Project is in progress.

...

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

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient worker and labor, eligible to work in accordance with state and federal law. Contractor shall appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

...

§ 9.3.2.1 The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

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

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

§ 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

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

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

§ 9.3.6.1 PREVAILING WAGES

The Project is subject to the requirements of Texas Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Contractor, and any subcontractor under him, to

pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

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

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

§ 9.4 CRIMINAL HISTORY RECORDS CHECKS

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

- .1 "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.
- .2 "Covered Employees", shall mean, all employees of Contractor, as well as employees of Contractor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

§ 9.4.2 Unless otherwise exempt from providing such information by any provision in Texas Education Code, Section 22.08341 (the "Statute"), the Contractor agrees, that prior to commencement of work under this Agreement, using the form promulgated by the Owner or such other form approved by the Owner, Contractor will arrange with the Owner to obtain any national criminal history record information ("CHRI") required pursuant to the Statute on all of Contractor's employees, independent contractors, agents, or Subcontractors, Contractor's Subcontractors of every tier ("Subcontractors"), Subcontractors' employees, independent contractors, agents, or sub-subcontractors, if any of these persons is a "Covered Employee" as defined in Section § 9.4.1 and shall reimburse the Owner for the costs and expenses associated with obtaining the required CHRI.

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

- .1 the public work does not involve the construction, alteration, or repair of an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code ("Instructional Facility);
- .2 for a public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first date the facility will be used for instructional purposes; or
- .3 for a public work that involves an existing Instructional Facility:
 - (a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and
 - (b) the Contractor adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

§ 9.4.4 Any Covered Employee that has during the preceding thirty (30) years, been convicted of one of the following offenses, if at the time of the offense the victim was under eighteen (18) or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense to (a) or (b) under federal law or the laws of another state ("Disqualifying Criminal History Offense") shall be disqualified and prohibited from performing any contract duties or services and neither the Contractor nor its Subcontractor may permit such person to provide services at an instructional facility. If a Covered Employee is determined by the Owner's review of the CHRI to have a Disqualifying Criminal History, Contractor will exclude that person from assignment to the Project. Contractor understands that it will not have access to the results of such criminal history records check, based on statewide regulations beyond the control of the Owner, and agrees to rely solely on the judgment of the Owner as to whether the Covered Employee must be excluded from the Project.

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

- .1 has requested a Criminal History Records Check through the District on all Covered Employees, if any, of every tier, has provided the required information to the District to do so and reimbursed the District for same;
- .2 has obtained written certification from its independent contractors, and Subcontractor's (of any tier) that they have provided the required information to the Contractor, necessary to secure the information from the District and reimbursed the Contractor for same; and
- .3 have excluded any Covered Employee reported by the District to have a Disqualifying Criminal History from assignment to the Project.

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

§ 9.5 Taxes

~~The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~

Warranty

§ 9.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

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

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

§ 9.5.4 The warranty provided in Section 9.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

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

§ 9.5.6 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Contractor acknowledges that the Project may involve construction work on more than one

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

§ 9.5.7 Warranties shall become effective on a date established by the Owner in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties, except for work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the work is completed or corrected and accepted by the Owner or the date of final payment.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws Taxes

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

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

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

Permits, Fees, Notices, and Compliance with Laws

§ 9.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 9.7.2 In performing its obligations hereunder, the Contractor shall comply fully with all applicable Federal, State and Local laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the Owner of such compliance. The Contractor agrees to indemnify, defend and

hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from, arising out of, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees.

§ 9.8 Contractor's Construction Schedules Allowances

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

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

§ 9.9 Submittals Contractor's Construction Schedules

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals. Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project but not less than monthly, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

Submittals

§ 9.10.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the

Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

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

§ 9.10.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.11 ~~Cutting and Patching~~ **Use of Site**

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor will abide by all applicable rules and regulations of the Owner with respect to conduct, including smoking, possession or consumption of alcohol or drugs, parking of vehicles and entry into adjacent facilities owned by the Owner.

§ 9.12 ~~Cleaning Up~~ **Cutting and Patching**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project. be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 9.13 ~~Access to Work~~ **Cleaning Up**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials, and shall clean renovated areas.

§ 9.14 ~~Royalties, Patents and Copyrights~~ **Access to Work**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect. provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 9.15 Indemnification Royalties, Patents and Copyrights

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

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 9.16 Indemnification

§ 9.16.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND (EXCEPT AS LIMITED BELOW) AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES (HEREINAFTER IN THIS SECTION 3.18 "OWNER"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM 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 9.16.

§ 9.16.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 9.16 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 9.16.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

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

§ 9.16.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 9.16.1..

§ 9.16.5 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, the Architect and their respective agents, consultants, and representatives pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, the Architect and their respective agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

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

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

§ 10.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment of the Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld. [Paragraph Deleted.]

§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. Documents, and delivered on time. In addition, the Architect or its structural consultant will (1) provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable; and (2) provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third-party laboratory or testing services to assist the Architect and Owner.

§ 10.4 On the basis of the site visits, observations, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and Work. The Architect shall promptly report to the Owner and Contractor orally regarding: (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. An oral notification of defects and deficiencies observed in the Work shall be followed by a notice in writing to the Owner and Contractor specifying the defect(s), non-conforming Work, deviations from the Contract Documents and corrective actions taken or recommended. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

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

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§ 10.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

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§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect Architect, in writing, of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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§ 11.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

...

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

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

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§ 13.4 ~~If concealed or unknown physical conditions are encountered at the site that differ materially which are subsurface or otherwise concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are~~

~~disturbed.~~ Documents, the Contractor shall notify the Owner of such *conditions promptly before conditions are disturbed, and in no event more than three (3) days after first observation* of the conditions. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Section 21.5.

...

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

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

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§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, as applicable, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, or, in the case of a Guaranteed Maximum Price, concurrent with the Guaranteed Maximum Price Proposal, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values-values, unless objected to by the Architect, or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values. [Paragraph Deleted.]

§ 15.2 Control Estimate [Paragraph Deleted.]

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;
- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed

changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

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

§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect ~~retainage if provided for in the Contract Documents; withheld;~~ and include any revised cost control information required by ~~Section 15.2.4. the terms of this Agreement.~~ Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor ~~does not intend to pay~~ has not been invoiced by a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. ~~was self-performed; in such case, only portions of Work actually performed shall be included on the Contractor's request for payment.~~

...

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

...

§ 15.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3. In each Application for Payment, Contractor shall certify that there are no known mechanics' or 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 filling of any mechanics' or materialmen's liens on the Work, and that releases from all subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, Owner that the Architect has observed the progress of the Work and determined that, in the Architect's professional opinion based on the Architect's evaluations of the Work and the data in the Application for Payment, that, ~~to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect.~~ the Architect in writing to the Owner. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data unless requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

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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.

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

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

...

~~§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven days after~~ In compliance with Texas Government Code Section 2251.022, the Contractor shall, within ten (10) days following receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its subcontractors as are applicable to the contractor hereunder, and if the Owner so requests, shall provide copies of such subcontractor payments to the Owner. If the Contractor has failed to make payment promptly to the Contractor's subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

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

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

...

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

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. ~~Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~

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

...

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

§ 15.7.2 ~~Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees. The Contractor shall not be entitled to final payment unless and until it submits to the Owner its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.~~

§ 15.7.3 ~~The making of final payment shall constitute a waiver of claims by the Owner except those arising from~~
~~.1 — liens, claims, security interests or encumbrances arising out of the Contract and unsettled;~~
~~.2 — failure of the Work to comply with the requirements of the Contract Documents;~~
~~.3 — terms of special warranties required by the Contract Documents; or~~
~~.4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~ Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the issuance of Owner's final Certificate for Payment and compliance with all requirements of Section 15.7.2. Owner shall be entitled to deduct out of any sums due to Contractor at Final Payment, any or all liquidated damages due Owner in accordance with the Contract Documents.

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§ 15.7.5 AUDIT

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

...

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. ~~The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.9.~~

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

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

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

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§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. If such notice is provided orally, written confirmation of such notice by Contractor shall be provided not later than one (1) business day following such notification. Owner shall not be responsible for materials or substances brought to the site by the Contractor. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property

(other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. [Paragraph Deleted.]

§ 16.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred. [Paragraph Deleted.]

...

§ 17.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain in force insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 the table below, the Agreement, or elsewhere in the Contract Documents. No work will be commenced, and no equipment or materials may be shipped, until all requirements of Article 17 have been satisfied, satisfactory evidence of insurance has been provided, and all required insurance is in full force and effect. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. the State of Texas. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others. Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 17.1.2. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

Section 18.4.

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

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.5 the Contractor's indemnity obligations under Section 9.15-9.16.

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

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

.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§17.1.2.2 Owner's Protective Liability Insurance Policy – The successful Contractor must obtain an owner's liability insurance policy, at Contractor's expense, naming the District and its employees insured with the following limits: Bodily Injury - \$1,000,000 Each Occurrence and \$1,000,000 Aggregate.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than (\$) **ONE MILLION DOLLARS (\$1,000,000.00)** per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

...

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

§17.1.5.1 Workers' Compensation Insurance Coverage

.1 Definitions:

- .1.1 Certificate of coverage ("Certificate").** A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC 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)]

§ 17.1.6 Employers' Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) each employee, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) policy limit.

§ 17.1.7 ~~If~~ If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate. DOLLARS (\$) per claim and DOLLARS (\$) in the aggregate. **OR** [Paragraph Deleted.]

§ 17.1.8 ~~If~~ If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the

aggregate. [REDACTED] DOLLARS (\$) [REDACTED] per claim and [REDACTED] DOLLARS (\$ [REDACTED]) in the aggregate. **OR** [Paragraph Deleted.]

§ 17.1.9 Coverage [Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$ [REDACTED]) per claim and (\$ [REDACTED]) in the aggregate. [REDACTED] DOLLARS (\$) [REDACTED] per claim and [REDACTED] DOLLARS (\$) [REDACTED] in the aggregate.] **OR** [Paragraph Deleted.]

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

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

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage and automobile liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within ~~three (3)~~ ten (10) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

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

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

- .1 be written for no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others,
- .2 provide coverage for direct physical loss or damage resulting from all perils, and shall not exclude the risks of fire, lightning, explosion, theft, vandalism, malicious mischief, collapse, earthquake, hurricane, flood, or windstorm,

Coverage

Limits

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

- .4 provide protection on a full replacement cost basis for boiler and machinery equipment during installation, during testing, and until acceptance by Owner.
- .5 cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements.
- .6 cover reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses.
- .7 provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup.
- .8 include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds.

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

§ 17.2 Owner's Insurance [Paragraphs Deleted.]

§ 17.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 17.2.2 Property Insurance

§ 17.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 17.2.3 Other Insurance Provided by the Owner

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

Coverage	Limits

§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract. Contractor is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum.

§ 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee.

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

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

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

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

§ 17.3.5 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power-of-Attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

§ 17.3.6 Upon the request in writing of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 17.3.7 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the Contractor's bonds becomes insufficient, Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) business days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld.

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

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§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work. expense and will be subject to offset by the Owner at Final Payment.

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

Contractor. If the Work is according to the Contract Documents, the cost to restore cover on the Work is at the sole expense of the Contractor.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, 9.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Owner shall give such notice of the condition to the Contractor with reasonable promptness after discovery of the condition. The Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

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

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

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

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

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§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

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

...

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and

shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require. The Owner will contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for the acceptance of the Work by the Owner. The Contractor shall give timely notice to the persons or entities selected by the Owner of the need for such services.

...

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

...

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

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

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

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

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

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

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If the Architect fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages. Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 because the Owner has not made payment within the time stated in the Contract Documents.

...

- .4 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents;
- .5 fails to furnish the Owner, upon written request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in or permits serious or repeated worker misconduct in violation of Article 9.3;
- .7 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .8 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take above reasons exist the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's Surety, if any, seven (7) days written notice, terminate employment of the Contractor and may, subject to any prior rights of Surety:

- .1 Take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish equipment, and machinery thereof owned by the Contractor.
- .2 Accept assignment of subcontracts.
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

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

(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)

profit only on that portion of the Work executed.

...

§ 21.1 Claims, disputes, and other matters in question A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims by the Contractor must be initiated within twenty-one (21) days after occurrence or of the event giving rise to such Claim.

...

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Architect within 21 days after the Contractor, shall be initiated by notice to the Owner and to the Architect. Claims under this Section shall be initiated within 21 calendar days after the occurrence of the event giving rise to such Claim or within 21 calendar days after the claimant first recognizes-knew or should have known of the condition giving rise to the Claim, whichever is later-is earlier. If the full impact cannot be assessed as of the date of the Notice, then Notice shall be provided and amended by a second notice at the earliest date that is reasonably possible, but in no event later than the date of Contractor's Application for Payment covering the period in which the impact can be assessed and quantified.

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

...

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive law. The Contractor waives all claims and causes of action not commenced in accordance with this Section 21.3.

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§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

MEDIATION

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

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

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

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

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The Contractor shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Owner not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, and shall include documentation demonstrating the nature and duration of the delays or disruptions.

§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). **Waiver of Lien.** It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent. [Paragraph Deleted.]

§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof. [Paragraph Deleted.]

...

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

§ 21.11 Waiver of Claims for Consequential Damages **CALCULATING CLAIMS FOR DAMAGES**

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

- ~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and No indirect or consequential damages will be allowed.~~
- ~~.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.~~
- ~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~
.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~
.4 No damages will be allowed for home office overhead or other home office changes or any Eichleay formula calculation.

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MCALLEN INDEPENDENT SCHOOL DISTRICT

Board President, Board of Trustees,
 McAllen Independent School District

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 3, 2023

SUBMITTED BY: *Laura Williams*
Laura Williams (Jul 31, 2023 16:30 CDT)

SUPERVISOR: *am*
Alejandra Gonzalez (Jul 31, 2023 16:32 CDT)

Approved for presentation to the Board of Education:

Rosalba De Hoyos

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Acting Superintendent of Schools



LEGAL SERVICES AGREEMENT

This is an agreement between McAllen Independent School District, hereinafter referred to as "Client," and Walsh Gallegos Treviño Kyle & Robinson P. C., Attorneys at Law, hereinafter referred to as "Law Firm," for legal representation. Client, acting by and through the authorized Representative or Employee whose signature appears below, hereby retains Law Firm to provide the following legal services:

Services as needed and requested by District to provide legal consultation and representation regarding all areas of law as outlined in Request for Proposal with Qualifications ("RFP/Q") No. 2023-1000 for General Legal Counsel Services except Special Education and Section 504, training, and litigation matters covered by District's insurance carriers ("Legal Matters").

This Agreement is for the second year of the three (3) year term, effective August 1, 2023, with the option to renew for one more one (1) year terms. However, Law Firm and Client reserve the right to review the fee structure at the end of each year of the agreement and make adjustments as mutually agreed to in writing. Client employs Law Firm to handle legal matters on the following terms and conditions:

1. Client agrees to pay Law Firm an hourly rate for services in accordance with the Specifications and Scope of Work of the RFP/Q, with the exception of Section 13.1.2 "Special Education and Section 504" services and Section 13.1.7.4 "Conduct workshops or training for the Board, administrators, and or employees on education legal issues." The hourly rate will be billed in 0.1 hour increments and on the following sliding scale based on the volume of work:
 - \$265 per hour for all Attorneys for the first 200 hours per fiscal year
 - \$245 per hour for all Attorneys for the next 200 hours per fiscal year
 - \$225 per hour for all Attorneys for the remaining hours billed per fiscal year

At the beginning of each fiscal year, the rates will revert back to \$265 per hour.

2. Client will be mailed a statement each month itemizing work performed. Client agrees to pay the balance due upon receipt of monthly billings by Law Firm to Client. Client's failure to pay within 30 days will be grounds for termination of this agreement by Law Firm, unless Client has disputed a charge and notified Law Firm in writing.
3. This Agreement can be terminated at any time by either party with thirty (30) days' written notice to the other party. In the event of termination, Client agrees to pay for services performed by Law Firm through the date of notice of termination.

4. Compliance with Texas Government Code Chapter 2271: Pursuant to Texas Government Code Chapter 2271, as amended, Walsh Gallegos verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement.
5. Compliance with Texas Government Code Chapter 2252: Pursuant to Texas Government Code Chapter 2252, as amended, Walsh Gallegos verifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152.
6. Compliance with Texas Government Code Chapter 2274 and 809: Pursuant to Texas Government Code Chapters 2274 and 809, as amended, Walsh Gallegos verifies that it does not boycott energy companies and will not boycott energy companies during the term of this Agreement.
7. Compliance with Texas Government Code Chapter 2274: Pursuant to Texas Government Code Chapter 2274, as amended, Walsh Gallegos verifies that it 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.
8. This Agreement establishes a limited attorney-client relationship only between Law Firm and Client. This Agreement does not impose any duty upon Law Firm to provide advice or work to Client regarding other legal matters absent a request for such advice or work on a matter by Client. Law Firm and Client acknowledge and represent that this Agreement does not establish an attorney-client relationship between Law Firm and any individual Representative, Agent or Employee of Client. If a lawsuit or other adversarial matter is brought against Client and/or any Employee of Client, Law Firm shall require the execution of one or more separate Letters of Engagement signed by all parties prior to undertaking an attorney-client relationship in those additional matters.
9. Texas Lawyer's Creed: Under rules of the Texas Supreme Court and the State Bar of Texas, we advise our clients of the contents of the Texas Lawyer's Creed, a copy of which is enclosed. In addition, we advise clients that the State Bar of Texas investigates and prosecutes complaints of professional misconduct against attorneys licensed in Texas. A brochure entitled Attorney Complaint Information is available at all of our offices and is likewise available upon request. A client that has any questions about the State Bar's disciplinary process should call the Office of the General Counsel of the State Bar of Texas at 1-800-932-1900 (toll free).

AGREED TO on behalf of McAllen Independent School District on the ____ day of _____, 2023.

Printed Name and Title

AGREED TO on behalf of Walsh Gallegos Treviño Kyle & Robinson P. C., on the ___ day of _____, 2023.

Joe A. De Los Santos, Managing Shareholder

DRAFT



LEGAL SERVICES AGREEMENT

This is an agreement between McAllen Independent School District, hereinafter referred to as "Client," and Walsh Gallegos Treviño Kyle & Robinson P. C., Attorneys at Law, hereinafter referred to as "Law Firm," for legal representation. Client, acting by and through the authorized Representative or Employee whose signature appears below, hereby retains Law Firm to provide the following legal services:

Services as needed and requested by District to provide legal consultation and representation regarding all areas of law as outlined in Request for Proposal with Qualifications ("RFP/Q") No. 2023-1000 for General Legal Counsel Services except Special Education and Section 504, training, and litigation matters covered by District's insurance carriers ("Legal Matters").

This Agreement is for a primary term of three (3) years, effective July 1, 2022, with the option to renew for two (2) additional one (1) year terms. However, Law Firm and Client reserve the right to review the fee structure at the end of each year of the agreement and make adjustments as mutually agreed to in writing. Client employs Law Firm to handle legal matters on the following terms and conditions:

1. Client agrees to pay Law Firm a flat fee ("Flat Fee") of \$14,583 per month for services in accordance with the Specifications and Scope of Work of the RFP/Q, with the exception of Section 13.1.2 "Special Education and Section 504" services and Section 13.1.7.4 "Conduct workshops or training for the Board, administrators, and or employees on education legal issues."
2. Client will be mailed a statement each month itemizing work performed. Client agrees to pay the balance due upon receipt of monthly billings by Law Firm to Client. Client's failure to pay within 30 days will be grounds for termination of this agreement by Law Firm, unless Client has disputed a charge and notified Law Firm in writing.
3. This Agreement can be terminated at any time by either party with thirty (30) days' written notice to the other party. In the event of termination, Client agrees to pay for services performed by Law Firm through the date of notice of termination.
4. Compliance with Texas Government Code Chapter 2271: Pursuant to Texas Government Code Chapter 2271, as amended, Walsh Gallegos verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement.
5. Compliance with Texas Government Code Chapter 2252: Pursuant to Texas Government Code Chapter 2252, as amended, Walsh Gallegos verifies that it is not engaged in business

with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152.

6. Compliance with Texas Government Code Chapter 2274 and 809: Pursuant to Texas Government Code Chapters 2274 and 809, as amended, Walsh Gallegos verifies that it does not boycott energy companies and will not boycott energy companies during the term of this Agreement.
7. Compliance with Texas Government Code Chapter 2274: Pursuant to Texas Government Code Chapter 2274, as amended, Walsh Gallegos verifies that it 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.
8. This Agreement establishes a limited attorney-client relationship only between Law Firm and Client. This Agreement does not impose any duty upon Law Firm to provide advice or work to Client regarding other legal matters absent a request for such advice or work on a matter by Client. Law Firm and Client acknowledge and represent that this Agreement does not establish an attorney-client relationship between Law Firm and any individual Representative, Agent or Employee of Client. If a lawsuit or other adversarial matter is brought against Client and/or any Employee of Client, Law Firm shall require the execution of one or more separate Letters of Engagement signed by all parties prior to undertaking an attorney-client relationship in those additional matters.
9. Texas Lawyer's Creed: Under rules of the Texas Supreme Court and the State Bar of Texas, we advise our clients of the contents of the Texas Lawyer's Creed, a copy of which is enclosed. In addition, we advise clients that the State Bar of Texas investigates and prosecutes complaints of professional misconduct against attorneys licensed in Texas. A brochure entitled Attorney Complaint Information is available at all of our offices and is likewise available upon request. A client that has any questions about the State Bar's disciplinary process should call the Office of the General Counsel of the State Bar of Texas at 1-800-932-1900 (toll free).


AGREED TO on behalf of McAllen Independent School District on the 23 day of 2022,
2022.


Tony Forina (Jun 23, 2022 08:14 CDT)

Tony Forina, President, Board of Trustees

Printed Name and Title

AGREED TO on behalf of Walsh Gallegos Treviño Kyle & Robinson P. C., on the 23 day of
June, 2022.


Joe De Los Santos (Jun 23, 2022 11:24 CDT)

Joe A. De Los Santos, Managing Shareholder

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 3, 2023

SUBMITTED BY: 
Alejandra Gonzalez (Jul 31, 2023 16:10 CDT)

SUPERVISOR: _____

Approved for presentation to the Board of Education:

Rosalba De Hoyos

133 _____
Acting Superintendent of Schools

Second Amendment
To Commercial Real Estate Listing Agreement
Exclusive Right to Sell

This Second Amendment amends the Commercial Real Estate Listing Agreement – Exclusive Right to Sell (“Agreement”) between McAllen Independent School District (“District”) and Sperry Commercial Global Affiliates - The Arriaga Group (“Arriaga”) effective August 1, 2019 through July 31, 2022, and amended October 28, 2022 to extend the Agreement to July 31, 2023.

The Agreement is amended to amend Paragraph C of Section 4 as follows:

C. The Term of the Agreement is extended to July 31, 2024 for the sole purpose of listing, selling, and closing on the following properties and the following properties only:

- Property 1: 701 S. 17th Street (formerly Instruction & Guidance Center)
- Property 2: 2400 Jordan Avenue (formerly Bonham Elementary School)

If the above Properties sell and close before July 31, 2024, the term of this Agreement will end on the date the last of the above properties closes and title is transferred to the buyer.

SELLER
MCALLEN INDEPENDENT SCHOOL DISTRICT
By: _____
Debbie Crane Aliseda, Board President

BROKER
SPERRY COMMERCIAL GLOBAL AFFILIATES- THE ARRIAGA GROUP
By: _____
Adrian Abel Arriaga, SIOR, CCIM, CPM
Broker/Owner License: 0450641

DATE: _____

APPROVED AS TO FORM:

By: Stacy Castillo
By: [Stacy Castillo \(Jul 20, 2023 15:23 CDT\)](#)
Stacy Tuer Castillo, Attorney for McAllen ISD

Amendment
To Commercial Real Estate Listing Agreement No. 2020-113 Sperry Commercial Global
Affiliates - The Arriaga Group
Exclusive Right to Sell

This Amendment amends the Commercial Real Estate Listing Agreement – Exclusive Right to Sell (“Agreement”) between McAllen Independent School District (“District”) and Sperry Commercial Global Affiliates - The Arriaga Group (“Arriaga”) effective August 1, 2019 through July 31, 2022.

The Agreement is amended to add the following to Section 4:

C. The Term of the Agreement is extended to July 31, 2023, for the sole purpose of listing and selling the following properties and the following properties only:

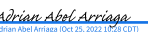
- Property 1: 701 S. 17th Street (Formerly Instruction & Guidance Center)
- Property 2: 2400 Jordan Avenue (Formerly Bonham Elementary)

SELLER
MCALLEN INDEPENDENT SCHOOL DISTRICT

By: 
Tony Forina (Oct 25, 2022 10:50 CDT)

Tony Forina, Board President


BROKER
SPERRY COMMERCIAL GLOBAL AFFILIATES- THE ARRIAGE GROUP

By: 
Adrian Abel Arriaga (Oct 25, 2022 11:29 CDT)

Adrian Abel Arriaga, SIOR, CCIM, CPM
Broker/Owner
License: 0450641

DATE: Oct 25, 2022

APPROVED AS TO FORM:

By: 
Stacy Tuer Castillo (Oct 6, 2022 14:42 CDT)

Stacy Tuer Castillo, Attorney for McAllen ISD



COMMERCIAL REAL ESTATE LISTING AGREEMENT
EXCLUSIVE RIGHT TO SELL

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS®, INC. IS NOT AUTHORIZED.
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1. PARTIES: The parties to this agreement (this Listing) are:

Seller: McAllen Independent School District

Address: 2000 N. 23rd St.

City, State, Zip: McAllen, TX 78504

Phone: (956)618-6000

Fax:

E-Mail: Arely.Benavides@mcallenisd.net

Broker: Sperry Commercial Global Affiliates -- The Arriaga Group

Address: 200 S. 10th St., Suite 904

City, State, Zip: McAllen, TX 78501

Phone: (956)682-1111

Fax: (956)682-2222

E-Mail: adrian@aaare.com

Seller appoints Broker as Seller's sole and exclusive real estate agent and grants to Broker the exclusive right to sell the Property.

2. PROPERTY:

A. "Property" means the following real property in Texas:

Address: See Paragraph 15

City: McAllen, TX

County: Hidalgo

Zip:

Legal Description (Identify exhibit if described on attachment):

B. Except as otherwise provided in this Listing, Broker is to market the Property together with:

- (1) all buildings, improvements, and fixtures;
(2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, easements and rights-of-way;
(3) Seller's interest in all leases, rents, and security deposits for all or part of the Property;
(4) Seller's interest in all licenses and permits related to the Property;
(5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
(6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
(7) all Seller's tangible personal property located on the Property that is used in connection with the Property's operations except:

(Describe any exceptions, reservations, or restrictions in Special Provisions or an addendum. If the Property is a condominium, attach Condominium Addendum to Listing (TXR-1401).)

3. LISTING PRICE:

- A. Seller instructs Broker to market the Property at the following gross sales price: \$ See Paragraph 15

(Listing Price).
- B. Seller agrees to sell the Property for the Listing Price or any other price acceptable to Seller. Seller will pay all typical closing costs charged to sellers of commercial real estate in Texas (seller's typical closing costs are those set forth in the commercial contract forms published by Texas REALTORS®) except _____.

4. TERM:

- A. This Listing begins on August 1, 2019 and ends at 11:59 p.m. on July 31, 2022. Seller may terminate this Listing on notice to Broker any time after _____.
- B. If Seller enters into a binding written contract to sell the Property before the date this Listing begins and the contract is binding on the date this Listing begins, this Listing will not commence and will be void.

5. BROKER'S FEE:

A. Fee: When earned and payable, Seller will pay Broker a fee of:

- (1) 4.750 % of the sales price.
- (2) _____
- _____
- _____

B. Earned: Broker's fee is earned when any one of the following occurs during this Listing:

- (1) Seller sells, exchanges, agrees to sell, or agrees to exchange all or part of the Property to anyone at any price on any terms;
- (2) Broker individually or in cooperation with another broker procures a buyer ready, willing, and able to buy all or part of the Property at the Listing Price or at any other price acceptable to Seller;
- (3) Seller grants or agrees to grant to another person an option to purchase all or part of the Property;
- (4) Seller transfers or agrees to transfer all or part of Seller's interest (stock or shares) in any entity that holds title to all or part of the Property for the purpose of conveying all or part of the Property to another person; or
- (5) Seller breaches this Listing.

C. Payable: Once earned, Broker's fee is payable either during this Listing or after it ends at the earlier of:

- (1) the closing and funding of any sale or exchange of all or part of the Property;
- (2) Seller's refusal to sell the Property after Broker's Fee has been earned;
- (3) Seller's breach of this Listing; or
- (4) at such time as otherwise set forth in this Listing.

Broker's fee is not payable if a sale of the Property does not close or fund as a result of: (i) Seller's failure, without fault of Seller, to deliver to a buyer a deed or a title policy as required by the contract to sell; (ii) loss of ownership due to foreclosure or other legal proceeding; or (iii) Seller's failure to restore the Property, as a result of a casualty loss, to its previous condition by the closing date set forth in a contract for the sale of the Property.

D. Other Fees:

(1) Lease of Property: If, during this Listing, Broker procures a tenant to lease all or part of the Property and Seller agrees to lease all or part of the Property to the tenant, Seller will pay Broker at the time the lease is executed the fee described below. If, during the term of the lease, the tenant agrees to purchase all or part of the Property, Seller will pay Broker the fee specified in Paragraph 5A in addition to the amount described below.

(a) N/A % of all base rents to be paid over the term of the lease and the same percentage of the following items to be paid over the term of the lease: expense reimbursements; and N/A

(b) N/A

(2) Renewals, Extensions, or Expansions of Property: If, during this Listing or after it ends, Seller renews, extends, or expands the lease, Seller will pay Broker, at the time the renewal, extension, or expansion becomes effective, a fee of:

(a) N/A % of all base rents to be paid over the term of the renewal or extension and the same percentage of the following items to be paid over the same term: expense reimbursements based on initial amounts N/A;

(b) N/A % of all base rents to be paid over the term of the expansion and the same percentage of the following items to be paid over the same term: expense reimbursements based on initial amounts N/A; or

(c) N/A

In addition to their ordinary meanings, "extensions", "renewals," and "expansions" include new leases for more, less, or different space in the building or complex in which the property is located.

(3) Breach by Buyer Under Contract: If Seller collects earnest money, the sales price, or damages by suit, compromise, settlement or otherwise from a buyer who breaches a contract for the sale of all or part of the Property entered into during this Listing, Seller will pay Broker, after deducting attorney's fees and collection expenses, an amount equal to the lesser of one-half of the amount collected after deductions or the amount of the Broker's Fee stated in Paragraph 5A. Any amount paid under this Paragraph 5D(3) is in addition to any amount that Broker may be entitled to receive for subsequently selling the Property.

(4) Service Providers: If Broker refers Seller or a prospective buyer or tenant to a service provider (e.g., mover, cable company, telecommunications provider, utility, or contractor) Broker may receive a fee from the service provider for the referral. Any referral fee Broker receives under this Paragraph 5D(4) is in addition to any other compensation Broker may receive under this Listing.

(5) Other Fees and/or Reimbursable Expenses: N/A

E. Protection Period:

(1) "Protection period" means that time starting the day after this Listing ends and continuing for 60 days.

(2) Not later than 10 days after this Listing ends Broker may send Seller written notice specifying the names of persons whose attention Broker has called to the Property during this Listing. If Seller agrees to sell or lease all or part of the Property during the protection period to a person named in the notice or to a relative or business associate of a person named in the notice, Seller will pay Broker, upon the closing of the sale or upon execution of the lease, the amount Broker would have been entitled to receive if this Listing were still in effect.

(3) "Person" means any person in any capacity whether an individual or entity. "Sell" means any transfer of any interest in the Property whether by agreement or option.

(4) This Paragraph 5E survives termination of this Listing.

F. County: All amounts payable to Broker are to be paid in cash in Hidalgo County, Texas.

G. Escrow Authorization: Seller authorizes, and Broker may so instruct, any escrow or closing agent authorized to close a transaction for the purchase or acquisition of the Property to collect and disburse to Broker all amounts payable to Broker under this Listing.

NOTICE: Under Chapter 62, Texas Property Code, Broker is entitled to claim a lien against the Property to secure payment of an earned commission.

6. EXCLUSIONS:

A. Under a prior listing agreement Seller is obligated to pay another Texas licensed broker a fee if Seller sells or leases all or part of the Property before N/A to any of the following persons: N/A (named exclusions).

B. If Seller enters into a contract to sell or lease all or part of the Property to a named exclusion before the date specified in Paragraph 6A, Seller will not be obligated to pay Broker the fees under Paragraph 5 of this Listing, but Seller will pay Broker, upon the closing of the sale or upon execution of the lease, a fee equal to:

- (1) N/A % of the sales price if Seller sells the Property;
- (2) N/A % of all base rents to be paid over the term of the lease if Seller leases the Property and the same percentage of the following items to be paid over the term of the lease: expense reimbursements; N/A; and
- (3) N/A

C. If Seller enters into a contract to sell or lease all or part of the Property to a named exclusion, Broker will will not assist Seller in negotiating and closing the sale or lease to the named exclusion.

7. ACCESS TO THE PROPERTY: Authorizing access to the Property means giving permission to another person to enter the Property, disclosing security codes necessary to enter the Property to such person, and lending a key to the Property to such person. To facilitate the showing and sale of the Property, Seller instructs Broker and Broker's associates to: (i) access the Property at reasonable times; (ii) authorize other brokers, inspectors, appraisers, lenders, engineers, surveyors, and repair persons to enter the Property at reasonable times; and (iii) duplicate keys to facilitate convenient and efficient showings.

8. COOPERATION WITH OTHER BROKERS: Broker will allow other brokers to show the Property to prospective buyers. If the other broker procures a buyer who purchases the Property, Broker will offer to pay the other broker a portion of Broker's fee under Paragraph 5.

9. INTERMEDIARY: (Check A or B only.)

- A. **Intermediary Status:** Broker may show the Property to interested prospective buyers or tenants who Broker represents. If a prospect who Broker represents offers to buy or lease the Property, Seller authorizes Broker to act as an intermediary and Broker will notify Seller that Broker will service the parties in accordance with one of the following alternatives.
- (1) If a prospect who Broker represents is serviced by an associate other than the associate servicing Seller under this Listing, Broker may notify Seller that Broker will: (a) appoint the associate then servicing Seller to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller; and (b) appoint the associate then servicing the prospect to the prospect for the same purpose.
 - (2) If a prospect who Broker represents is serviced by the same associate who is servicing Seller, Broker may notify Seller that Broker will: (a) appoint another associate to communicate with, carry out instructions of, and provide opinions and advice during negotiations to the prospect; and (b) appoint the associate servicing the Seller under this Listing to the Seller for the same purpose.
 - (3) Broker may notify Seller that Broker will make no appointments as described under this Paragraph 9A and, in such an event, the associate servicing the parties will act solely as Broker's intermediary representative, who may facilitate the transaction but will not render opinions or advice during negotiations to either party.
- B. **No Intermediary Status:** Seller agrees that Broker will not show the Property to prospects who Broker represents.

- Notice: If Broker acts as an intermediary under Paragraph 9A, Broker and Broker's associates:**
- ◆ may not disclose to the prospect that Seller will accept a price less than the asking price unless otherwise instructed in a separate writing by Seller;
 - ◆ may not disclose to Seller that the prospect will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the prospect;
 - ◆ may not disclose any confidential information or any information Seller or the prospect specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the property;
 - ◆ may not treat a party to the transaction dishonestly; and
 - ◆ may not violate the Real Estate License Act.

10. CONFIDENTIAL INFORMATION: During this Listing or after it ends, Broker may not knowingly disclose information obtained in confidence from Seller except as authorized by Seller or required by law. Broker may not disclose to Seller any information obtained in confidence regarding any other person Broker represents or may have represented except as required by law.

11. BROKER'S AUTHORITY:

- A. Broker will use reasonable efforts and act diligently to market the Property for sale, procure a buyer, and negotiate the sale of the Property.
- B. In addition to other authority granted by this Listing, Broker may:
 - (1) advertise the Property by means and methods as Broker determines is appropriate in any media, including but not limited to:
 - (a) placing a "For Sale" sign or similar marketing sign on the Property; and
 - (b) creating and placing information about the Property (including interior and exterior photographs or videos):

- (i) on the Internet on Broker's website and on other websites as Broker determines;
 - (ii) in any advertisements whether in print or electronic media; and
 - (iii) into listing services that may publicize the information on the Internet or by other means;
- (2) reproduce, display, and distribute information about the Property, including the information described under Paragraph 11B(1), for the purposes of marketing the Property;
 - (3) furnish comparative marketing and sales information about other properties to prospects;
 - (4) disseminate information about the Property to other brokers and prospects, including applicable disclosures, notices, or other information that Seller is required to make under law or a contract;
 - (5) obtain information from any holder of any note secured by a lien on the Property;
 - (6) accept, in trust, any earnest money, option fee, security deposit, or other money related to the purchase or lease of the Property and deliver such money for deposit in accordance with a contract for the sale or lease of the Property;
 - (7) disclose the sales price and terms of a sale or a lease to other brokers, appraisers, other real estate professionals, and any listing services into which information about the Property is placed;
 - (8) place information about this Listing and a transaction for the Property on an electronic platform (an electronic platform is typically an Internet-based system where professionals related to the transaction, such as title companies and lenders, may receive, view, and input information); and
 - (9) advertise that Broker "sold" or "leased" the Property after the closing of a sale or execution of a lease of the Property in which Broker was involved.

NOTICE: Any submission of information to a listing service must be made in accordance with listing service's rules.

- C. Broker is not authorized to execute any document in the name of or on behalf of Seller concerning the Property.
- D. Photographs, videos, and compilations of information submitted to a listing service are the property of the listing service for all purposes.

12. REPRESENTATIONS:

- A. Except as provided otherwise in this Listing, Seller represents that:
 - (1) Seller has fee simple title to and peaceable possession of the Property and all its improvements and fixtures thereon, unless rented, and the legal capacity to convey the Property;
 - (2) Seller is not bound by a listing agreement with another broker for the sale, exchange, or lease of the Property that is or will be in effect during this Listing;
 - (3) no person or entity has any right to purchase, lease, or acquire the Property by an option, right of refusal, or other agreement;
 - (4) there are no delinquencies or defaults under any deed of trust, mortgage, or other encumbrance on the Property;
 - (5) the Property is not subject to the jurisdiction of any court;
 - (6) Seller owns sufficient intellectual property rights in any materials which Seller provides to Broker related to the Property (for example, brochures, photographs, drawings, or articles) to permit Broker to reproduce and distribute such materials for the purposes of marketing the Property or for other purposes related to this agreement; and
 - (7) all information relating to the Property Seller provides to Broker is true and correct to the best of Seller's knowledge.
- B. Seller and Broker must disclose any known material defect in the Property to a prospective buyer. (Check only one box.)
 - (1) Seller is not aware of any material defects to the Property except as stated in the attached Commercial Property Condition Statement (TXR-1408). Seller authorizes Broker to furnish prospective buyers and other brokers with a copy of the Commercial Property Condition Statement (TXR-1408).

- (2) Except as otherwise provided in this Listing, Seller is not aware of:
- (a) any subsurface: structures, pits, wastes, springs, or improvements;
 - (b) any pending or threatened litigation, condemnation, or assessment affecting the Property;
 - (c) any environmental hazards or conditions that materially affect the Property;
 - (d) whether the Property is or has ever been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
 - (e) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants) or other pollutants or contaminants of any nature now exist or have ever existed on the Property;
 - (f) any wetlands, as defined by federal or state law or regulation, on the Property;
 - (g) any threatened or endangered species or their habitat on the Property;
 - (h) any present or past infestation of wood-destroying insects in the Property's improvements;
 - (i) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
 - (j) any material physical defects in the improvements on the Property; or
 - (k) any condition on the Property that violates any law or ordinance.

(List any exceptions to (a)-(k) in Special Provisions or an addendum.)

13. SELLER'S ADDITIONAL PROMISES: Seller agrees to:

- A. cooperate with Broker to facilitate the showing and marketing of the Property;
- B. not negotiate with any prospective buyer who may contact Seller directly, but refer all prospective buyers to Broker;
- C. not enter into a listing agreement with another Broker for the sale or exchange of the Property to become effective during this Listing;
- D. not enter into a listing agreement for the lease of all or part of the Property with another broker to become effective during this Listing without Broker's written permission;
- E. provide Broker with copies of the following, if any, relating to the Property: a current rent roll, all leases including any amendments, architectural plans and drawings, renderings, survey, a current operating statement, environmental inspection reports, engineering reports, and other relevant information that Broker may request during this Listing;
- F. advise Broker of any tenants moving in or out of the Property;
- G. complete any disclosures or notices required by law or a contract to sell the Property;
- H. amend any applicable notices and disclosures if any material change occurs during this Listing; and
- I. at Seller's expense, remove from the Property all:
 - (1) "For Sale" (or similarly worded) signs other than Broker's signs;
 - (2) "For Lease" (or similarly worded) signs from the Property unless the Property is listed for lease with another broker; and
 - (3) "For Information" (or similarly worded) signs other than Broker's signs.

14. LIMITATION OF LIABILITY:

- A. If the Property is or becomes vacant during this Listing, Seller must notify Seller's casualty insurance company and request a "vacancy clause" to cover the Property. Broker is not responsible for the security of the Property nor for inspecting the Property on any periodic basis.
- B. Broker is not responsible or liable in any manner for personal injury to any person or for loss or damage to any person's real or personal property resulting from any act or omission not caused by Broker, including but not limited to injuries or losses caused by:
 - (1) other brokers, inspectors, appraisers, lenders, contractors, surveyors, engineers, and other persons who are authorized to access the Property;
 - (2) acts of third parties (for example, vandalism or theft);
 - (3) freezing or broken water pipes;
 - (4) a dangerous condition on the Property; and
 - (5) the Property's non-compliance with any law or ordinance.

- C. Seller agrees to indemnify and hold Broker and Broker's associates harmless from any damages, costs, attorney's fees, and expenses:
 - (1) that arise from Seller's failure to disclose any material information about the Property;
 - (2) that are caused by Seller giving incorrect information to Broker, other brokers, or prospects;
 - (3) that arise from any claim for misuse of intellectual property in any materials or information that Seller provided to Broker related to the Property or this agreement; or
 - (4) that are otherwise caused by Seller or Seller's negligence.

15. SPECIAL PROVISIONS:

- 1. **8.32 Acres South of Fossum Middle School -- Subject to Appraisal**
- 2. **23.71 Acres West of Jackson & North of Fern -- Subject to Appraisal**
- 3. **2100 Fir Avenue (Stephen F. Austin School) -- \$360,000**
- 4. **701 S. 17th St. (Former Instruction & Guidance Center) -- \$590,000**
- 5. **520 S. 23rd St. (Former Thigpen School) -- \$775,000**

16. DEFAULT: If Seller breaches this Listing, Seller is in default and will be liable to Broker for the amount of Broker's fee specified in Paragraph 5A and any other fees Broker is entitled to receive under this Listing. If a sales price is not determinable in the event of any exchange or breach of this Listing, the Listing Price will be the sales price for the purpose of calculating Broker's fee. If Broker breaches this Listing, Broker is in default and Seller may exercise any remedy at law.

17. MEDIATION: The parties agree to negotiate in good faith in an effort to resolve any dispute that may arise between the parties. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation. The parties to the dispute will choose a mutually acceptable mediator and will share the costs of mediation equally.

18. ATTORNEY'S FEES: If Seller or Broker is a prevailing party in any legal proceeding brought as a result of a dispute under this Listing or any transaction related to or contemplated by this Listing, such party may recover from the non-prevailing party all costs of such proceeding and reasonable attorney's fees.

19. ADDENDA: Addenda or information that are part of this Listing are:

- A. Information About Brokerage Services (TXR-2501)
- B. Property Description Exhibit identified in Paragraph 2
- C. Condominium Addendum to Listing (TXR-1401)
- D. Commercial Property Condition Statement (TXR-1408)
- E. Information About On-Site Sewer Facility(TXR-1407)
- F. Information about Special Flood Hazard Areas (TXR-1414)
- G. _____

20. AGREEMENT OF THE PARTIES:

- A. Entire Agreement: This Listing is the entire agreement of the parties and may not be changed except by written agreement.
- B. Assignability: Neither party may assign this Listing without the written consent of the other party.
- C. Binding Effect: Seller's obligations to pay Broker an earned fee is binding upon Seller and Seller's heirs, administrators, executors, successors, and permitted assigns.
- D. Joint and Several: All Sellers executing this Listing are jointly and severally liable for the performance of all its terms.
- E. Governing Law: Texas law governs the interpretation, validity, performance, and enforcement of this Listing.

- F. **Severability:** If a court finds any clause in this Listing invalid or unenforceable, the remainder of this Listing will not be affected and all other provisions of this Listing will remain valid and enforceable.
- G. **Partial Sales or Leases:** If Seller sells or leases part of the Property before the date this Listing ends, this Listing will continue for the remaining part of the Property through the term of this Listing.
- H. **Notices:** Notices between the parties must be in writing and are effective when sent to the receiving party's address, fax, or e-mail specified in Paragraph 1.

21. ADDITIONAL NOTICES:

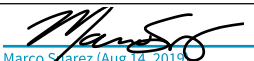
- A. **Broker's fees or the sharing of fees between brokers are not fixed, controlled, recommended, suggested, or maintained by Texas REALTORS®, its local affiliates, or any listing service. Broker's fees are negotiable.**
- B. **The Property must be shown and made available to all persons without regard to race, color, religion, national origin, sex, disability, or familial status. Local ordinances and the National Association of REALTORS® Code of Ethics may provide for additional protected classes (e.g., creed, status as a student, marital status, sexual orientation, or age).**
- C. **If the Property contains a residential dwelling built before 1978, federal law requires the Seller to: (1) provide the buyer with the promulgated lead hazard information pamphlet (TXR-2511); and (2) disclose the presence of any known lead-based paint or lead-based paint hazards.**
- D. **Broker cannot give legal advice. This is a legally binding agreement. READ IT CAREFULLY. If you do not understand the effect of this Listing, consult your attorney BEFORE signing.**


Seller: McAllen Independent School District

Broker: Sperry Commercial Global
Broker / Company Name: Affiliates -- The Arriaga Group

By: _____

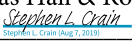
License No. 9007195

By (signature): 
Printed Name: Marco Suarez
Title: Board President Date: Aug 14, 2019

By (signature): 
Printed Name: Adrian Abel Arriaga, SIOR, CCIM, CPM
Title: Broker/Owner License No. 0450641
Date: Aug 7, 2019

By: _____

By (signature): _____
Printed Name: _____
Title: _____ Date: _____

Approved as to form:
Atlas Hall & Rodriguez, LLP
by: 
Stephen L. Crain

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 3, 2023

SUBMITTED BY: *Laura Williams*
Laura Williams (Jul 31, 2023 16:14 CDT)

SUPERVISOR: *am*
Alejandra Gonzalez (Jul 31, 2023 16:20 CDT)

Approved for presentation to the Board of Education:

Rosalba De Hoyos

146

Acting Superintendent of Schools

O'HANLON, DEMERATH & CASTILLO

ATTORNEYS AND COUNSELORS AT LAW

426 W. CAFFERY AVE
PHARR, TX 78577
PHONE: (956) 318-0555
FAX: (956) 318-1955

KEVIN THOMAS O'HANLON
Board Certified, Civil Trial Law
Board Certified, Civil Appellate Law
kohanlon@808west.com

Austin Office
808 West Ave.
Austin, Texas 78701

San Antonio Office
117 W. Craig Place
San Antonio, Texas 78212

Fort Worth Office
209 W. 8th St.
Fort Worth, Texas 76102

July 20, 2023

Ms. Debbie Aliseda, Board President &
Members of the Board of Trustees
McAllen Independent School District
2000 N. 23rd St.
McAllen, Texas 78501

RE: Legal representation agreement

President Aliseda,

The purpose of this letter is to provide you the terms and conditions under which our firm proposes to undertake all necessary legal work, as directed by you ("Client"), related to providing legal counsel services to the District. Please review the agreement, and if you wish to retain the Firm's services, execute and return the agreement to our office by either facsimile or email.

We have made the following fee and staffing arrangements.

1. Firm's Personnel: Kevin O'Hanlon will have primary responsibility for this engagement. Other attorneys and legal and staff assistants in our office may also be used in the course of this matter. The use of such personnel will be based on the exercise of our professional judgment and will depend on the nature of the work to be performed and the qualifications, skill and specialized expertise needed to perform a particular aspect of a specific engagement.

2. Fees: Our firm policy is to charge a reasonable fee for services rendered based primarily upon the time spent by each attorney and legal assistant working on the case. Our hourly rates for personnel assigned to this matter will be \$ 185.00 per hour for attorney work performed by attorneys in the firm, \$ 95.00 per hour for work performed by paralegals and \$45 per hour for work performed by law clerks. Time will be billed in .25 hour increments. Our firm will not charge for travel (including mileage), copies, faxes, and other such related expenses.

July 20, 2023

Page 2

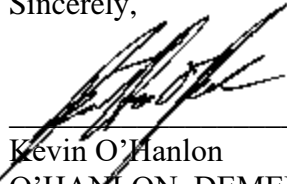
3. Term of Agreement: This Agreement shall be for a term of one (1) year, commencing August 8, 2023 through August 7, 2024.

4. Billing: Client will receive monthly invoices for the services provided by the firm. Any outstanding amounts due and owed to the firm are payable within thirty (30) days of invoicing.

5. Conflict Issues: We have reviewed the goals that the Client wishes to achieve and have not detected any conflict between our firm and your interests in this engagement.

On a personal note, I am very pleased that are considering our firm to assist in this important project. We look forward to serving you, and we shall use our best efforts on your behalf.

Sincerely,



Kevin O'Hanlon
O'HANLON, DEMERATH & CASTILLO

AGREED TO:

Debbie Crane Aliseda, Board President
MCALLEN INDEPENDENT SCHOOL DISTRICT

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

by: Leandra C. Ortiz
Leandra C. Ortiz (Jul 24, 2023 11:17 CDT)
Leandra C. Ortiz

Evaluation Matrix
2023-1055 One-to-One Initiative - Technology
Equipment with Service (RE-BID)

Criteria	Max. Pts. 100	iBenzer, Inc	CDW Government LLC	Netsync Network Solutions	Dell Marketing LP	SHI International
Rank	100	5	1	2	4	3
Maximum Points		6.33	72.19	58.84	35.56	57.78
Price	30	0.00	30.00	22.28	14.56	14.78
Hardware Price/ Unlimited Accident Protection (LI #2.1 & 2.3)	30	\$0.00	\$406.50	\$547.45	\$837.61	\$825.35
Hardware Price(LI#2.1)		\$0.00	\$331.00	\$547.45	\$837.61	\$610.95
		<i>No Submission</i>				
Unlimited Accident Protection (LI #2.3)		\$0.00	\$75.50	\$0.00	\$0.00	\$214.40
		<i>No Submission</i>				
Reputation of the vendor and of the vendor's goods or services;	5	3.33	5.00	5.00	5.00	0.00
Reference #1 (Attribute #66)	1.66	1.66	1.66	1.66	1.66	0.00
Reference #2 (Attribute #66)	1.67	1.67	1.67	1.67	1.67	0.00
Reference #3 (Attribute #66)	1.67	0.00	1.67	1.67	1.67	0.00
The quality of the vendor's goods or services	40	2.00	34.19	27.56	13.00	39.00
Value Add (Professional Development, Additonal Instructional Software, etc) (Attribute #49)						
Professional Development=1pt; Additonal Instructional Software=1pt	2	0	2	1	0	2
		<i>No professional development submitted or additional instructional software</i>	<i>Professional development and Google Audit Submitted</i>	<i>No Professional Development - Google Audit Submitted</i>	<i>No professional development submitted or additional instructional software</i>	<i>Professional Development and Technical Training Provided</i>
Implementation Strategy (Attribute #52) Submitted=2pt; Non-submission =0pts	2	2	2	1	2	1
		<i>Response Submitted</i>	<i>Response Submitted</i>	<i>Response Submitted but exclusions were provided</i>	<i>Response Submitted</i>	<i>Response Submitted but fee is listed</i>
Online Store Front (Attribute #51) Submitted=1 Non-submission =0	1	0	1	0	1	1
		<i>Storefront not provided</i>	<i>Storefront Provided</i>	<i>Storefront not provided</i>	<i>Storefront Provided</i>	<i>Storefront Provided</i>
Equipment meets usage and specific capabilities of use - Best Value to Include Cost (LI#8 & LI#9)	25	0	19.19	15.56	0	25
		\$0.00	\$177,790.00	\$219,209.00	\$0.00	\$136,457.00
Content Filtering Solution (LI#8)		\$0.00	\$88,895.00	\$64,447.00	\$0.00	\$75,916.00
		<i>No Submission</i>			<i>No Submission</i>	
Classroom Management Solution (LI#9)		\$0.00	\$88,895.00	\$154,762.00	\$0.00	\$60,541.00
		<i>No Submission</i>	0-		<i>No Submission</i>	
USB-C 45W/65W Compatability (Attribute #57) Yes= 10pt ; No= 0pt	10	0	10	10	10	10
		<i>Not Compatable</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>	<i>Yes</i>
The extent to which the goods or services meet District's needs	21	14.00	16.00	19.00	17.00	13.00


Evaluation Matrix
2023-1055 One-to-One Initiative - Technology
Equipment with Service (RE-BID)

Local Support of Products (Attribute #61) Within Rio Grande Valley= 4pts Outside of Rio Grande Valley but within Texas= 2pts Outside of Texas=0pts	4	0	2	2	0	0
		<i>College Point, NY</i>	<i>Houston, TX</i>	<i>Belaire, TX</i>	<i>Stillwater, OK</i>	<i>Houth Haven, MS</i>
Project Manager Strategy (Attribute #63) Submitted=1pt; Non-submission =0pts	1	1	1	1	1	1
		Project Manager Response Submitted	Project Manager Response Submitted	Project Manager Response Submitted	Project Manager Response Submitted	Project Manager Response Submitted
Resumes of Assigned Employees (Attribute #65) Submitted=1pt; Non-submission =0pts	1	1	1	1	1	0
		<i>Resumes Submitted</i>	<i>Resumes Submitted</i>	<i>Resumes Submitted</i>	<i>Resumes Submitted</i>	<i>No Submission</i>
Escalation Process (Attribute #53) Submitted=10pt; Incomplete =5pts; Non-submission =0pts	10	10	10	10	10	10
		<i>Escalation Process Response Submitted</i>	<i>Escalation Process Response Submitted</i>	<i>Escalation Process Response Submitted</i>	<i>Escalation Process Response Submitted</i>	<i>Escalation Process Response Submitted</i>
Augmentaion of Staff (Attribute #62) Submitted=5pt; Incomplete= 2pts; Non-submission =0pts	5	2	2	5	5	2
		Response Submitted No Additional Support Not Provided	Response Submitted No Additional Support Not Provided	Response Submitted Additional Support Provided	Response Submitted Additional Support Provided	Response Submitted No Additional Support Not Provided
Past Relationship with District	1	0	1	1	1	1
Past experience = 1 pt; No experience/Negative experience = 0pts (Attribute #48)	1	0	1	1	1	1
		<i>N/A</i>	<i>Past Experience Response Provided</i>	<i>Past Experience Response Provided</i>	<i>Past Experience Response Provided</i>	<i>Past Experience Response Provided</i>
HUB	1	0	0	1	0	1
Yes = 1pt; No = 0pts (Attribute #19)	1	0	0	1	0	1
		<i>Small & Minority, WBE, Labor Surplus Area Firms (Certificate was not submitted)</i>	<i>I am neither</i>	<i>I am an Active certified HUB vendor</i>	<i>I am neither</i>	<i>I am an Active certified HUB vendor (certificate attached)</i>
Total long-term cost to the district to acquire the vendor's goods or services;	0	0	0	0	0	0
<i>N/A</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
Vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state	1	0	1	1	1	1
Texas Vendor or Employs 500+ in Texas = 1pt; Out of State Vendor = 0pts (Attribute #12)	1	0	1	1	1	1
		<i>Pricipal place is NOT in Texas</i>	<i>Principal place employs 500+ in Texas</i>	<i>Principal place of business is in TX</i>	<i>Principal place of business is in TX</i>	<i>Principal place of business is in TX</i>
Any other relevant factor specifically listed in the request for bids or proposals.	1	1	1	1	1	1
Scope of Work (LI #6.1) Submitted=1pt; Non-submission =0pts	1	1	1	1	1	1
		<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>	<i>Submitted</i>

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 3, 2023

SUBMITTED BY: *Judith Escamilla*

SUPERVISOR: 
Alejandra Gonzalez (Jul 31, 2023 17:07 CDT)

Approved for presentation to the Board of Education:

Rosalba De Hoyos

151 Acting Superintendent of Schools

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 3, 2023

SUBJECT: Discussion and Possible Action on Recommendation for Position of the Director of Transportation

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The previous Director of Transportation (Erica Flores) was out on FMLA from May 26, 2023, until she resigned on July 30, 2023. The Assistant Director of Transportation (Alicia Ginez) managed the Transportation department in Ms. Flores' absence until she resigned on July 10, 2023.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

On July 10, 2023, Administration was notified by Mrs. Ginez that she was resigning. On July 11, 2023, Administration promoted Mr. Eduardo Barnhart to Acting Director of Transportation to ensure continued successful Transportation operations and to get the team ready for the upcoming school year. Administration has received numerous positive comments about Mr. Barnhart's performance to date, and his efforts are even attracting ex-bus drivers to reapply at McAllen ISD.

LEGAL REVIEW: Not Applicable

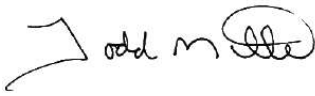
BUDGETARY CONSIDERATIONS: This is a budgeted position.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the Superintendent's recommendation of the Director of Transportation.


Attachment:

SUBMITTED BY: _____

SUPERVISOR:  _____
Jul 31, 2023

SUBMITTED BY: _____

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

Approved for presentation to the Board of Education:

152 _____
Acting Superintendent of Schools
Jul 31, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 3, 2023

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

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

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

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

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

LEGAL REVIEW: Not Applicable

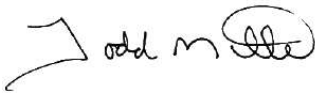
BUDGETARY CONSIDERATIONS: Not Applicable

RECOMMENDED BOARD ACTION:

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


Attachment:

SUBMITTED BY: _____

SUPERVISOR:  _____
Jul 31, 2023

SUBMITTED BY: _____

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

Approved for presentation to the Board of Education:

153 _____
Acting Superintendent of Schools
Jul 31, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 3, 2023

SUBJECT: Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2023-2024

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

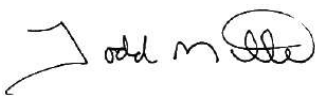
BUDGETARY CONSIDERATIONS: Not Applicable

RECOMMENDED BOARD ACTION:

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


Attachment:

SUBMITTED BY: _____

SUPERVISOR:  _____
Jul 31, 2023

SUBMITTED BY: _____

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

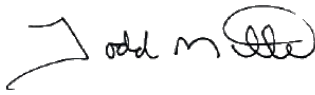
Approved for presentation to the Board of Education:

154 _____
Acting Superintendent of Schools
Jul 31, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 3, 2023

Attachment:

SUBMITTED BY: _____

SUPERVISOR: 
Jul 31, 2023

SUBMITTED BY: _____

Approved for presentation to the Board of Education:

Rosalba De Hoyos
155 _____
Acting Superintendent of Schools
Jul 31, 2023









Discussion and Possible Action on Recommendation for Position

Final Audit Report

2023-07-31

Created:	2023-07-31
By:	Erika Melgoza (erika.melgoza@mcallenisd.net)
Status:	Signed
Transaction ID:	CBJCHBCAABAAeakiVOTxjyZHg0S8b-_2Pu4gTiuO8lco

"Discussion and Possible Action on Recommendation for Position" History

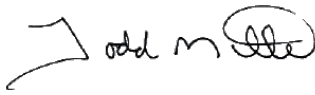
-  Document created by Erika Melgoza (erika.melgoza@mcallenisd.net)
2023-07-31 - 8:07:10 PM GMT- IP address: 198.96.22.251
-  Document emailed to Todd Miller (todd.miller@mcallenisd.net) for signature
2023-07-31 - 8:07:45 PM GMT
-  Email viewed by Todd Miller (todd.miller@mcallenisd.net)
2023-07-31 - 8:09:01 PM GMT- IP address: 198.96.22.250
-  Document e-signed by Todd Miller (todd.miller@mcallenisd.net)
Signature Date: 2023-07-31 - 8:09:21 PM GMT - Time Source: server- IP address: 198.96.22.250
-  Document emailed to Rosalba De Hoyos (rosalba.dehoyos@mcallenisd.net) for signature
2023-07-31 - 8:09:22 PM GMT
-  Email viewed by Rosalba De Hoyos (rosalba.dehoyos@mcallenisd.net)
2023-07-31 - 8:11:46 PM GMT- IP address: 174.193.128.216
-  Document e-signed by Rosalba De Hoyos (rosalba.dehoyos@mcallenisd.net)
Signature Date: 2023-07-31 - 8:12:07 PM GMT - Time Source: server- IP address: 174.193.128.216
-  Agreement completed.
2023-07-31 - 8:12:07 PM GMT

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: August 3, 2023

Attachment:

SUBMITTED BY: _____

SUPERVISOR: 
Jul 31, 2023

SUBMITTED BY: _____

Approved for presentation to the Board of Education:

Rosalba De Hoyos
157

Acting Superintendent of Schools
Jul 31, 2023