Agenda of Regular Meeting

The Board of Trustees
McAllen Independent School District

A Regular Meeting of the Board of Trustees of the McAllen Independent School District will be held Monday, October 30, 2023, beginning at 5:00 PM Dr. Ricardo Chapa Board Room/Administration Building of the McAllen Independent School District, 2000 North 23rd Street, McAllen, TX 78501.

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

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

1. **CALL MEETING TO ORDER**
2. **MOMENT OF SILENCE**
3. **PLEDGE OF ALLEGIANCE**
4. **PUBLIC COMMENT(S)**
5. **SUPERINTENDENT'S REPORT(S)**
   A) Texas High School Coaches Day
   B) Attendance Matters
6. **RECOGNITION(S)**
7. **PROCLAMATION(S)**
8. **DONATION(S)**
9. **PUBLIC HEARING** for the School Financial Integrity Rating System of Texas (School FIRST) **5**

   Presenter: Dr. Rosalba De Hoyos, Interim Superintendent
10. **CONSENT AGENDA ITEMS**
    A) Discussion and Possible Action on the Participation of MISD Students in the Rio Grande Valley Ballet Company "The Nutcracker" 25
    Item Submitted: Maribelle Elizondo, Interim Assistant Superintendent for Instruction

    Presenter: Dr. Rosalba De Hoyos, Interim Superintendent

B) Discussion and Possible Action on the Participation of MISD Students in the Edinburg Dance Theatre Production of "The Nutcracker" 26
Item Submitted: Maribelle Elizondo, Interim Assistant Superintendent for Instruction

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent

C) Discussion and Possible Action on Agreement No. 2024-200 Edspire with Region One (Education Service Center) 27
Item Submitted: Maribelle Elizondo, Interim Assistant Superintendent for Instruction

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent

D) Discussion and Possible Action on Collaboration Agreement No. 2024-155 Health Care Learning Experiences with Rio Grande Regional Hospital 32
Item Submitted: Maribelle Elizondo, Interim Assistant Superintendent for Instruction

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent

E) Discussion and Possible Action on Memorandum of Understanding No. 2024-250 Membership for Scholars Program with Rio Grande Valley Linking Economic and Academic Development 44
Item Submitted: Maribelle Elizondo, Interim Assistant Superintendent for Instruction

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent

F) Discussion and Possible Action on Ratification of Contract and First Amendment, and Approval of Second Amendment to Contract No. 2023-096 Grounds Maintenance Services for Various Locations Maldonado Nursery & Landscaping Inc. through 2023-1020 52
Item Submitted: Elizabeth Gonzalez, Interim Assistant Superintendent for District Operations

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent

11. **INSTRUCTION, HUMAN RESOURCES, DISTRICT OPERATIONS, BUSINESS OPERATIONS, AND BOARD OF TRUSTEES ITEMS**

A) **Instruction Item(s)** (Maribelle Elizondo)

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

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

D) **Business Operations Item(s)** (Iris Luna)

1. Report Regarding Taxes Collected for September 2023 169
Item Submitted: Iris Luna, Interim Assistant Superintendent for Business Operations

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent

2. Report Regarding Monthly Financial and Quarterly Investment Report for August 2023 171
Item Submitted: Iris Luna, Interim Assistant Superintendent for Business Operations

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent

3. Discussion and Possible Action on Competitive Sealed Proposal No. 2024-1016 McAllen Veterans Memorial Stadium Fiber Installation for Scoreboard Operations at New Press Box 199
Item Submitted: Iris Luna, Interim Assistant Superintendent for Business Operations

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent

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

1. Report Regarding Responses to Superintendent's Search Survey 347
2. Discussion of Revisions to Board Policy BE (LOCAL)- 1st Reading 359
Item Submitted: Trustee Debbie Aliseda

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent

3. Discussion of Phase 2 Administration's Cost Savings Plan
Item Submitted: Trustee Lucia Regalado
4. Discussion of Board of Trustees Creating a Board Sub-Committee to Conduct a Comprehensive Review of all Board Policies and to Edit and Draft an Operating Procedures Manual
Item Submitted: Trustee Lucia Regalado
5. Approval of Board of Education Meeting Minutes 362
   a) School Safety and Security Committee Meeting October 11, 2023 1:30 PM
   b) Regular Board Meeting October 16, 2023 5:00 PM
   c) Special Board Meeting October 11, 2023 7:00 PM

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

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

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

C) Discussion on Recommendation for the Principal at William B. Travis Middle School

D) Discussion Regarding School Safety and Security

E) Pending and/or Potential Litigation

F) Possible Real Estate Acquisition

13. **RECONVENE IN OPEN SESSION**

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

A) Discussion and Possible Action of Human Resources Recommendation(s) for School Year 2023-2024
Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent

B) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2023-2024 364
Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent

C) Discussion and Possible Action on Recommendation for the Principal at William B. Travis Middle School 365
Item Submitted: Todd Miller, Assistant Superintendent for Human Resources

Presenter: Dr. Rosalba De Hoyos, Interim Superintendent

D) Discussion Regarding School Safety and Security

E) Pending and/or Potential Litigation

F) Possible Real Estate Acquisition

15. **SCHEDULE OF FUTURE MEETINGS**

A) Regular Board Meeting November 13, 2023 5:00 PM Dr. Ricardo Chapa Board Room/Administration Building

B) Special Board Meeting - December 4, 2023 - 5:30 PM Auditorium/McAllen High School

16. **ADJOURNMENT**

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

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

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

The notice for this meeting was posted in compliance with the Texas Open Meeting Act on October 27, 2023 at 3:00 P.M.
Natalia Goza
on behalf of the Board of Trustees

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 30, 2023

SUBJECT: Public Hearing for the School Financial Integrity Rating System of Texas (School FIRST)

REFERENCE: Goal 4; Strategy 7: Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Major changes in the Commissioner's Rule in August 2015 were authorized by House Bill 5, Section 49, 83rd Texas Legislature, Regular Session, 2013. House Bill 5 amended Section 39.082 Texas Education Code to require the commissioner of education to include processes in the financial accountability rating system for anticipating the future financial solvency of each school district. This is the 21st year this reporting has been in place.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The Texas Education Agency, which conducts and issues the rating report, requires that it be presented and distributed at a public hearing within 60 days of final issuance by TEA. If the District does not appeal the rating, the public hearing process may proceed on the 31st day after the issuance of preliminary ratings. The Notification of Public Meeting was published in The Monitor on Wednesday, October 18, 2023 and on the McAllen ISD home page website through October 30, 2023.

LEGAL REVIEW:

Not required.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

The School Financial Integrity Rating System of Texas (School FIRST) is submitted to the Board for information purposes only and requires no Board action.

Attachment: ☑

SUBMITTED BY: _____ **SUPERVISOR:** _____

For further information contact:
Name: Iris Luna, RTSBA
Office: (956) 618-6016
Email: iris.luna@mcallenisd.net

Approved for presentation to the Board of Education:

_____

Interim Superintendent of Schools

PUBLIC HEARING FOR THE SCHOOL FINANCIAL INTEGRITY RATING SYSTEM OF TEXAS

(SCHOOL FIRST)

2021-2022

Presented by
Iris Luna, RTSBA
Chief Financial Officer /
Interim Assistant Superintendent for Business Operations

October 30, 2023

PUBLIC HEARING

The purpose of this meeting is to discuss McAllen Independent School District's State of Texas Financial Accountability Rating. At the conclusion of this presentation public participation is invited.

McAllen ISD Rating

“A” for Superior Achievement

SCHOOLS FIRST
FINANCIAL INTEGRITY RATING SYSTEM OF TEXAS

District earns State’s highest rating for financial integrity!

FIRST Table of Contents

- FIRST Objectives
- FIRST Goals
- Rating System
- Indicator Updates
- Critical Indicators
- Ceiling Indicators
- School FIRST Indicators

FIRST Objectives

- Implement a rating system that fairly and equitably evaluates the quality of management decisions
- Provide an analysis tool for assessment
- Publicly report this assessment
- Financial data reported from the following sources:
  - Audited annual financial report
  - Public Education Information Management System (PEIMS)

FIRST Goals

- Strengthen fiscal accountability
- Improve performance in management finances
- Facilitates effective and efficient use of resources

Rating System

Determine the rating by the applicable number of points	
A = Superior Achievement	90-100
B = Above Standard Achievement	80-89
C = Meets Standard Achievement	70-79
F = Substandard Achievement	< 70

Indicator Updates

- Changes in the Commissioner's Rule for School FIRST indicators were implemented by the Texas Education Agency beginning fiscal year 2021. The indicators increased from 15 to 20 and introduced five "Ceiling Indicators".
- The District is rated according to 20 indicators, based upon its relative performance, except for the **four critical indicators**.
- A negative response to any of the four critical indicators results in the district receiving a rating of "Substandard Achievement".
- A negative response to any of the five ceiling indicators supersedes any rating earned based on points.
- A negative response to all of the five ceiling indicators results in the district receiving a "Substandard Achievement".

Critical Indicators

Failure to pass any of the *CRITICAL* indicators will result in an automatic failing grade

- Annual Financial Report not filed within one month after November 27th deadline
- Other than an Unmodified Opinion and/or any Material Weaknesses identified in the Audit
- Default on Debt payments
- Default on Payroll-related payments

Ceiling Indicators

Did the school district meet the criteria for any of the following **ceiling indicators** 4,6,16,17, or 20? If so, the school district's applicable maximum points and rating are disclosed below. Please note, an F = Substandard Achievement Rating supersedes any rating earned as the result of the school district meeting the criteria of a ceiling indicator.

Determine the rating based on meeting ceiling criteria.	**Maximum Points**	**Maximum Rating**
Indicator 4 (Timely Payments) – School district was issued a warrant hold.	95	A = Superior Achievement
Indicator 6 (Average Change in Fund Balance) – Response to indicator is *No.*	89	B = Above Standard Achievement
Indicator 16 (PEIMS to AFR) – Response to indicator is *No.*	89	B = Above Standard Achievement
Indicator 17 (Material Weakness) – Response to Indicator is *No.*	79	C = Meets Standard Achievement
Indicator 20 (Property Values and Tax Discussion) – Response to Indicator is *No.*	89	B = Above Standard Achievement

SchoolFirst Indicators

1. Was the complete Annual Financial Report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively**?** **» Yes**

2. Was there an unmodified opinion in the AFR in the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.) **» Yes**

3. Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.) **» Yes**

School First Indicators

4. Did the school district make timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and other government agencies? (If the school district received a warrant hold and the warrant hold was not cleared within 30 days from the date the warrant hold was issued, the school district is considered to not have made timely payments and will fail critical indicator If the school district was issued a warrant hold, the maximum points and highest rating that the school district may receive is 95 points, A = Superior Achievement, even if the issue surrounding the initial warrant hold was resolved and cleared within 30 days.)
   » **Yes, meeting the ceiling indicator.**

5. This indicator is no longer being scored due to the impact of accounting changes implemented by the Governmental Accounting Standards Board.

6. Was the average change in (assigned and unassigned) fund balances over 3 years less than a 25 percent decrease or did the current year's assigned and unassigned fund balances exceed 75 days of operational expenditures? (If the school district fails indicator 6, the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)

   McAllen ISD's average percentage change in fund balance of 0.0595 was less than the 25 percent decrease threshold. The fund balance exceeded the 75 days of operational expenditures meeting the ceiling indicator.

School First Indicators

7. Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover operating expenditures (excluding facilities acquisition and construction)? ***» 10 Points***

   McAllen ISD's number of days of cash on hand was 207.1254, which was sufficient to cover its operating expenditures.

8. Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt? ***» 10 Points***

   McAllen ISD's current assets to current liabilities ratio of 3.921 exceeded the target amount of 3.00 to cover its short-term debt.

9. Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days? ***» 10 Points***

   McAllen ISD's expenditures did not exceed general fund revenues.

School First Indicators

10. This indicator is currently not being scored due to the impact of the COVID-19 Pandemic and ESSER funding on school district revenue. All districts will get 10 points. ***» 10 Points***

11. Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency? (If the school district's increase of students in membership over 5 years was 7 percent or more or 1,000 or more students in membership, then the school district passes this indicator.) ***» 10 Points***

    McAllen ISD's long-term liabilities to total assets ratio of 21.32% was sufficient to support long-term solvency.

12. What is the correlation between future debt requirements and the district's assessed property value? ***» 10 Points***

    McAllen ISD's debt per $100 of assessed property was sufficient to support future debt repayments.

School First Indicators

13. Was the school district's administrative cost ratio equal to or less than the threshold ratio? ***» 10 Points***

    McAllen ISD's cost ratio of 7.31% was less than the threshold ratio of 8.55%.

14. This indicator is currently not being scored. All districts will get 10 points. **» 10 Points**

15. This indicator is currently not being scored due to the impact of the COVID-19 Pandemic on school district attendance. All school districts will get 5 points. ***» 5 Points***

16. Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function? (If the school district fails indicator 16, the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)

    McAllen ISD had a 0% variance in data reported to PEIMS as compared to the Comprehensive Annual Financial Report meeting the ceiling indicator.

School First Indicators

17. Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds and free from substantial doubt about the district's ability to continue as a going concern? (The AICPA defines material weakness.) (If the school district fails indicator 17, the maximum points and highest rating that the school district may receive is 79 points, C = Meets Standard Achievement.)

    No material weakness in internal controls were reported in the June 30, 2022, Annual Financial Report meeting the ceiling indicator.

18. Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.) ***» 10 Points***

    No material non-compliance item was reported in the Annual Audited Financial Report.

School First Indicators

19. Did the school district post the required financial information on its website in accordance with Government Code, Local Government Code, Texas Education Code, Texas Administrative Code and other statutes, laws and rules that were in effect at the school district's fiscal year end? ***» 5 Points***

    McAllen ISD posted the required financial information on its website.

20. Did the school board members discuss the district's property values at a board meeting within 120 days before the district adopted its budget? (If the school district fails indicator 20 the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)

    McAllen ISD held a board meeting May 27, 2021, to discuss and consider the impact of changes in property values, meeting the ceiling indicator.

Title 19 Texas Administrative Code Chapter 109 Disclosures are located in the Annual Financial Accountability Management Report

Public Comments

McAllen ISD thanks you for your continued support!

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 30, 2023

SUBJECT: Discussion and Possible Action on the Participation of MISD Students in the Rio Grande Valley Ballet Company "The Nutcracker"

REFERENCE: Board Policy FEB (LEGAL) states that "a student not actually on campus when attendance is taken may be considered in attendance for FSP purposes if: The student is participating in a board-approved activity under the direction of a member of the district's staff."

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The production of "The Nutcracker", along with rehearsals and preparation involved by students, meets several of the TEKS for Elementary and Secondary Fine Arts Courses including Perception, Creative Expressions and Creative Performance. For several years, McAllen ISD has had students involved in these performances and we would like to help our students and parents by allowing them to not be penalized for their involvement with these performances. The district will count students present during these performances. We did start gaining this approval two years ago and it was very well received and worked out very well.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS: N/A

LEGAL REVIEW: None required

BUDGETARY CONSIDERATIONS:
The only cost for the district is to pay for a substitute for two days if a professional staff member serves as the sponsor or we can utilize a para-professional staff member that will not need a substitute.

RECOMMENDED BOARD ACTION:
The the Board of Trustees approve the recommendation to excuse MISD students and not mark them absent on December 7, & 8, 2023 for the RGV Ballet's Production of "The Nutcracker".

SUBMITTED BY: Debra Loya (Oct 24, 2023 10:22 CDT)

SUPERVISOR: Maribelle Elizondo (Oct 24, 2023 15:04 CDT)

For further information contact:
Name: Debra Loya
Office: (956) 618-6085
Email: Debra.Thomas@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools Oct 24, 2023

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 30, 2023

SUBJECT: Discussion and Possible Action on the Participation of MISD Students in the Edinburg Dance Theatre Production of "The Nutcracker"

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ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS: N/A

LEGAL REVIEW: None required

BUDGETARY CONSIDERATIONS:
The only cost for the district is to pay for a substitute for two days if a professional staff member serves as the sponsor or we can utilize a para-professional staff member that will not need a substitute.

RECOMMENDED BOARD ACTION:
The the Board of Trustees approve the recommendation to excuse MISD students and not mark them absent on December 13, 14, & 15, 2023 for the Edinburg Dance Theater's Production of "The Nutcracker".

SUBMITTED BY: Debra Loya (Oct 24, 2023 10:22 CDT)

SUPERVISOR: Maribelle Elizondo (Oct 24, 2023 15:04 CDT)

For further information contact:
Name: Debra Loya
Office: (956) 618-6085
Email: Debra.Thomas@mcallenisd.net

Approved for presentation to the Board of Education:

Superintendent of Schools Oct 24, 2023

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 30, 2023

SUBJECT: Discussion and Possible Action on Agreement No. 2024-200 Edspire with Region One Education Service Center

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

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

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Region One Education Service Center provides Edspire, a hosted online subscription to assist the District in tracking, storing, monitoring, reporting, and organizing student performance data and student/teacher data.

LEGAL REVIEW:

The Memorandum of Understanding has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

Funds for this service are available through the Special Revenue Fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Agreement No. 2024-200 Edspire with Region One ESC through August 31, 2024.

Attachment: ☑

SUBMITTED BY: Dr. Cynthia Olivarez (Oct 25, 2023 13:30 CDT) **SUPERVISOR:** Maribelle Elizondo (Oct 25, 2023 14:23 CDT)

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

Approved for presentation to the Board of Education:

Interim Superintendent of Schools

Region One Education Service Center
1900 W. Schunior, Edinburg, TX 78541 ◆ Ph (956) 984-6000 ◆ Fax (956) 984-7655

Daniel P. King, Ph.D.
Executive Director

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

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

The purpose of the Agreement is to provide professional development services to Participating District in the areas of software and database development.

WITNESSETH:

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

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

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

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

Term of Contract:

The term of the agreement is 10/31/2023 to 08/31/2024

2. Termination of the Contract:

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

3. Role of Region One ESC:

Scope of work:

Provide EdSpire via hosted online subscription to assist teachers, schools and school districts in tracking, storing, monitoring, reporting and organizing student performance data and in tracking, storing, monitoring, reporting and organizing student and teacher progress. See term of contract for subscription time frame. First time converts are allowed up to three months grace time for initial conversion time, training, and setup. One day of physical on-site training will also be included at no cost.

Region one or its designated software partner is responsible for all maintenance including:

- Web server maintenance
- SSL Encryption
- System bandwidth
- Database server maintenance
- Database disaster recovery
- System high availability

If major modifications are required, a formal agreement can be drafted.

4. Role of Participating District:

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

5. Costs:

District will be invoiced on an annual basis.

Annual Subscription Breakdown

Web-based Applications (2023-24)

Please check the desired products and services.

Chore Packages - *** Prorated Amount		
Yes ☑ No ☐	Accountability $750 per campus (29)	$19,938
Yes ☑ No ☐	Instructional $750 per campus (29)	$19,938
Addon Packages - *** Prorated Amount		
Yes ☑ No ☐	TSI/ACT/SAT/AP Tracker* $700 per campus (5)	$3,208
Yes ☐ No ☑	Goal Setting Engine - $250 per campus	$0
Yes ☐ No ☑	HB 1416 Tracking - $250 per campus	$0
Yes ☐ No ☑	Group Sharing - $250 per campus	$0
Yes ☐ No ☑	Assessment Design Lab - $2,000 per district	$0
Per Student Services	***- *** Prorated Amount***	
Yes ☑ No ☐	TSI/ACT/SAT/AP Tracker* ($2*6729)	$12,337
	EdSpire Annual Subcription Fee:	$55,420
	Total 2023-24 Fee:	$55,420

6. Limitation of Liability:

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

Authorization	
McAllen ISD	**Region One ESC**
Superintendent or Designee Signature	**Signature**
Name: Debbie Crane Aliseda	**Name:** Dr. Daniel King
Title: Board President	**Title:** Executive Director
Date:	**Date:**
Email: debbie.aliseda@mcallenisd.net	**Email:** dking@esc1.net
Phone: (956) 618-6000	**Phone: (956)984-6001**
Contact Person: Dr. Cynthia Olivarez	

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

By: _____
Kevin O'Hanlon

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 30, 2023

SUBJECT: Discussion and Possible Action on Collaboration Agreement No. 2024-155 Health Care Learning Experiences with Rio Grande Regional Hospital.

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
McAllen Independent School District's (the "District") Career Technical Education Program affords students enrolled in the Healthcare Therapeutic Program of Study opportunities to experience hands on activities at a state of the art medical facility. Students are able to participate and receive hand-on experience in the following departments; Pharmacy, Labor and Delivery, Nursery, Intensive Care, Respiratory, Emergency, Laboratory, Histology, Telemetry, Surgical, Wound-Care and Radiology. This opportunity will also help students be better prepared for future industry-based certification(s).

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
This agreement allows students to obtain clinical learning experience and learning in a hospital setting that are of benefit to the student, the District, Rio Grande Regional Hospital, and similarly situated businesses. Through their participation in this program, students are able to make informed decisions about their career and post-secondary opportunities, increase students' wage earning options, and enhance lifelong learning.

LEGAL REVIEW:
Agreement has been approved by legal.

BUDGETARY CONSIDERATIONS:
The Agreement requires liability insurance not to exceed $500 which will be paid through Career Technical Education State allotment.

RECOMMENDED BOARD ACTION:
Administration recommends that the Board of Trustees approve Collaboration Agreement No. 2024-155 Health Care Learning Experiences with Rio Grande Regional Hospital for a term of one (1) year with the option to renew for one (1) year, from October 30, 2023 through October 29, 2024.

Attachment: ☑

SUBMITTED BY: Lilia Sandoval Silva

SUPERVISOR: Maribelle Elizondo (Oct 25, 2023 08:52 CDT)

For further information contact:
Name: Mrs. Lilia Sandoval-Silva, Director of Career Technical Education
Office: 956-632-5181
Email: lilia.sandovalsilva@mcallenisd.net

Approved for presentation to the Board of Education:

Rosalba De Hoyos

Interim Superintendent of Schools

SECONDARY SCHOOL COLLABORATION AGREEMENT

This Education Collaboration Agreement ("Agreement") is made as of October 30th, 2023 (the effective date) by and between McAllen Independent School District ("School") and Columbia Rio Grande Regional Healthcare, L.P. DBA Rio Grande Regional Hospital ("Hospital"). School and Hospital may be referred to herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

Whereas, the Parties wish to enhance and formalize their long-standing work to improve health profession career exploration and education through a formal collaboration;

Whereas, the Parties wish to provide learning opportunities to see, first hand, the healthcare workplace and the day-to-day work of professionals in the health care field during their experience;

Whereas, this Agreement shall develop resources and systems allowing the School to increase in-school and out-of-school opportunities for these learning experiences; and

Whereas, this collaboration will allow opportunities to increase exposure of School students and graduates to Hospital as a premier employer.

Now therefore, in consideration of mutual promises contained herein, the Parties hereby agree as follows:

1) Responsibilities of Hospital

a) Hospital will coordinate with School Career & Technical Education Coordinator to provide guest speakers to health science programs/ classes as requested and available.

b) Hospital shall provide reasonable opportunities for Participating Students observation experiences to the extent permitted by applicable law and without disruption of patient care or Hospital operations.

c) Hospital shall at all times retain ultimate control of Hospital and responsibility for patient care and quality standards.

d) Hospital will ensure that the Facility complies with applicable state and federal workplace safety laws and regulations.

2) Responsibility of School

a) Responsibility.

i) School will retain ultimate responsibility for the education program in health sciences.

ii) School will retain sole responsibility for identifying appropriate health care topics and careers that are appropriate for the Program curriculum.

iii) School will identify and request selected dates for Facility to participate in Programs for guest speakers, career fairs, or small group tours of Facility.

iv) School will identify appropriate Program students for observation experiences ensuring student is enrolled in a health science Program. No individual shall be permitted to conduct an observation simply because they are interested in or curious about health care and/or the day-to-day occurrences at the Hospital.

v) School will assist student in completing Observation Agreement and obtaining required signatures for observation experiences.

vi) School will advise each Program Participant to attend training and orientation with respect to applicable Facility policies and procedures prior to the commencement of the observation experience.

b) Records: School will provide annual information including listing and number of health science Programs offered at the School, number of students enrolled in health science Programs, and anticipated number of students seeking health care careers upon graduation to the extent they are aware.

c) Conduct of Program Participants: School will advise Program Students attending any observation experience or small group tour the requirement to appropriately interact with all contacts, remain with the observation employee or small group, and not enter prohibited areas. All Program Participants onsite at the Facility shall be accountable to the Facility's administrator while onsite.

d) Non-Contact: School understands that during any observation experience or small group tour at a Facility, Program Participants are to refrain from touching any patient at any time. School is responsible for notifying students of this requirement and to ensure compliance.

e) Student Records: School will obtain prior signed and dated written consent that complies with 34 C.F.R. 99.30 from each Participating Student (or the parent of the student, if the student is not deemed an "eligible student" under 34 C.F.R. 99.30) before disclosing personally identifiable information from the student's education records to Hospital to the extent that access to such information is required by Hospital to carry out the Clinical Program. If Participating Student notifies School that they revoke said consent, School shall immediately notify Hospital and the revocation shall become effective immediately upon such notice as applicable to any decisions after that date.

3) Mutual Responsibilities. The Parties shall cooperate to fulfill the following mutual responsibilities:

a) Each Party will identify to the other Party a Program Representative on or before the execution of this Agreement. School's Program Representative shall be an employee involved in the Career & Technical Education department. Each Party will maintain a Program Representative for the Term and will promptly appoint a replacement Program Representative if necessary to comply with this Agreement. Each Party will ensure that it's Program Representative is reasonably available to the other Party's Program representative.

b) Both School and Hospital will work together to create and maintain an appropriate learning environment for the Participating Students. The School, including it's faculty and staff, and Hospital share responsibility for creating an appropriate learning environment that includes both formal learning activities and the attitudes, values, and informal "lessons" conveyed by individuals who interact with the Participating Student. The Parties will cooperate to evaluate the learning environment (which may include on-site visits) to identify positive and negative influences on the maintenance of professional standards, and to conduct and develop appropriate strategies to enhance the positive and mitigate the negative influences.

4) Withdrawal of Participating Students. Hospital may immediately remove a Participating Student from the Facility when in Hospital's discretion their behavior is disruptive or detrimental to Hospital operations and/or Hospital's patients.

5) Independent Contractor; No other Beneficiaries; Employment Disclaimer.

a) The Parties hereby acknowledge that they are independent contractors, and neither School nor any of its agents, representatives, Program Participants, or employees shall be considered agents, representatives, or employees of Hospital. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relationship between the Parties. School shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes or benefits. No Program Participant shall look to Hospital for any salaries, insurance or other benefits. No Program Participant or other third person is entitled to, and shall not, receive any rights under this Agreement. Neither Party shall have the right or authority nor hold itself out to have the right or authority to bind the other Party and neither shall either Party be responsible for the acts or omissions of the other except as provided specifically to the contrary herein.

b) Each Party acknowledges Participating Students will not be considered employees or agents of Hospital or School for any purpose. Participating Students will not be entitled to receive any compensation from Hospital or School or any benefits of employment from Hospital or School, including health care or workers' compensation benefits, vacation, sick time, or other direct or indirect benefit of employment.

c) School acknowledges that Hospital has not and is not obligated to implement or maintain insurance coverage for the benefit or protection of School or Program Participants.

6) Non-Discrimination. There shall be no discrimination on the basis of race, national origin, religion, creed, sex, age, veteran status, or handicap in either the selection of Participating Students, or as to any aspect of the Educational Program; provided, however, that with respect to handicap, the handicap must not be such as would, even with reasonable accommodation, in and of itself preclude the Program Participant's effective participation in the Program.

7) Indemnification. To the extent permitted by applicable law and without waiving any defenses, School shall indemnify and hold harmless Hospital and Hospital's officers, directors, trustees, medical and nursing staff, representatives and employees from and against all third-party liabilities, claims, damages and expenses, including reasonable attorneys' fees, relating to or arising out of any act or omission of School or any of its Program Participants, agents, representatives or employees in connection with this Agreement, including, but not limited to, claims for personal injury, professional liability, or with respect to the failure to make proper payment of required taxes, withholding, employee benefits or statutory or other entitlements. School shall obtain signed copies of Exhibit A prior to on-site experiences.

8) Confidentiality. School will and will advise Program Participants to keep strictly confidential and hold in trust all non-public information of Hospital, including all patient information, and refrain from disclosing such confidential information to any third party without the express prior written consent of Hospital, provided that the minimum necessary confidential information may be disclosed pursuant to valid legal process after Hospital is permitted an opportunity to minimize the potential harmful effects of such disclosure. School shall not disclose the terms of this Agreement to any person who is not a party to this Agreement, except as required by law or as authorized by Hospital. These confidentiality requirements survive the termination or expiration of the Agreement. In addition to the requirements set forth in this Section, Program Participants shall agree to abide by the terms of Exhibit B.

9) Term; Termination.

a) The term of this Agreement will commence on the Effective Date and will continue for two (2) years unless terminated as provided below (the "Term").

b) Either Party may terminate this Agreement at any time without cause upon with written notice to the other Party.

c) The Parties may terminate this Agreement at any time by mutual written agreement.

d) Hospital may immediately terminate this Agreement at any time upon notice to School in the event of a breach of Section 11 of this Agreement.

10) **Travel Expenses.** No expense of School or of a Program Participant will be paid or reimbursed by Hospital unless that expense is approved by Hospital in writing in advance and is incurred and documented in accordance with applicable Hospital travel and expense policies.

11) **Use of Name or Logo.** School will not, and will cause Program Participants not to use names, logos or marks associated with Hospital without the express written consent of Hospital in each case.

12) **Entire Agreement.** This Agreement and its Exhibits set forth the entire Agreement with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the Parties relating to such subject matter. This Agreement may not be amended or modified except by mutual written agreement of the Parties. All continuing covenants, duties and obligations herein shall survive the expiration or earlier termination of this Agreement.

13) **Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, this Agreement shall remain in full force and effect in accordance with its terms disregarding such unenforceable or invalid provision.

14) **Captions.** The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

15) **No Waiver.** Delay or failure to exercise any right or remedy hereunder will not impair such right or remedy or be construed as a waiver thereof. Any single or partial exercise of any right or remedy will not preclude any other or further exercise thereof or the exercise of any other right or remedy.

16) **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the state of Texas. Venue for all disputes arising in connection with this Agreement will be in the federal or state courts with jurisdiction for the area where Hospital is located.

17) **Assignment; Binding Effect.** School may not assign or transfer any of its rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of Hospital. This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors and permitted assigns.

18) **Notices.** All notices hereunder by either Party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, addressed as follows:

If to Hospital:	Rio Grande Regional Hospital 101 East Ridge Road McAllen, TX 78503 **Attention: Chief Executive Officer**
Copy to:	HCA Legal Department One Park Plaza, Bldg. 1, 2-West Nashville, TN 37203 **Attention: Operations Counsel**

If to School: McAllen Independent School District
2000 N. 23rd Street
McAllen, TX 78501
Attention: Superintendent

or to such other person or place as either Party may from time to time designate by written notice to the other Party.

19) **Counterparts.** This Agreement may be executed in multiple parts (by facsimile transmission or otherwise) and each counterpart shall be deemed an original, and all of which together shall constitute but one agreement. Electronic signatures will be considered originals.

20) **HIPPA Requirements.** To the extent applicable to this Agreement, School agrees to comply with the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH ACT"), the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC § 1320d through d-8 ("HIPAA") and any current and future regulations promulgated under either the HITECH Act or HIPAA including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Parts 160, 162 and 164 (the "Federal Security Regulations") and the federal standards for electronic transactions, all as may be amended from time to time, and all collectively referred to herein as "HIPAA Requirements". School further agrees not to use or disclose any Protected Health Information (as defined in 45 C.F.R. § 164.501) or Individually Identifiable Health Information (as defined in 42 USC § 1320d), other than as permitted by HIPAA Requirements and the terms of this Agreement. School will and will cause Program Participants to enter into any further agreements as necessary to facilitate compliance with HIPAA Requirements.

21) **No Requirement to Refer.** Nothing in this Agreement requires or obligates School to cause the admittance of a patient to Hospital or to use Hospital's services. None of the benefits granted pursuant to this Agreement are conditioned on any requirement or expectation that the Parties make referrals to, be in a position to make or influence referrals to, or otherwise generate business for the other Party. Neither Party is restricted from referring any services to, or otherwise generating any business for, any other entity of their choosing.

22) **No Payments.** No payments will be made between the Parties or to the Program Participants in connection with this Agreement.

23) **Recitals.** The Recitals to this Agreement shall be an enforceable part of this Agreement, binding on the Parties as if fully set forth herein.

24) **Equitable Remedies.** School acknowledges that the injury which might be suffered by Hospital in the event of any breach by School or non-compliance by Program Participants with the terms and conditions of this Agreement would be of a nature which could not be fully compensated for solely by a recovery of monetary damages, and accordingly agrees that in the event of any such breach or threatened breach, in addition to and not in lieu of any damages sustained by Hospital and any other remedies which Hospital may pursue hereunder or under applicable law, Hospital shall have the right to equitable relief, including issuance of a temporary restraining order, preliminary injunction and/or permanent injunction by any court of competent jurisdiction, against the commission or continuation of such breach or threatened breach, without the necessity of proving any actual damages or the posting of any bond.

Wherefore, authorized representatives of each Party hereby execute this Agreement as of the Effective Date.

SCHOOL

McAllen Independent School District

By: _____

Printed Name: Debbie Crane Aliseda

Title: President, McAllen ISD Board of Trustees

Date: _____

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

By: _____
Kevin O'Hanlon

HOSPITAL

Rio Grande Regional Hospital

By: _____

Print Name: Laura Disque

Title: Chief Executive Office

Date: _____

EXHIBIT A

STATEMENT OF RESPONSIBILITY

For and in consideration of the benefit provided the undersigned in the form of experience in a clinical setting at **Rio Grande Regional Hospital** ("Hospital"), the undersigned and his/her heirs, successors and/or assigns do hereby covenant and agree to assume all risks and be solely responsible for any injury or loss sustained by the undersigned while participating in the Program operated by: _____ ("School") at Hospital unless such injury or loss arises solely out of Hospital's gross negligence or willful misconduct.

_____ _____

Signature of Program Participant/Print Name Date

_____ _____

Parent or Legal Guardian Date

If Program Participant is under 18 / Print Name

Exhibit B

Workforce Member Confidentiality and Security Agreement

I understand that the HCA affiliated entity(ies) (the "Company") for which I am a Workforce Member (my "Engagement") manages health information and has legal and ethical responsibilities to safeguard the privacy of its patients and their personal and health information ("Patient Information"). "Workforce Member" means employees, employed Licensed Independent Practitioners (LIPs) (*e.g.,* employed/managed physicians), employed Advanced Practice Professionals (APPs), residents/fellows, students (*e.g.*, nursing, medical, and interns), faculty/instructors, contractors (*e.g.*, HealthTrust Workforce Solutions (HWS), travelers, network/per diem staff, or dependent healthcare professionals and/or contracted through another temporary staffing agency), and volunteers.

Additionally, the Company must protect its interest in, and the confidentiality of, any information it maintains or has access to, including, but not limited to, financial information, marketing information, Human Resource Information, (as defined below), payroll, business plans, projections, sales figures, pricing information, budgets, credit card or other financial account numbers, customer and supplier identities and characteristics, sponsored research, processes, schematics, formulas, trade secrets, innovations, discoveries, data, dictionaries, models, organizational structure and operations information, strategies, forecasts, analyses, credentialing information, Social Security numbers, passwords, PINs, and encryption keys (collectively, with patients' information, "Confidential Information"). The Company must also protect Company Property (such as inventions, software, trade secrets, and Developments (as defined below)).

During the course of my Engagement with the Company, I understand that I may access, use, or create Confidential Information. I agree that I will access and use Confidential Information only when it is necessary to perform my job-related duties and in accordance with the Company's policies and procedures, including, without limitation, its Privacy and Security Policies (available at http://hcahealthcare.com/ethics-compliance/ and the Information Protection Page of the Company's intranet). I further acknowledge that I must comply with such policies, procedures, and this Confidentiality and Security Agreement (the "Agreement") at all times as a condition of my Engagement and in order to obtain authorization for access to Confidential Information and/or Company systems. I acknowledge that the Company is relying on such compliance and the representations, terms and conditions stated herein.

General

1. I will act in the best interest of the Company and, to the extent subject to it, in accordance with its Code of Conduct at all times during my Engagement with the Company.
2. I have no expectation of privacy when using Company systems and/or devices. The Company may log, access, review, and otherwise utilize information stored on or passing through its systems, devices and network, including email.
3. Any violation of this Agreement may result in the loss of my access to Confidential Information and/or Company systems, or other disciplinary and/or legal action, including, without limitation, suspension, loss of privileges, and/or termination of my Engagement with the Company, at Company's sole discretion in accordance with its policies.

Patient Information

4. I will access and use Patient Information only for patients whose information I need to perform my assigned job duties in accordance with the HIPAA Privacy and Security Rules (45 CFR Parts 160—164), applicable state and international laws (*e.g.*, the European Union General Data Protection Regulation), and applicable Company policies and procedures, including, without limitation, its Privacy and Security Policies (available at http://hcahealthcare.com/ethics-compliance/ and the Information Protection Page of the Company's intranet).
5. I will only access, request and disclose the minimum amount of Patient Information needed to carry out my assigned job duties or as needed for treatment purposes.

6. By accessing or attempting to access Patient Information, I represent to the Company at the time of access that I have the requisite job-related need to know and to access the Patient Information.

Protecting Confidential Information

7. I acknowledge that the Company is the exclusive owner of all right, title and interest in and to Confidential Information, including any derivatives thereof.
8. I will not publish, disclose or discuss any Confidential Information (a) with others, including coworkers, peers, friends or family, who do not have a need to know it, or (b) by using communication methods I am not specifically authorized to use, including personal email, Internet sites, Internet blogs or social media sites.
9. I will not take any form of media or documentation containing Confidential Information from Company premises unless specifically authorized to do so as part of my job and in accordance with Company policies.
10. I will not transmit Confidential Information outside the Company network unless I am specifically authorized to do so as part of my job responsibilities. If I am authorized to transmit Confidential Information outside of the Company, I will ensure that the information is encrypted according to Company Information Security Standards and ensure that I have complied with the External Data Release policy and other applicable Company privacy policies.
11. I will not retain Confidential Information longer than required by the Company's Record Retention policy.
12. I will only reuse or destroy media in accordance with the Company's Information Security Standards.
13. I acknowledge that in the course of performing my job responsibilities I may have access to human resource information which may include compensation, age, sex, race, religion, national origin, disability status, medical information, criminal history, personal identification numbers, addresses, telephone numbers, financial and education information (collectively, "Human Resource Information"). I understand that I am allowed to discuss any Human Resource Information about myself and other employees if they self-disclose their information. I can also discuss Human Resource Information that does not relate to my individual employment or my job responsibilities and that is not in violation of any other provision in this Agreement.

Using Mobile Devices, Portable Devices and Removable Media

14. I will not copy, transfer, photograph, or store Confidential Information on any mobile devices, portable devices or removable media, such as laptops, smart phones, tablets, CDs, thumb drives, external hard drives, unless specifically required and authorized to do so as part of my Engagement with the Company.
15. I understand that any mobile device (smart phone, tablet, or similar device) that synchronizes Company data (*e.g.*, Company email) may contain Confidential Information and as a result, must be protected as required by Company Information Security Standards.

Doing My Part – Personal Security

16. I will only access or use systems or devices I am authorized to access, and will not demonstrate the operation or function of systems or devices to unauthorized individuals.
17. I will not attempt to bypass Company security controls.
18. I understand that I will be assigned a unique identifier (*i.e.*, 3-4 User ID) to track my access and use of Company systems and that the identifier is associated with my personal data provided as part of the initial and/or periodic credentialing and/or employment verification.
19. In connection with my Engagement, I will never:
    a. disclose or share user credentials (*e.g.*, password, SecurID card, Tap n Go badge, etc.), PINs, access codes, badges, or door lock codes;
    b. use another individual's, or allow another individual to use my, user credentials (*e.g.*, 3-4 User ID and password, SecurID card, Tap n Go badge, etc.) to access or use a Company computer system or device;
    c. allow a non-authorized individual to access a secured area (*e.g.*, hold the door open, share badge or door lock codes, and/or prop the door open);
    d. use tools or techniques to break, circumvent or exploit security measures;
    e. connect unauthorized systems or devices to the Company network; or
    f. use software that has not been licensed and approved by the Company.
20. I will practice good workstation security measures such as locking up media when not in use, using screen savers with passwords, positioning screens away from public view, and physically securing workstations while traveling and working remotely.
21. I will immediately notify my manager, Facility Information Security Official (FISO), Director of Information Security Assurance (DISA), Facility Privacy Official (FPO), Ethics and Compliance Officer (ECO), or Facility or Corporate Client Support Services (CSS) help desk or if involving the United Kingdom, the Data Protection Officer (DPO), Information Governance Manager, Caldicott Guardian, Heads of Governance (HoG), Hospital Chief Information Security Officer (CISO) if:
    a. my user credentials have been seen, disclosed, lost, stolen, or otherwise compromised;
    b. I suspect media with Confidential Information has been lost or stolen;
    c. I suspect a virus or malware infection on any system;
    d. I become aware of any activity that violates this Agreement or any Company privacy or security policies; or
    e. I become aware of any other incident that could possibly have any adverse impact on Confidential Information or Company systems.

Upon Separation

22. I agree that my obligations under this Agreement will continue after termination or expiration of my access to Company systems and Company Information.
23. At the end of my Engagement with the Company for any reason, I will immediately:
    a. securely return to the Company any Confidential Information, Company related documents or records, and Company owned media (*e.g.*, smart phones, tablets, CDs, thumb drives, external hard drives, etc.). I will not keep any copies of Confidential Information in any format, including electronic; and
    b. un-enroll any non-Company owned devices from the Company Enterprise Mobility Management System, if applicable.

Except to the Extent Otherwise Agreed in a Separate Agreement, the Following Statements Apply to All Workforce Members

24. I shall promptly disclose to the Company all Company Property that I develop during my Engagement. "Company Property" means any subject matter (including inventions, improvements, designs, original works of authorship, formulas, processes, compositions of matter, software, databases, confidential information and trade secrets), whether belonging to the Company or others, that, directly or indirectly: (i) I author, make, conceive, first reduce to practice, or otherwise create or develop, whether alone or with others using any Company

equipment, supplies, facilities, or Confidential Information, or (ii) otherwise arises from work performed by me for the Company, its employees, or agents, (each of the foregoing, a "Development").

25. As between me and the Company, all Company Property is the property of the Company or its designee, and all copyrightable Developments that I create within the scope of my employment are "works made for hire."
26. I agree to assign, and do hereby irrevocably assign, to the Company or its designee all of my right, title, and interest in and to any and all Developments, together with all intellectual property and other proprietary rights therein or arising therefrom, including any registrations or applications to register such rights and the right to sue for past, present, or future infringements or misappropriations thereof.

27. During and after my Engagement, I agree to execute any document and perform any act to effectuate, perfect, enforce, and defend the Company's rights in any Development. I hereby appoint the Company and its authorized agent(s) as my attorney in fact to execute such documents in my name for these purposes, which power of attorney shall be coupled with an interest and shall be irrevocable, if I fail to execute any such document within five (5) business days.
28. If there is a conflict between a term in Sections 24 through 28 and a term separately agreed to in writing with the Company, the term set forth in the separate agreement will control.

By signing this document, I acknowledge that I have read and understand this Agreement, and I agree to be bound by and comply with all the representations, terms and conditions stated herein.

Participant Signature:	Date:
Printed Participant Name:	
Parent or Legal Guardian Signature:	Date:
Printed Parent or Legal Guardian Name:	

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 30, 2023

SUBJECT: Discussion and Possible Action on Memorandum of Understanding No. 2024-250 Membership for Scholars Program with Rio Grande Valley Linking Economic and Academic Development

REFERENCE: Goal 1 - Student Achievement/Student Focus; Strategy 5 - Partnerships with Business/Civic/Education Organization

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The McAllen Independent School District ("District") has partnered with Rio Grande Valley Linking Economic and Academic Development ("RGV LEAD") to support the goal of having students stay in school and ultimately, graduate from high school equipped with the academic foundation and other competencies that are vital for college and career success.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The Memorandum of Understanding allows RGV LEAD to support outcome-focused partnerships with higher education institutions and strong partnerships with chambers of commerce, economic development agencies, and individual employers and community leaders.

LEGAL REVIEW:

The Agreement has been approval by legal counsel.

BUDGETARY CONSIDERATIONS:
Funds for membership fees have been budgeted through state funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Memorandum of Understanding No. 2024-250 Membership for Scholars Program with Rio Grande Valley Linking Economic and Academic Development.

Attachment: ☑

SUBMITTED BY: Lilia Sandoval Silva

SUPERVISOR: Maribelle Elizondo (Oct 26, 2023 16:54 CDT)

For further information contact:
Name: Lilia Sandoval Silva, Director of Career Technical Education
Office: 956-632-5181
eMail: lilia.sandovalsilva@mcallenisd.net

Approved for presentation to the Board of Education:

Rosalva De Hoyos

Interim Superintendent of Schools

RGV LEAD: In the Business of Education
Rio Grande Valley Linking Economic and Academic Development
322 South Missouri Ave. | Weslaco, Texas 78596 | 956-405-3091 | www.rgvlead.org

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July 6, 2023

McAllen Independent School District

RE: Memorandum of Agreement

Thank you for partnering with us on RGV LEAD's regional initiatives! RGV LEAD is preparing for transition from one leader to another, and our plans for 2023-2024 are well underway. Your support makes it possible for us to continue the important regional initiatives that are contributing to the academic and career success of Valley students. Your membership allows district staff to participate in various RGV LEAD events, and it also allows your students to participate in RGV LEAD Student Ambassadors and the RGV LEAD Scholars program. The attached invoice provides additional details. The time for submission of dues for 2023-2024 has arrived; so, we are attaching these items for you:

1. An invoice for your district's membership for 2023-2024.

2. Documentation illustrating the computations on which the statement is based ($2 per student, 9-12 enrollment, based on PEIMS records).

3. Duplicate originals of a memorandum of agreement for 2023-2024. (For your convenience, Luis Rodriguez has already signed both enclosed originals.) Please note: If your policies allow you to pay directly from the invoice, you need not process the agreement. From our perspective, the necessary documentation was filed when your district provided the original MOA. If your board policies require that you process the agreement, then please sign one original, and return it to me, retaining the other original for your records. We will file the agreement in our office and send you an updated invoice thereafter.

If you have any questions, please give me a call at 956.405.3091. We appreciate working with you!
Sincerely,

Luis Rodriguez

Luis Rodriguez
Executive Director

C: Lilia Sandoval Silva, CTE Director

RIO GRANDE VALLEY
LEAD
LINKING ECONOMIC & ACADEMIC DEVELOPMENT

INVOICE

322 South Missouri Avenue
Weslaco, TX 78596
Phone: 956.405.3091 Fax: 956.405.3082
www.rgvlead.org · rgvlead@rgvlead.org

Date: July 6, 2023

INVOICE NO: MOA-2024-11

TO McAllen Independent School District

Superintendent of Schools
2000 North 23rd St.
McAllen, Texas 78501

DESCRIPTION	AMOUNT
2023-2024 membership in Rio Grande Valley Linking Economic and Academic Development (RGV LEAD), to provide for these services: • Create a regional labor market report developed biennially in collaboration with chambers of commerce, economic development entities, higher education partners, and individual employers, and work with school district staff for use of the information in the report. • Provide quarterly regional P-16 Council and Counselors' Network meetings to facilitate sharing between and among public schools, colleges, universities, and employers to support college-and-career preparation and successful student transitions from education to the workforce. • Provide annually updated data reports and support their use to facilitate continuous improvement in college-and-career-preparation systems. • Provide regional events (for example, annual superintendents' meeting and regional conference) providing for employer-educator dialogue and sharing of best practices to facilitate successful student transitions from public school to postsecondary education to the workforce. • Coordinate regional programs for students (RGV LEAD Student Ambassadors and RGV LEAD Scholars) to encourage students to acquire the skills necessary for success in postsecondary education and careers. • Provide other services as may be agreed upon from time to time.	$13,380
TOTAL	$13,380

Payment is due within 45 days.
Make all checks payable to: *RGV LEAD.*
Rio Grande Valley Linking Economic & Academic Development (RGV LEAD), Inc.
is a Texas nonprofit, federal 501 (c)(3) corporation,
Taxpayer ID No. 74-2691363.

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is entered into effective July 1, 2023 (the "Effective Date") by and between the Contracting Agencies named below.

CONTRACTING AGENCIES:

Receiving Agency:	McAllen Independent School District, a school district organized and operating in accordance with the laws of the State of Texas
Providing Agency:	Rio Grande Valley Linking Economic and Academic Development (RGV LEAD), a nonprofit organization organized under the laws of the State of Texas

1. PURPOSE:

The purpose of this Agreement is for Receiving Agency to obtain services from the Providing Agency that will support the goal of having students stay in school and ultimately, graduate from high school equipped with the academic foundation and other competencies that are vital for college and career success. Providing Agency's services will support outcome-focused partnerships with higher education institutions and strong partnerships with chambers of commerce, economic development agencies, and individual employers and community leaders. The services to be rendered by Providing Agency under this agreement are vital to the Receiving Agency's work and cannot be provided by Receiving Agency's staff.

2. STATEMENT OF SERVICES TO BE PERFORMED:

Providing Agency will perform the following services ("services"):

A. Work with Receiving Agency's leadership and staff for utilization of the information contained in a regional labor market report published biennially by Providing Agency and developed in collaboration with chambers of commerce, economic development entities, higher education partners, and individual employers, identifying targeted occupations in the Rio Grande Valley. The work with Receiving Agency's leadership and staff is necessary to ensure that there are strong linkages between Providing Agency's program and course offerings and the targeted occupations included in the report, and further to support effective academic and career counseling and advisement for students and their families.

B. Provide quarterly meetings of a regional prekindergarten-through-baccalaureate (P-16) council in which academic and counseling leaders from colleges and universities meet together with business and workforce leaders plus school district representatives including superintendents, counselors, academic leaders, and career and technical education leaders to develop joint plans and strategies for effective college and career preparation. Regional cross-sector collaboration ensures that Receiving Agency's leaders and staff have information enabling them to serve the students enrolled in Receiving Agency's schools. These forums create opportunities for sharing of best practices and design and implementation of college-and-career readiness programs stressing accountability-driven outcomes in a system supporting continuous improvement.

C. Provide quarterly counselors' network meetings in which student services leaders from colleges and universities meet with counselors and career and technical education leaders from school districts to develop joint plans and strategies for effective transition from secondary education into higher education and careers. Sharing between and among counselors from multiple school districts, colleges, and universities promotes dissemination and utilization of best practices and expedites the implementation of best practices for helping students acquire the academic foundation necessary to exit high school prepared to succeed in higher education and further to help students develop post-graduation college and career plans that support successful college transition.

D. Provide regional events such as an annual superintendents' meeting in which data reports are shared about the post-secondary successes of students enrolled in Receiving Agency's schools and other school districts in the region, as well as transition-counseling session(s) and other regional events in which leaders from the employer community share their perspectives with Receiving Agency's leaders and staff.

E. Coordinate regional programs for students, including RGV LEAD Student Ambassadors and RGV LEAD Scholars. RGV LEAD Student Ambassadors is a leadership-development program that supports student development and growth. RGV LEAD Scholars is a graduate-recognition program that provides incentives for student participation, supports development of the academic foundation necessary for success in college, and supports acquisition of college credits in high school through programs of study blending college-preparatory academics with career and technical education courses offered by the Receiving Agency. The amount payable under this agreement is for the services of Providing Agency's staff in managing these programs and does not include the costs of materials and related expenses, for which payment is made separately.

F. Publish a calendar of events at the beginning of the year detailing dates on which services are to be provided and provide agendas for all such events to Receiving Agency's leaders and designated staff prior to the date each such event occurs.

G. Maintain records of all services provided and provide copies of such documentation to Receiving Agency upon request.

H. Publish and provide to the Receiving Agency an annual report providing data and additional information about services provided.

I. Provide other services as may be agreed upon from time to time.

Receiving Agency will perform the following services ("services"):

A. Collaborate with the Providing Agency on delivery of the programs and services described above to maximize the impact of the services provided by the Providing Agency.

B. Pay the Providing Agency the agreed-upon fee for services provided.

3. AGREEMENT AMOUNT:

Receiving Agency agrees to pay Providing Agency the sum of Thirteen Thousand Three Hundred Eighty and No/100 Dollars ($13,380) for providing the services described above. The amount to be paid by Receiving Agency is computed on the basis of Two Dollars ($2.00) per student based on Receiving Agency's enrollment for grades 9-12.

4. PAYMENT FOR SERVICES:

After this agreement has been signed by both parties, Providing Agency will issue an invoice to Receiving Agency for payment of the agreed-upon amount for services. Such invoice will be addressed to Receiving Agency as follows:

McAllen Independent School District
2000 North 23rd St.
McAllen, Texas 78501

Receiving Agency agrees to pay Performing Agency the amount shown on such invoice so long as Performing Agency is not in default under this Agreement.

5. TERM OF AGREEMENT:

This Agreement will begin on the Effective Date and will expire on June 30, 2024. The parties reserve the right to renew the agreement for additional one-year terms beginning on July 1, 2024, and in successive years thereafter.

6. TERMINATION:

Either party may terminate this Agreement without cause upon thirty (30) days' advance written notice of termination to the other party.

7. NOTICES:

All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as below or to such other persons or address as may be given in writing by either agency to the other in accordance with this Section:

If to Receiving Agency: McAllen Independent School District
2000 North 23rd St.
McAllen, TX 78501

If to Providing Agency: Rio Grande Valley Linking Economic and Academic Development, Inc.
322 South Missouri Avenue
Weslaco, Texas 78596
Attention: Luis Rodriguez, Executive Director

8. OTHER PROVISIONS:

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

B. **Assignment.** This Agreement is not transferable or assignable except upon written approval by both Receiving Agency and Providing Agency.

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

Duly authorized representatives of the Contracting Agencies have executed and delivered this Agreement to be effective as of the Effective Date

RECEIVING AGENCY:

McAllen Independent School District

By_____
Debbie Crane Aliseda
Board President

PROVIDING AGENCY:

Rio Grande Valley Linking Economic and Academic Development, Inc.

By _____
Luis Rodriguez
Executive Director

Approved as to form:
by: JOHNATHAN BALL
JOHNATHAN BALL (Oct 26, 2023 15:52 CDT)
Johnathan Ball, Staff Attorney

TSDS PEIMS DISAGGREGATION OF PEIMS STUDENT DATA

LEA-level Data
Campuses: [illegible] Campuses
2022 - 2023 Fall Collection, Resubmission

LEA: 108906 - MCALLEN ISD

TOTAL ENROLLMENT 20399

ENROLLMENT BY GRADE	Count	%Enroll
EARLY EDUCATION	50	0.25%
PRE-KINDERGARTEN	1,129	5.53%
KINDERGARTEN	1,186	5.81%
GRADE 1	1,328	6.51%
GRADE 2	1,330	6.52%
GRADE 3	1,301	6.38%
GRADE 4	1,348	6.61%
GRADE 5	1,483	7.27%
GRADE 6	1,484	7.27%
GRADE 7	1,510	7.40%
GRADE 8	1,560	7.65%
GRADE 9	1,834	8.99%
GRADE 10	1,870	9.17%
GRADE 11	1,544	7.57%
GRADE 12	1,442	7.07%
TOTAL	20,399	100.00%

Grades 9-12 Enrollment:
6,690 x $2 =
$13,380

ENROLLMENT BY SEX	Count	%Enroll
MALE	10,528	51.61%
FEMALE	9,871	48.39%
TOTAL	20,399	100.00%

ADA ELIGIBILITY	Count	%Enroll
"0" ENROLLED, NOT IN MEMBERSHIP	56	0.27%
"1" ELIGIBLE FOR FULL DAY	16,874	82.72%
"2" ELIGIBLE FOR HALF DAY	932	4.57%
"3" TRANSFER FOR FULL DAY	2,344	11.49%
"4" INELIGIBLE FOR FULL DAY	108	0.53%
"5" INELIGIBLE FOR HALF DAY	0	0.00%
"6" TRANSFER FOR HALF DAY	85	0.42%
"7" ELIGIBLE FLEX ATND	0	0.00%
"8" INELIGIBLE FLEX ATND	0	0.00%
"9" ENRLD, NOT MBRSHP VIRTL LRNG	0	0.00%
TOTAL	20,399	100.00%

	Count	%Enroll
EMERGENT BILINGUAL	7,338	35.97%
IMMIGRANT	487	2.39%
ECONOMIC DISADVANTAGE	14,787	72.49%
MILITARY CONNECTED	81	0.40%
FOSTER CARE	30	0.15%
DYSLEXIA	1,787	8.76%
PK ELIGIBLE PREVIOUS YEAR	3	0.01%

ENROLLMENT BY ETHNICITY	Count	%Group	%Enroll
AMER. INDIAN/ALASKAN	17	0.08%	0.08%
ASIAN	235	1.15%	1.15%
BLACK/AFRICAN AMER.	72	0.35%	0.35%
HISPANIC/LATINO	19,076	93.51%	93.51%
WHITE	915	4.49%	4.49%
HAWAIIAN/PAC ISLAND	4	0.02%	0.02%
TWO OR MORE	80	0.39%	0.39%
TOTAL	20,399	100.00%	100.00%

MIGRANTS	Count	%Group	%Enroll
AMER. INDIAN/ALASKAN	0	0.00%	0.00%
ASIAN	0	0.00%	0.00%
BLACK/AFRICAN AMER.	4	1.06%	0.02%
HISPANIC/LATINO	363	96.54%	1.78%
WHITE	9	2.39%	0.04%
HAWAIIAN/PAC ISLAND	0	0.00%	0.00%
TWO OR MORE	0	0.00%	0.00%
TOTAL	376	100.00%	1.84%

OTHER ECON DISADV	Count	%Group	%Enroll
AMER. INDIAN/ALASKAN	7	0.21%	0.03%
ASIAN	30	0.90%	0.15%
BLACK/AFRICAN AMER.	18	0.54%	0.09%
HISPANIC/LATINO	3,120	93.95%	15.29%
WHITE	141	4.25%	0.69%
HAWAIIAN/PAC ISLAND	1	0.03%	0.00%
TWO OR MORE	4	0.12%	0.02%
TOTAL	3,321	100.00%	16.28%

ELIGIBLE FOR FREE/REDUC MEALS	Count	%Group	%Enroll
AMER. INDIAN/ALASKAN	4	0.03%	0.02%
ASIAN	66	0.58%	0.32%
BLACK/AFRICAN AMER.	23	0.20%	0.11%
HISPANIC/LATINO	11,007	96.00%	53.96%
WHITE	340	2.97%	1.67%
HAWAIIAN/PAC ISLAND	2	0.02%	0.01%
TWO OR MORE	24	0.21%	0.12%
TOTAL	11,466	100.00%	56.21%

BILINGUAL	Count	%Group	%Enroll
AMER. INDIAN/ALASKAN	7	0.19%	0.03%
ASIAN	1	0.03%	0.00%
BLACK/AFRICAN AMER.	5	0.13%	0.02%
HISPANIC/LATINO	3,517	94.87%	17.24%
WHITE	175	4.72%	0.86%
HAWAIIAN/PAC ISLAND	0	0.00%	0.00%
TWO OR MORE	2	0.05%	0.01%
TOTAL	3,707	100.00%	18.17%

ESL	Count	%Group	%Enroll
AMER. INDIAN/ALASKAN	0	0.00%	0.00%
ASIAN	57	1.52%	0.28%
BLACK/AFRICAN AMER.	5	0.13%	0.02%
HISPANIC/LATINO	3,628	96.59%	17.79%
WHITE	60	1.60%	0.29%
HAWAIIAN/PAC ISLAND	1	0.03%	0.00%
TWO OR MORE	5	0.13%	0.02%
TOTAL	3,756	100.00%	18.41%

Alternative Language Program	Count	%Group	%Enroll
AMER. INDIAN/ALASKAN	0	0.00%	0.00%
ASIAN	4	1.11%	0.02%
BLACK/AFRICAN AMER.	1	0.28%	0.00%
HISPANIC/LATINO	345	96.10%	1.69%
WHITE	8	2.23%	0.04%
HAWAIIAN/PAC ISLAND	0	0.00%	0.00%
TWO OR MORE	1	0.28%	0.00%
TOTAL	359	100.00%	1.76%

GIFTED & TALENTED	Count	%Group	%Enroll
AMER. INDIAN/ALASKAN	2	0.09%	0.01%
ASIAN	71	3.03%	0.35%
BLACK/AFRICAN AMER.	14	0.60%	0.07%
HISPANIC/LATINO	2,062	87.86%	10.11%
WHITE	179	7.63%	0.88%
HAWAIIAN/PAC ISLAND	0	0.00%	0.00%
TWO OR MORE	19	0.81%	0.09%
TOTAL	2,347	100.00%	11.51%

This report displays the data for the FALL 2022 - 2023 Resubmission that was accepted by the ESC on 01/19/2023 03:40 PM.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 30, 2023

SUBJECT: Discussion and Possible Action on Ratification of Contract and First Amendment, and approval of Second Amendment to Contract No. 2023-096 Grounds Maintenance Services for Various Locations Maldonado Nursery & Landscaping through 2023-1020

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On September 12, 2022 the Board of Trustees approved Request for Proposal ("RFP") 2023-1020 Grounds Maintenance Services for Various Locations and awarded Maldonado Nursery & Landscaping, Inc.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

On September 26, 2022, Administration executed Contract No. 2023-096 Grounds Maintenance Services for Various Locations with Maldonado Nursery & Landscaping through 2023-1020. On March 3, 2023 Administration executed First Amendment to Contract No. 2023-096 Grounds Maintenance Services for Various Locations with Maldonado Nursery & Landscaping Inc. through 2023-1020 to include two additional visits per campus and include an additional section at Sam Houston Elementary. Administration is requesting approval of Second Amendment due to Maldonado Nursery & Landscaping Inc. price increases.

LEGAL REVIEW:

Legal Counsel has approved amendment.

BUDGETARY CONSIDERATIONS:

Funds are budgeted through Local Funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees
1. Ratify the Contract and First Amendment to Contract No. 2023-096 Maldonado Nursery & Landscaping, Inc. through Request for Proposal 2023-1020; and
2. Approve Second Amendment to Contract No. 2023-096 Maldonado Nursery & Landscaping through RFP 2023-1020.
3. Authorize the Interim Superintendent to sign Second Amendment.

Attachment: ☑

SUBMITTED BY: _____ **SUPERVISOR:** Elizabeth Gonzalez

For further information contact:
Name: Mr. Ruben Treviño, Executive Director for Facilities, Maintenance, and Operations
Office:956-632-3200
eMail: ruben.trevino@mcallenisd.net

Approved for presentation to the Board of Education:

_____

Interim Superintendent of Schools

SECOND AMENDMENT TO

CONTRACT NO. 2023-096 Maldonado Nursery & Landscaping through RFP 2023-1020

This Second Amendment to Contract No. 2023-096 (the "Contract") effective this 30th day of October 2023 by and between McAllen Independent School District ("District") and Maldonado Nursery & Landscaping, Inc., a Texas Corporation ("Contractor") as follows:

WHEREAS, the District entered into Contract No. 2023-096 dated September 26, 2022; and

WHEREAS, the District and Contractor desire to amend the Contract.

NOW THEREFORE, for and in consideration of the clarification of the terms and provisions set forth herein and, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District and Contractor hereby agree to the following amendment to the Contract.

1. Exhibit B-3 of the Agreement is modified to reflect new pricing.
2. Except as modified herein, all terms and conditions of the Contract, as amended, remain in full force and effect. District and Contractor ratify and confirm the terms and provisions of the Contract as amended.

EXECUTED IN DUPLICATE ORIGINALS and effective as of _____.
Date

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____
Dr. Rosalba De Hoyos,
Interim Superintendent

MALDONADO NURSERY & LANDSCAPING

By: _____
Jerry Maldonado, Owner

Approved as to form:

by: JOHNATHAN BALL
JOHNATHAN BALL (Oct 25, 2023 13:49 CDT)
Johnathan Ball, Staff Attorney

Contract 2023-096
Ground Maintenance Servies for Varous Locations thorugh RFP 2023-1020
Maldonado Nursery & Landscaping, Inc.

			Original Pricing		Amendment # 1 Added 2 visits per location and Sam Houston Price Increase			Amendment # 2 Price Increases		
			Total Price	$ 164,115.25		**Total Price**	$ 180,860.39		**Total Price**	$ 195,544.48
		# of visitis	**Unit**	**Extended**	**# of visitis**	**Unit**	**Extended**	**# of visitis**	**Unit**	**Extended**
	Services for Mowing, Edging Trimming and Blowing									
2	Cost for Francisca Alvarez Elementary		$238.96	$4,779.20	22	$238.96	$5,257.12	22	$342.00	$7,524.00
3	Cost for Dr. Carlos Castaeda Elementary	20	$345.94	$6,918.80	22	$345.94	$7,610.68	22	$382.57	$8,416.54
4	Cost for Jose De Escandon Elementary	20	$317.25	$6,345.00	22	$317.25	$6,979.50	22	$395.43	$8,699.46
5	Cost for Victor Fields Elementary	20	$309.51	$6,190.20	22	$309.51	$6,809.22	22	$369.08	$8,119.76
6	Cost for Reynaldo G. Garza Elementary	20	$307.81	$6,156.20	22	$307.81	$6,771.82	22	$376.11	$8,274.42
7	Cost for Leonelo H. Gonzalez Elementary	20	$385.76	$7,715.20	22	$385.76	$8,486.72	22	$403.75	$8,882.50
8	Cost for Lucile McKee Hendricks Elementary	20	$544.74	$10,894.80	22	$544.74	$11,984.28	22	$561.17	$12,345.74
9	Cost for Sam Houston Elementary	20	$316.59	$6,331.80	22	$354.03	$7,526.58	22	$417.04	$9,174.88
10	Cost for Andrew Jackson Elementary	20	$308.82	$6,176.40	22	$308.82	$6,794.04	22	$346.82	$7,630.04
11	Cost for Christa McAuliffe Elementary	20	$249.76	$4,995.20	22	$249.76	$5,494.72	22	$389.00	$8,558.00
12	Cost for Ben Milam Elementary	20	$490.75	$9,815.00	22	$490.75	$10,796.50	22	$475.67	$10,464.74
13	Cost for Dr. Pablo Perez Elementary	20	$470.81	$9,416.20	22	$470.81	$10,357.82	22	$448.87	$9,875.14
14	Cost for Sam Rayburn Elementary	20	$382.40	$7,648.00	22	$382.40	$8,412.80	22	$413.24	$9,091.28
15	Cost for Theodore Roosevelt Elementary	20	$328.05	$6,561.00	22	$328.05	$7,217.10	22	$418.81	$9,213.82
16	Cost for Blanca E. Sanchez Elementary	20	$631.15	$12,623.00	22	$631.15	$13,885.30	22	$681.60	$14,995.20
17	Cost for Juan Seguin Elementary	20	$241.65	$4,833.00	22	$241.65	$5,316.30	22	$285.02	$6,270.44
18	Cost for Thigpen-Zavala Elementary	20	$379.71	$7,594.20	22	$379.71	$8,353.62	22	$465.40	$10,238.80
19	Cost for Woodrow Wilson Elementary	20	$238.97	$4,779.40	22	$238.97	$5,257.34	22	$297.09	$6,535.98
20	Cost for Crockett Building	20	$242.33	$4,846.60	22	$242.33	$5,331.26	22	$331.88	$7,301.36
21	Cost for Jose Antonio Navarro Building	20	$209.61	$4,192.20	22	$209.61	$4,611.42	22	$284.95	$6,268.90
22	Cost for Instructional and Guidance Center	20	$192.38	$3,847.60	22	$192.38	$4,232.36	22	$191.30	$4,208.60
23	Cost for Agricultural Learning Center	20	$327.68	$6,553.60	22	$327.68	$7,208.96	22	$476.93	$10,492.46
	Services for Shrub Trimming and Bed Weed Control									
25	Cost for Francisca Alvarez Elementary	20	$23.71	$474.20	22	$23.71	$521.62	22	Included	Included
26	Cost for Dr. Carlos Castaeda Elementary	20	$19.58	$391.60	22	$19.58	$430.76	22	Included	Included
27	Cost for Jose De Escandon Elementary	20	$19.43	$388.60	22	$19.43	$427.46	22	Included	Included
28	Cost for Victor Fields Elementary	20	$32.67	$653.40	22	$32.67	$718.74	22	Included	Included
29	Cost for Reynaldo G. Garza Elementary	20	$22.72	$454.40	22	$22.72	$499.84	22	Included	Included
30	Cost for Leonelo H. Gonzalez Elementary	20	$21.20	$424.00	22	$21.20	$466.40	22	Included	Included
31	Cost for Lucile McKee Hendricks Elementary	20	$52.19	$1,043.80	22	$52.19	$1,148.18	22	Included	Included
32	Cost for Sam Houston Elementary per visit	20	$26.13	$522.60	22	$26.13	$574.86	22	Included	Included
33	Cost for Andrew Jackson Elementary	20	$14.23	$284.60	22	$14.23	$313.06	22	Included	Included
34	Cost for Christa McAuliffe Elementary	20	$15.37	$307.40	22	$15.37	$338.14	22	Included	Included
35	Cost for Ben Milam Elementary	20	$16.19	$323.80	22	$16.19	$356.18	22	Included	Included
36	Cost for Dr. Pablo Perez Elementary	20	$55.08	$1,101.60	22	$55.08	$1,211.76	22	Included	Included
37	Cost for Sam Rayburn Elementary	20	$56.05	$1,121.00	22	$56.05	$1,233.10	22	Included	Included
38	Cost for Theodore Roosevelt Elementary	20	$46.11	$922.20	22	$46.11	$1,014.42	22	Included	Included
39	Cost for Blanca E. Sanchez Elementary	20	$53.77	$1,075.40	22	$53.77	$1,182.94	22	Included	Included
40	Cost for Juan Seguin Elementary	20	$9.58	$191.60	22	$9.58	$210.76	22	Included	Included
41	Cost for Thigpen-Zavala Elementary	20	$21.65	$433.00	22	$21.65	$476.30	22	Included	Included

Contract 2023-096
Ground Maintenance Servies for Varous Locations thorugh RFP 2023-1020
Maldonado Nursery & Landscaping, Inc.

			Original Pricing		Amendment # 1 Added 2 visits per location and Sam Houston Price Increase			Amendment # 2 Price Increases		
			Total Price	$ 164,115.25		**Total Price**	$ 180,860.39		**Total Price**	$ 195,544.48
		# of visitis	**Unit**	**Extended**	**# of visitis**	**Unit**	**Extended**	**# of visitis**	**Unit**	**Extended**
42	Cost for Woodrow Wilson Elementary	20	$36.40	$728.00	22	$36.40	$800.80	22	Included	Included
43	Cost for Crockett Building	20	$6.82	$136.40	22	$6.82	$150.04	22	Included	Included
44	Cost for Jose Antonio Navarro Building	20	$31.22	$624.40	22	$31.22	$686.84	22	Included	Included
45	Cost for Instructional and Guidance Center	20	$20.76	$415.20	22	$20.76	$456.72	22	Included	Included
46	Cost for Agricultural Learning Center	20	$30.28	$605.60	22	$30.28	$666.16	22	Included	Included
	Services for Ornamental tree pruning									
48	Tree Care Cost for Francisca Alvarez Elementary	1	$74.80	$74.80	1	$74.80	$74.80	1	$84.80	$84.80
49	Tree Care Cost for Dr. Carlos Castaeda Elementary	1	$172.80	$172.80	1	$172.80	$172.80	1	$178.13	$178.13
50	Tree Care Cost for Jose De Escandon Elementary	1	$45.84	$45.84	1	$45.84	$45.84	1	$180.23	$180.23
51	Tree Care Cost for Victor Fields Elementary	1	$17.23	$17.23	1	$17.23	$17.23	1	$19.67	$19.67
52	Tree Care Cost for Reynaldo G. Garza Elementary	1	$178.20	$178.20	1	$178.20	$178.20	1	$183.15	$183.15
53	Tree Care Cost for Leonelo H. Gonzalez Elementary	1	$212.66	$212.66	1	$212.66	$212.66	1	$215.32	$215.32
54	Tree Care Cost for Lucile McKee Hendricks Elementary	1	$114.77	$114.77	1	$114.77	$114.77	1	$120.51	$120.51
55	Tree Care Cost for Sam Houston Elementary	1	$28.61	$28.61	1	$28.61	$28.61	1	$251.03	$251.03
56	Tree Care Cost for Andrew Jackson Elementary	1	$68.93	$68.93	1	$68.93	$68.93	1	$267.51	$267.51
57	Tree Care Cost for Christa McAuliffe Elementary	1	$143.73	$143.73	1	$143.73	$143.73	1	$149.69	$149.69
58	Tree Care Cost for Ben Milam Elementary	1	$68.93	$68.93	1	$68.93	$68.93	1	$75.09	$75.09
59	Tree Care Cost for Dr. Pablo Perez Elementary	1	$143.73	$143.73	1	$143.73	$143.73	1	$160.00	$160.00
60	Tree Care Cost for Sam Rayburn Elementary	1	$172.34	$172.34	1	$172.34	$172.34	1	$59.56	$59.56
61	Tree Care Cost for Theodore Roosevelt Elementary	1	$28.61	$28.61	1	$28.61	$28.61	1	$29.47	$29.47
62	Tree Care Cost for Blanca E. Sanchez Elementary	1	$310.20	$310.20	1	$310.20	$310.20	1	$391.14	$391.14
63	Tree Care Cost for Juan Seguin Elementary	1	$57.56	$57.56	1	$57.56	$57.56	1	$57.30	$57.30
64	Tree Care Cost for Thigpen-Zavala Elementary	1	$200.94	$200.94	1	$200.94	$200.94	1	$274.01	$274.01
65	Tree Care Cost for Woodrow Wilson Elementary	1	$48.84	$48.84	1	$48.84	$48.84	1	$51.51	$51.51
66	Tree Care Cost for Crocket Building	1	$45.84	$45.84	1	$45.84	$45.84	1	$46.99	$46.99
67	Tree Care Cost for Jose Antonio Navarro	1	$45.84	$45.84	1	$45.84	$45.84	1	$45.19	$45.19
68	Tree Care Cost for Instructional and Guidance Center	1	$74.80	$74.80	1	$74.80	$74.80	1	$67.19	$67.19
69	Tree Care Cost for Agricultural Learning Center	1	$24.65	$24.65	1	$24.65	$24.65	1	$54.93	$54.93
	Services for chemically treat weeds in concrete asphalt.									
71	Chemically Treat weeds Cost for Francisca Alvarez Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
72	Chemically Treat weeds Cost for Dr. Carlos Castaeda Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
73	Chemically Treat weeds Cost for Jose De Escandon Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
74	Chemically Treat weeds Cost for Victor Fields Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
75	Chemically Treat weeds Cost for Reynaldo G. Garza Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
76	Chemically Treat weeds Cost for Leonelo H. Gonzalez Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
77	Chemically Treat weeds Cost for Lucile McKee Hendricks Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
78	Chemically Treat weeds Cost for Sam Houston Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
79	Chemically Treat weeds Cost for Andrew Jackson Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
80	Chemically Treat weeds Cost for Christa McAuliffe Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
81	Chemically Treat weeds Cost for Ben Milam Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
82	Chemically Treat weeds Cost for Dr. Pablo Perez Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included

Contract 2023-096
Ground Maintenance Servies for Varous Locations thorugh RFP 2023-1020
Maldonado Nursery & Landscaping, Inc.

		Original Pricing			Amendment # 1 Added 2 visits per location and Sam Houston Price Increase			Amendment # 2 Price Increases		
			Total Price	$ 164,115.25		**Total Price**	$ 180,860.39		**Total Price**	$ 195,544.48
		# of visitis	**Unit**	**Extended**	**# of visitis**	**Unit**	**Extended**	**# of visitis**	**Unit**	**Extended**
83	Chemically Treat weeds Cost for Sam Rayburn Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
84	Chemically Treat weeds Cost for Theodore Roosevelt Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
85	Chemically Treat weeds Cost for Blanca E. Sanchez Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
86	Chemically Treat weeds Cost for Juan Seguin Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
87	Chemically Treat weeds Cost for Thigpen-Zavala Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
88	Chemically Treat weeds Cost for Woodrow Wilson Elementary	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
89	Chemically Treat weeds Cost for Crocket Building	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
90	Chemically Treat weeds Cost for Jose Antonio Navarro Building	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
91	Chemically Treat weeds Cost for Instructional and Guidance Center	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
92	Chemically Treat weeds Cost for Agricultural Learning Center	12	$0.00	$0.00	12	$0.00	$0.00	12	Included	Included
94	Cost to Spot Treat Ants	1	$0.00	$0.00	1	$0.00	$0.00	1	Included	Included
95	NORMAL HOURLY RATE - Hourly rate for Services during normal business hours 6:00 AM - 5:00 PM Monday - Friday. Pricing specified by the proposer shall include all such direct and indirect overhead costs such as transportation, fuel, labor cost, etc. Normal response time shall be within one business day after service call has been placed by the District.	1	$40.00	$40.00	1	$40.00	$40.00	1	$40.00	$40.00

Laura Williams
Director of Purchasing Services

July 11, 2023

Jerry Maldonado, Owner
Maldonado Nursery & Landscaping, Inc.
16348 Nacogdoches Rd
San Antonio, TX 78247
jorge.flores@terracon.com

RE: Contract 2023-096 Grounds Maintenance Services for Various Locations through 2023-1020

Mr. Maldonado,

On September 12, 2022, the McAllen Independent School District ("District") awarded your company the above referenced RFP and Contract, for a period of one (1) year with the option to renew for three (3) additional 1-year terms. The current contract is set to expire on September 26, 2023. At this time, the District is exercising the option to renew the contract for one (1) additional year, through September 26, 2024, as allowed by the terms and conditions, Section 4.0 of the solicitation documents, and in accordance with the terms and conditions of the contract (Section 12 titled Term and Termination of Contract. This is Renewal 1 of 3.

All terms and conditions of the RFP and Contract will remain the same. If you agree to this renewal, no further action is needed from your company. However, if you do not agree to this renewal, or if changes are needed, please notify Gracie Garza, Senior Buyer via email at ggarza@mcallenisd.net within five (5) days of this notice of renewal.

Your Company agrees to comply with Texas Education Code Sec. 22.0834 Criminal History Record Information. Your Company shall obtain criminal history record information through the criminal history clearinghouse relating to any employee who will be on McAllen ISD premises where students are present. **Failure to do so may result in disqualification of vendor award and/or termination of contract.**

If you have any questions or comments concerning this renewal, please contact Gracie Garza, Senior Buyer at (956) 657-4487.

Sincerely,

Laura Williams
Laura Williams (Jul 12, 2023 11:56 CDT)

Laura Williams
Director of Purchasing Services

FIRST AMENDMENT TO

CONTRACT NO. 2023-096 Maldonado Nursery & Landscaping through RFP 2023-1020

This First Amendment to Contract No. 2023-096 (the "Contract") effective this 27th day of February 2023 by and between McAllen Independent School District ("District") and Maldonado Nursery & Landscaping, a Texas Corporation ("Contractor") as follows:

WHEREAS, the District entered into Contract No. 2023-096 dated September 26, 2022; and

WHEREAS, the District and Contractor desire to amend the Contract.

NOW THEREFORE, for and in consideration of the clarification of the terms and provisions set forth herein and, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District and Contractor hereby agree to the following amendment to the Contract.

1. Exhibit B of the Agreement is modified, and Exhibit B-1 Additional Services and Exhibit B-2 Sam Houston Elementary Southwest Section attached hereto is included in the contract.
2. Except as modified herein, all terms and conditions of the Contract, as amended, remain in full force and effect. District and Contractor ratify and confirm the terms and provisions of the Contract as amended.

EXECUTED IN DUPLICATE ORIGINALS and effective as of March 3, 2023.
Date

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____
Jose A. Gonzalez, Superintendent

MALDONADO NURSERY & LANDSCAPING

By: Jerry Maldonado
Jerry Maldonado, Owner

Approved as to form:

Walsh Gallegos Treviño Kyle & Robinson P.C.

by: Leandra C. Ortiz
Leandra C. Ortiz (Mar 3, 2023 12:04 CST)
Leandra C. Ortiz

Exhibit B-1
Additional Services

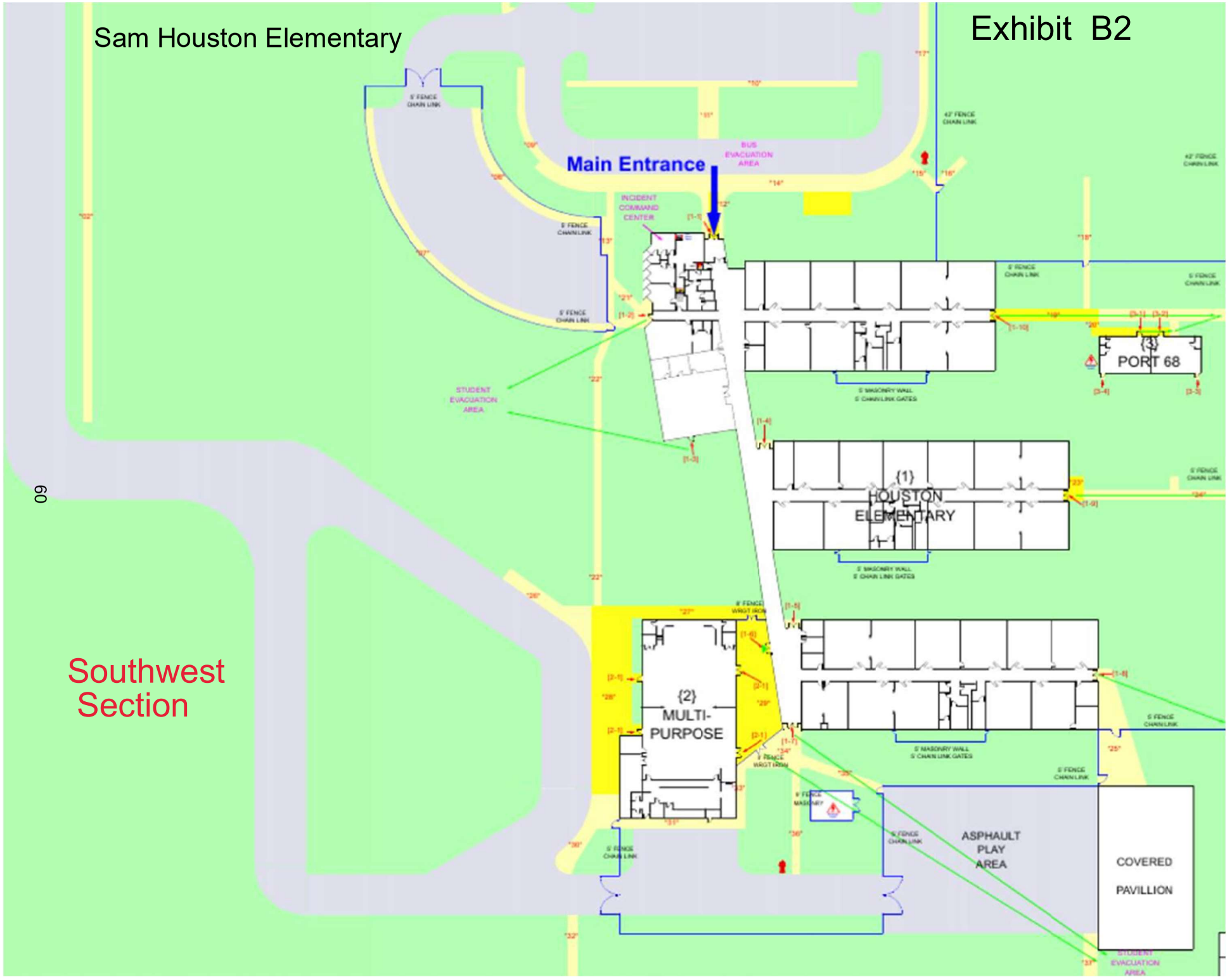
Original contract price for Mowing, Edging, Trimming and Blowing for Sam Houston Elementary will change from $316.59 to $354.03 to include Southwest Section of the campus for the 15 visits remaining for the initial term through September 25, 2023 and succeeding renewal terms.
The District is adding two (2) additional visits per location for the services and the prices reflected below.

Services for Mowing, Edging, Trimming and Blowing	QTY	UOM	Unit	Extended
Francisca Alvarez Elementary	2	EA	$ 283.20	$ 566.40
Dr. Carlos Castaeda Elementary	2	EA	$ 410.00	$ 820.00
Jose De Escandon Elementary	2	EA	$ 376.00	$ 752.00
Victor Fields Elementary	2	EA	$ 366.80	$ 733.60
Reynaldo G. Garza Elementary	2	EA	$ 364.80	$ 729.60
Leonelo H. Gonzalez Elementary	2	EA	$ 457.20	$ 914.40
Lucile McKee Hendricks Elementary	2	EA	$ 645.60	$ 1,291.20
Sam Houston Elementary	2	EA	$ 354.03	$ 708.06
Andrew Jackson Elementary	2	EA	$ 366.00	$ 732.00
Christa McAuliffe Elementary	2	EA	$ 296.00	$ 592.00
Ben Milam Elementary	2	EA	$ 581.60	$ 1,163.20
Dr. Pablo Perez Elementary	2	EA	$ 558.00	$ 1,116.00
Sam Rayburn Elementary	2	EA	$ 453.20	$ 906.40
Theodore Roosevelt Elementary	2	EA	$ 388.80	$ 777.60
Blanca E. Sanchez Elementary	2	EA	$ 914.80	$ 1,829.60
Juan Seguin Elementary	2	EA	$ 286.40	$ 572.80
Thigpen-Zavala Elementary	2	EA	$ 450.00	$ 900.00
Woodrow Wilson Elementary	2	EA	$ 283.20	$ 566.40
Crockett Building	2	EA	$ 287.20	$ 574.40
Jose Antonio Navarro Building	2	EA	$ 248.40	$ 496.80
Instructional and Guidance Center	2	EA	$ 228.00	$ 456.00
Agricultural Learning Center	2	EA	$ 380.30	$ 760.60
Total				**$ 17,959.06**

Services for Shrub Trimming and Bed Weed Control	QTY	UOM	Unit	Extended
Francisca Alvarez Elementary	2	EA	$ 34.40	$ 68.80
Dr. Carlos Castañeda Elementary	2	EA	$ 31.20	$ 62.40
Jose De Escandon Elementary	2	EA	$ 74.00	$ 148.00
Victor Fields Elementary	2	EA	$ 64.00	$ 128.00
Reynaldo G. Garza Elementary	2	EA	$ 65.20	$ 130.40
Leonelo H. Gonzalez Elementary	2	EA	$ 60.00	$ 120.00
Lucile McKee Hendricks Elementary	2	EA	$ 78.80	$ 157.60
Sam Houston Elementary	2	EA	$ 26.13	$ 52.26
Andrew Jackson Elementary	2	EA	$ 16.40	$ 32.80
Christa McAuliffe Elementary	2	EA	$ 24.40	$ 48.80
Ben Milam Elementary	2	EA	$ 18.80	$ 37.60
Dr. Pablo Perez Elementary	2	EA	$ 87.60	$ 175.20
Sam Rayburn Elementary	2	EA	$ 93.20	$ 186.40
Theodore Roosevelt Elementary	2	EA	$ 68.40	$ 136.80
Blanca E. Sanchez Elementary	2	EA	$ 75.60	$ 151.20
Juan Seguin Elementary	2	EA	$ 16.40	$ 32.80
Thigpen-Zavala Elementary	2	EA	$ 28.00	$ 56.00
Woodrow Wilson Elementary	2	EA	$ 56.00	$ 112.00
Crockett Building	2	EA	$ 11.60	$ 23.20
Jose Antonio Navarro Building	2	EA	$ 47.60	$ 95.20
Instructional and Guidance Center	2	EA	$ 32.40	$ 64.80
Agricultural Learning Center	2	EA	$ 48.91	$ 97.82
Total				**$ 2,118.08**

Sam Houston Elementary

Exhibit B2



Southwest Section

MCALLEN INDEPENDENT SCHOOL DISTRICT
CONTRACT NO. 2023-096 Maldonado Nursery & Landscaping, Inc. through Request for Proposal No. 2023-1020

This contract ("Contract"), made and entered into effective by and between **McALLEN INDEPENDENT SCHOOL DISTRICT** (hereinafter referred to as "District") and **Maldonado Nursery & Landscaping, Inc.** a Texas Corporation, (hereinafter referred to as "Vendor") as of the date of execution (the "Commencement Date") by the District as shown on the signatory page of this Contract.

WITNESSETH:

WHEREAS, District recognizes that the **Facilities, Maintenance, and Operations Department** of District (the "Department") requires certain services ("Services") rendered by Vendor who has the training, experience, and qualifications necessary to provide the services;

WHEREAS, District requested proposals from vendors for Services, more particularly described on Exhibit A attached hereto;

WHEREAS, Vendor submitted a response to the District's proposal;

WHEREAS, District has determined that the proper, orderly and efficient delivery of quality Services for the District can be accomplished best by contracting with Vendor in accordance with the local, state and federal regulations for procurement;

WHEREAS, District has determined that for proper and efficient operation of the Department, several objectives must be met, including, among others, coordination of schedules and assignments, administrative ease and efficiency, consistency and uniformity in book and recordkeeping, and the delivery of quality Services;

WHEREAS, the Vendor is willing to accept the responsibility of providing the Services to the District in accordance with recognized standards, the Board Policies of District, applicable laws and regulations and the terms and conditions set forth in this Contract; and

WHEREAS, the parties desire to provide a full statement of their agreement in connection with the provision of the Services by Vendor during the term of this Contract;

NOW, THEREFORE, in consideration of the following mutual agreements and covenants, it is understood and agreed by and between the parties hereto as follows:

1. OBLIGATIONS OF THE VENDOR

Vendor shall perform all of the work and provide all equipment, materials, and labor required in accordance with the terms and conditions of the Contract Documents, as hereinafter defined.

Vendor represents and warrants to District that Vendor possesses all of the licenses, permits, and expertise required to provide the equipment, materials, and labor and perform the services contemplated hereunder. Vendor warrants and represents that during the term of this Contract, Vendor shall maintain all such licenses and permits. Vendor warrants that the services rendered and equipment, materials, and labor furnished shall be in accordance with the terms of the Contract Documents.

The term Contract Documents as used herein shall include the following documents, and this Contract does hereby expressly incorporate same herein as fully as if set forth verbatim in this Contract. The terms and provisions of this Contract shall control with respect to any conflicting or inconsistent terms or provisions in any exhibit to this Contract.

A. This Contract

B. Exhibit "A" – District's Request for Proposal No 2023-1020

C. Exhibit "B" – Vendor's Response to District's Request for Proposal No. 2023-1020

D. Exhibit "C" – Certificate of Insurance

This Contract is entered into subject to the following conditions:

A. Vendor shall use its best efforts to keep to a minimum disruption or interruption of duties and/or work of employees of District and /or the learning environment of students of District while performing its work in accordance with the Contract Documents.

B. Vendor assumes full responsibility and liability for all labor and materials furnished and activities conducted by Vendor pursuant to this Contract and any action or omission incident thereto.

2. INSURANCE COVERAGE

At all times during the term of this Contract, Vendor will, at Vendor's expense, carry and maintain the following insurance coverages with the minimum coverage amounts as follows:

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

B. Commercial General Insurance (occurrence basis only) $1,000,000 each claim and in the aggregate.

C. Business Commercial or Personal Automobile Liability Insurance in the amounts specified by the Texas Tort Claims Act, Chapter 101 of the Texas Practice and Remedies Code for all owned, non-owned and hired vehicles; each person $100,000; each accident $300,000; and for property damage, each occurrence of $100,000. No deletions/exclusions from standard coverage form allowed without written consent of District. (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY).

D. The District shall be named as an additional insured by endorsement on the Vendor's policy as to the subject job.

E. The Vendor will provide a certificate of insurance to the Administrator of the Department evidencing such coverage and will notify the Administrator in writing immediately if any change in coverage occurs for any reason. Such Certificate of insurance shall be attached to this Contract as Exhibit C.

3. TRANSFER, ASSIGNMENT, ETC.

Vendor agrees, for itself and on behalf of its successors, and any person or persons claiming under Vendor by virtue hereof, that this Contract and the rights, interests, and benefits hereunder cannot be assigned, transferred, pledged, or hypothecated in any way and shall not be subject to execution, attachment, or similar process. Any such attempt to do so, contrary to the terms hereof, shall be null and void and shall relieve the District of any and all obligations or liability hereunder.

4. ADJUDICATION

If any provision, paragraph, or subparagraph of this Contract is adjudged by any court of law to be void or unenforceable, in whole or in part, such adjudication shall not be deemed to affect the validity of the remainder of the Contract, including any other provision, paragraph, or subparagraph.

5. PROVISIONS, PARAGRAPHS

Each provision, paragraph, and subparagraph of this Contract is declared to be separable from every other provision, paragraph, and subparagraph and constitutes a separate and distinct covenant.

6. PAYMENT

As consideration for performing the services and supplying the equipment, materials and labor pursuant to the Contract Documents, District agrees to pay Vendor a cost consistent with the pricing agreed upon, a copy of which is attached hereto as Exhibit B and is incorporated herein for all purposes. The payment for services, materials, and labor shall be paid by District to Vendor as invoiced upon successful and satisfactory installation of equipment and materials pursuant to the Contract Documents upon verification by District's authorized representative of such invoice in compliance with the Contract Documents.

7. TAXES AND BENEFITS

Vendor expressly acknowledges that Vendor will be acting as an independent Vendor for all purposes, including payment of social security, withholding taxes, and all other federal, state, and local taxes. Vendor, as independent Vendor, shall be solely responsible to its employees, agents, third party Vendors any other person supplying labor or material for Vendor in performing any portion of this Contract or any action or omission incident thereto. Vendor also agrees to pay for and provide workers compensation insurance covering all employees working for Vendor in performing labor pursuant to this Contract or any activity incident thereto.

8. INCURRING FINANCIAL OBLIGATION

The Vendor will incur no financial obligation on behalf of District without prior written approval of the Superintendent of District. The Vendor will be responsible for all personal and professional expenses.

9. ACCESS TO BOOKS AND RECORDS

Vendor recognizes that District is a participant in governmental payment programs. In connection with such programs, the Vendor agrees to cooperate with District and provide to District reasonable assistance in District's efforts to meet the requirements for participation in and payment under such programs.

10. NON-DISCRIMINATION

Vendor will not discriminate on the basis of race, color, sex, age, religion, national origin, or handicap in providing services under this Contract or in the selection of associates, employees, or independent Vendors.

11. HOLD HARMLESS

VENDOR AGREES TO HOLD HARMLESS AND INDEMNIFY DISTRICT FROM ANY LIABILITY AND/OR DAMAGES, WHICH MAY DIRECTLY OR INDIRECTLY ARISE FROM OR OCCUR IN CONNECTION WITH VENDOR'S PERFORMANCE UNDER THIS CONTRACT OR ANY ACTION, ACTIVITY OR OMISSION INCIDENT THERETO. SUCH INDEMNIFICATION SHALL INCLUDE BUT NOT BE LIMITED TO ALL DISTRICT'S ATTORNEYS' FEES AND COSTS INCURRED IN DEFENDING OR RESPONDING TO ANY ACTION BROUGHT OR THREATENED AGAINST DISTRICT FOR ANY ACTION OR OMISSION ARISING FROM OR INCIDENT TO VENDOR'S PERFORMANCE UNDER THIS CONTRACT.

12. TERM AND TERMINATION OF CONTRACT

Term. The term of this Contract shall commence on the Commencement Date and remain effective for the term of one (1) year, with the option to renew for three (3) additional one (1) year terms). All services must be completed during the term of the Contract.

A. **Termination without Cause**. District shall have the right to terminate this Contract without cause on thirty (30) days written notice to the Vendor.

B. Termination with Cause.

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

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

ii. Failure to provide evidence of liability insurance, as required by numbered Paragraph 2 hereof.

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

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

b. Termination by Vendor. In the event District breaches any material term of this Contract, Vendor may terminate this Contract upon no less than fifteen (15) days written notice.

c. Non-Interference. Following the expiration of this Contract or its termination for any reason, Vendor agrees to do nothing that may interfere with any contract of District with any other individual or entity for the provision of the services herein.

13. NOTICES

All notices provided to be given under this Contract shall be given in writing and will be deemed delivered when deposited in the United States Postal Service by certified or registered mail, addressed to the proper party, at the following addresses:

If to District:
McAllen Independent School District
Attn: Jose A. Gonzalez, Superintendent
2000 N. 23rd Street
McAllen, Texas 78501

If to Vendor:
Maldonado Nursery & Landscaping, Inc.
Jerry Maldonado
16348 Nacogdoches Rd
San Antonio, TX 78247

Either party may change the address to which notices are to be sent by giving the other party notice of the new address in the manner provided in this section.

14. LAW

THE INTERPRETATION AND ENFORCEMENT OF THIS CONTRACT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED BY THIS AGREEMENT ARE PERFORMABLE IN HIDALGO COUNTY, TEXAS.

15. NO IMPLIED WAIVER

No waiver or modification of the Contract Documents shall be valid unless it is in writing and signed by the District and Vendor.

16. SEVERABILITY

The invalidity or unenforceability of any provisions of this Contract will not affect the validity or enforceability of any other provision.

17. ASSIGNABILITY

The right and obligations of District hereunder shall inure to the benefit of and be binding upon the successors and assigns of District. The Vendor may not assign Vendor's rights or obligations under this Contract without District's written consent. Any assignment in violation of this provision shall give District the right to terminate this Contract immediately, upon written notice to the Vendor.

18. AMENDMENTS

All provisions of the Contract Documents shall be strictly complied with and performed by Vendor; and no amendment to this Contract shall be made except upon the written agreement by the parties. No amendment shall be construed to release either party from any obligation, representation, and/or warranty of the Contract Documents except as specifically provided for in such amendment.

19. ENTIRE CONTRACT

This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof. This Contract supersedes any and all other agreements, whether oral or in writing, between the parties with respect to the subject matter the Contract.

20. INTERPRETATION

The defined terms used herein are for convenience only and do not limit the contents of this Contract.

21. VARIATIONS OF PRONOUNS

All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons or entity may require.

22. AUTHORIZATION FOR CONTRACT

The execution and performance of this Contract by District and Vendor have been duly authorized by all necessary laws, resolutions or corporate action, and this Contract constitutes the valid and enforceable obligations of Vendor and District in accordance with its terms.

23. IMMUNITIES

Nothing in this Contract is intended to and District does not hereby waive, release or relinquish any right to assert any of the defenses District enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to District as to any claim or action of any person, entity, or individual against District.

24. NON-APPROPRIATION OF FUNDS.

In the event no funds or insufficient funds are appropriated and budgeted for the services and funds are otherwise unavailable, by any means whatsoever, in any fiscal period in which the payments for the services are due under this Contract, then District shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify Vendor and any assignee of such occurrence. This Contract shall thereafter terminate and be rendered null and void on the last day of the fiscal period for which appropriations were made, without penalty, liability or expense to the District of any kind, except as to (i) the portions of the payment herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available and (ii) District's other obligations and liabilities under this Contract relating to, accruing or arising prior to such termination. In the event of such termination, District agrees to peaceably request that the Vendor or its assignee stop the services on the date of such termination.

25. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA).

Parental consent must be obtained before personally identifiable information is used for any purpose other than meeting a requirement under the Individuals with Disabilities Education Act or disclosed to anyone other than officials of agencies collecting or using this information. The District may not release information from these records without parental consent except as provided in the Family Educational Rights and Privacy Act (FERPA).

26. CRIMINAL HISTORY INFORMATION.

Pursuant to Texas Education Code Section 22.0834, Vendor shall obtain criminal history record information that relates to an employee, applicant for employment, agent or subcontractor of the Vendor if the employee, applicant, agent, or subcontractor has or will have continuing duties related to the contracted services herein, and the duties are or will be performed on school property or at another location where students are regularly present. Vendor shall certify to District before beginning work and at no less than on an annual basis thereafter, that this process was followed.

Vendor shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony, or misdemeanor involving moral turpitude, as defined by Texas law, from District's property or other location where students are regularly present, District shall be the final decider of what constitutes a "location where students are regularly present". Vendor's violation of this section shall constitute a material breach of contract. If the Vendor is the person, owner, or operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review, and must submit original evidence of compliance acceptable to District, with this Contract.

27. ENTITIES THAT BOYCOTT ISRAEL

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of $100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

28. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES (SB 13)

If Vendor is a company with 10 or more full-time employees and if this Agreement has a value of at least $100,000 or more, Vendor verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental

entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

29. PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES (SB 19)

If Vendor is a company with 10 or more full-time employees and if this Agreement has a value of at least $100,000 or more, Vendor verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. This verification is not required for an agreement with a sole-source provider; or a governmental entity that does not receive bids from a company that is able to provide this verification.

30. Sec. 2252.152 CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED.

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

Sec. 2252.153. **LISTED COMPANIES.** The comptroller shall prepare and maintain, and make available to each governmental entity, a list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.

Sec. 2252.154. **EXCEPTION.** Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanction's regime relating to Sudan its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter. SECTION 2. Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to a contract or purchase for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. SECTION 3. This Act takes effect September 1, 2017.

31. SUSPENSION AND DEBARMENT COMPLIANCE REQUIREMENTS

Vendor shall comply with all requirements on Part 3.2 – Compliance Requirements.

32. BREACH OF CONTRACT AND FEES

If either party hereto shall breach any of the terms hereof, such party shall pay to the non-defaulting party all of the non-defaulting party's costs and expenses, including attorney's fees, incurred by such party in enforcing the terms of this Contract.

33. FURTHER DOCUMENTS

The parties hereto covenant and agree that they will execute such other and future instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Contract.

34. BINDING NATURE

This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Contract.

35. CONTRACT TERMS CONTROL

The terms and provisions of this Contract shall control with respect to any conflicting or inconsistent terms or provisions in any exhibit to this Contract.

IN WITNESS WHEREOF, the execution and performance of this Contract by each of the parties hereto have been duly authorized by all necessary laws, resolutions, ordinances, or governing body action, and this Contract constitutes the valid and enforceable obligations of the parties hereto in accordance with its terms.

EXECUTED on Sep 26, 2022
Date

DISTRICT:

McAllen Independent School District

By: _____

Jose A. Gonzalez, Superintendent

VENDOR:

Maldonado Nursery & Landscaping, Inc

By: Jerry Maldonado

Jerry Maldonado, Owner

Approved as to form:

Walsh Gallegos Treviño Kyle & Robinson P.C.

by: Leandra C. Ortiz
Leandra C. Ortiz (Sep 24, 2022 16:28 CDT)

Attorney

Exhibit "A" – District's Request for Proposal No. 2023-1020

1.0 BACKGROUND

McAllen Independent School District (the "District") is a multicultural community of over 20,000 students. The District's vision is to educate all students to become lifelong learners and productive citizens in a global society through a program of educational excellence utilizing technology and actively involving parents and the community. The District consists of eighteen (18) elementary schools, six (6) middle schools, three (3) traditional high schools, and two (2) non-traditional high schools.

Officers of the District are:

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

2.0 INTENT

It is the intent of the district, through this Request for Proposal ("RFP"), to select a proposer ("Proposers"), that offers the best value for grounds maintenance services for the District.

3.0 REQUIREMENTS

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

4.0 TERM AND TERMINATION OF AGREEMENT

The period of the contract ("Contract") resulting from this RFP will be for a primary term of one (1) year with the option to renew for three (3) additional one (1) year terms with favorable pricing.

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

4.2 Termination with Cause.

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

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

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

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

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

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

5.0 PRICING, INVOICING AND PAYMENT

The pricing offered through this RFP must remain firm for the term of the Contract. Price decreases and/or discount percentage in favor of the District are acceptable at any time throughout the term of the contract. In case of a price increase required due to market shortage or market change, documentation must be submitted for approval to Elizabeth Cabrera, Interim Director of Purchasing Services at elizabeth.cabrera@mcallenisd.net.

6.0 REFERENCES

Proposer shall obtain a minimum of three (3) references from other school districts for similar services. References must complete the "District Reference Form" (See Attachments tab).

7.0 EVALUATION CRITERIA

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

7.1 the purchase price;
7.2 the reputation of the vendor and of the vendor's goods or services;
7.3 the quality of the vendor's goods or services;
7.4 the extent to which the goods or services meet the District's needs;
7.5 the vendor's past relationship with the District;
7.6 the impact on the ability of the District to comply with laws and rules relating to historically underutilized businesses (in accordance with 2 CFR 200.320);
7.7 the total long-term cost to the District to acquire the vendor's goods or service;
7.8 for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:
  7.8.1 has its principal place of business in this state; or
  7.8.2 employs at least 500 persons in this state; and
7.9 any other relevant factor specifically listed in the request for RFP or proposals.

Refer to Attachment "A" for weights.

8.0 EVALUATION COMMITTEE.

The evaluation committee which will be comprised of Ruben Treviño, Executive Director for Facilities, Maintenance, and Operations; Eduardo Barnhart, Assistant Director for Facilities, Maintenance, and Operations; Elizabeth Cabrera, Interim Director of Purchasing Services; Carolina Quintanilla, Interim Coordinator for Purchasing Services; Gracie Garza, Senior Buyer, will evaluate the RFP and recommend the successful vendor.

9.0 COMMUNICATION WITH DISTRICT PERSONNEL

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

10.0 SCOPE OF WORK

This RFP is intended for Landscaping Services for various locations to include the following services:

10.1 Turf Management (20 annual visits per location). Schedule to be determined by District.
- **10.1.1** Mow
- **10.1.2** Edge
- **10.1.3** Trim
- **10.1.4** Blow

10.2 Shrubs and Bed Care (20 annual visits per location). Schedule to be determined by District.
- **10.2.1** Shrub trimming
- **10.2.2** Bed weed control

10.3 Tree Care
- **10.3.1** Ornamental tree pruning (1 annual visit per location). Schedule to be determined by District.

10.4 Miscellaneous
- **10.4.1** Proposer shall chemically treat weeds in concrete asphalt (12 annual visits). Schedule to be determined by District
- **10.4.2** Spot treat for ants as needed.

10.5 Proposers Responsibilities
- **10.5.1** Final Schedule of Services to be performed shall be coordinated with District.
- **10.5.2** Proposer shall mow surrounding edge of pond/detention areas as needed.
- **10.5.3** Proposer shall pick up debris and litter in work areas prior to mowing.
- **10.5.4** Proposer shall edge all walkways, curbs, beds, tree rings and driveways.
- **10.5.5** Proposer shall backpack blow all landscape debris generated during regular maintenance visits, to include leaves within maintained areas.
- **10.5.6** Awarded Proposer shall adhere to all state laws and/or local regulations and ordinances.
- **10.5.7** Proposer shall mulch all grass clipping into existing turf.
- **10.5.8** Proposer shall bag and remove any excessive clippings.
- **10.5.9** Proposer shall manually remove all weeds over 2” in all beds.
- **10.5.10** Proposer shall spot treat weeds smaller than 2”.
- **10.5.11** Proposer shall only apply herbicides under the supervision of a current Licensed Pesticide Applicator certified by the State of Texas Department of Agriculture. Attach proof of employee(s) current applicator license under Response Attachments tab.
- **10.5.12** Proposer shall regularly prune/edge groundcover beds and maintain manicured appearance.
- **10.5.13** Proposer shall maintain perennials according to species.
- **10.5.14** Proposer shall prune shrubs to maintain proper shape and appearance.
- **10.5.15** Proposer shall prune shrubs during dormant season to encourage proper growth.
- **10.5.16** Proposer shall cut back all perennials and native grasses, annually, between February to May depending on plant type and weather.
- **10.5.17** Proposer shall clean up leaves from fall/winter to improve airflow and sunlight penetration to soil from growing months.
- **10.5.18** Proposer shall lift tree canopies to 8’ clearance on as needed basis.

10.6 Proposer shall submit a list of equipment intended for use in the performance of services under this contract. Line Item # 93

10.7 All work shall be completed during the hours of 6:00 A.M. through 5:00 P.M. Monday through Friday, unless otherwise scheduled by the District.

10.8 Non-Billable Services. The District is not responsible for travel time to or from the job site, and such fees shall not be included in the quote.

10.9 Invoices shall be itemized and include date of service, location and detailed information on the work performed.

10.10 Awarded Proposer shall take all necessary precautions to protect District property from damage.

10.11 Awarded Proposer shall be held responsible for any damage to property caused by operations on District grounds.

10.12 It shall be the sole responsibility of the awarded Proposer to safeguard his/her own materials, tools, and equipment. The District shall not assume any responsibility for vandalism and/or theft of materials, tools, and equipment.

10.13 The District reserves the right to inspect all work prior to payment. Final project approval is contingent on the final inspection by an authorized District representative.

10.14 Awarded Proposer will promptly correct all work not approved by an authorized District representative.

10.15 Awarded Proposer shall be required to sign a contract with the District. Refer to Draft Service Contract under the Attachments tab.

10.16 Awarded Proposer shall provide a certificate of insurance Acord, in accordance with Section 6 of the Terms and Conditions of this RFP. Upload your Acord form in the Response Attachments tab.

10.17 See list of locations and addresses under the Attachments tab.

10.18 For project visits contact Eduardo Barnhart, Assistant Director for Facilities, Maintenance, and Operations 956-632-3200 eduardo.barnhart@mcallenisd.net.

11.0 AWARD INFORMATION

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

12.0 INSTRUCTIONS FOR SUBMITTING A PROPOSAL

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

2023-1020 Addendum 1

Grounds Maintenance Services for Various Locations

Issue Date: 8/24/2022
Questions Deadline: 9/2/2022 10:00 AM (CT)
Response Deadline: 9/7/2022 10:00 AM (CT)

Contact Information

Contact: Graciela Garza
Address: Purchasing Services
Administration Office
2000 N 23rd St
McAllen, TX 78501-6126
Phone: (956) 6574487
Fax: (956) 6574481
Email: ggarza@mcallenisd.net

Event Information

Number:	2023-1020 Addendum 1
Title:	Grounds Maintenance Services for Various Locations
Type:	Request for Proposal
Issue Date:	8/24/2022
Question Deadline:	9/2/2022 10:00 AM (CT)
Response Deadline:	9/7/2022 10:00 AM (CT)
Notes:	McAllen Independent School District (the "District") invites your submittal on the above referenced project.

Interested respondents may obtain details through IonWave. The District prefers and encourages respondents to submit their proposals electronically, through IonWave.

Submittals received after this deadline will be void and unacceptable. Facsimile transmittals and/or emailed submittals will not be accepted.

Any questions regarding this solicitation must be submitted through the "Questions" option located on the Ionwave website, no later than the date and time specified on the solicitation. Questions/clarifications regarding this solicitation will not be answered by phone nor email.

Ship To Information

Contact: Ruben Trevino, Executive Director
Address: Facilities, Maintenance & Operations
Building A
4309 Warrior Drive
McAllen, TX 78501
Phone: (956) 6323200
Email: ruben.trevino@mcallenisd.net

Billing Information

Contact: Iris Luna, Director
Address: Accounting
2000 N. 23rd Street
McAllen, TX 78501
Phone: (956) 6328403
Email: iris.luna@mcallenisd.net

Bid Attachments

2023-1020 General Terms and Conditions.pdf View Online
General Terms and Conditions

2023-1020 Specifications and Scope of Work.pdf View Online
Specifications and Scope of Work

2023-1020 Locations.pdf View Online
Locations and Addresses

2023-1020 Reference Form (Fillable).pdf View Online
Reference Form

2023-1020 Attachment A.pdf View Online
Attachment A

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

W-9 Form

CIQ FORM FILLABLE R1.1.2021.pdf View Online

Conflict of Interest Questionnaire (CIQ) form

Draft Service Contract - thru solicitation.pdf View Online

Draft Service Contract

2023-1020 Addendum 1.pdf View Online

Addendum 1

2023-1020 List of Locations -Revised.pdf View Online

List of Locations Revised

2023-1020 Site Plans.pdf View Online

Site Plans

Requested Attachments

Completed W9 Form

(Attachment required)

Please upload your completed W9 form.

Assumed Name Certificate/Fictitious Name Documentation/Disregarded Entity Documentation

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

Proof of employee (s) Pesticide Applicator Licenses

(Attachment required)

Please upload your Proof of employee (s) Pesticide Applicator Licenses.

Completed Conflict of Interest Questionnaire.

(Attachment required)

Please upload your completed CIQ.

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

Completed Form 1295 Form or Exemption Statement

(Attachment required)

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

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

HUB Certificate

Upload your HUB Certificate, if applicable.

Equipment Inventory List

If you have more than 5 items on your Equipment Inventory List upload here.

Staff Experience

If you have more than 5 employees, upload your list here.

Bid Attributes

1 General Terms and Conditions

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

**This is your electronic signature.

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

2 Specifications and Scope of Work

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

**This is your electronic signature.

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

3 Deviations and Exceptions

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

(Required: Maximum 4000 characters allowed)

4 Form 1295 - Certificate of Interested Parties

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

Access form at:

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

If exempt, attach documentation.

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

5 Delinquent Taxpayers

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

**This is your electronic signature.

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

(Required: Check only one)

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

_____

_____

_____

(Required: Maximum 1000 characters allowed)

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

☐ Yes (upload Assumed Name Certificate)

☐ No

(Required: Check all that apply)

8 Felony Conviction Notification

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

Select where applicable:

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

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

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

**This is your electronic signature.

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

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

(Required: Check only one)

9 Felony Conviction Details

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

(Required: Maximum 4000 characters allowed)

10 Criminal History Record Information Review of Certain Contract Employees

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

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

OR

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

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

**This is your electronic signature.

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

(Required: Check only one)

11	**Confidential/Copyrighted Information** Contractor agrees, if a bid is, or parts of bid is confidential, the Contractor has specified by stamping in bold letters the term “CONFIDENTIAL” on all or the confidential part of the bid. The bid may be considered public information even though all or parts are marked confidential. Furthermore, Contractor agrees a copyrighted bid is unacceptable and will be disqualified as unresponsive. **This is your electronic signature. ☐ I have read and agree. *(Required: Check if applicable)*

12	**Declaration of Business Location - Texas Education Code 44.031(b)(8)** Bidder certifies the Bidder’s or the Bidder’s ultimate parent company or majority owner: A. Has its principal place of business in the State of Texas; OR B. Employs at least 500 persons in the State of Texas C. Principal place of business is not in the State of Texas. **This is your electronic signature. ☐ A. Principal place of business is in TX ☐ B. Principal place employs 500+ in Texas ☐ C. Principal place is NOT in Texas *(Required: Check only one)*

13	**Declaration of Business Location - Texas Education Code 44.031(b)(8)** Specify principal place of business (City/State). If not applicable, please enter N/A (not applicable). ***This is your electronic signature. _____ _____ _____ _____ _____ _____ *(Required: Maximum 4000 characters allowed)*

14	**Prohibition on Contracts with Companies Boycotting Certain Energy Companies (SB 13)** If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least $100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. **This is your electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*

15	**Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries (SB 19)** If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least $100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. **This is your electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*
16	**Entities That Boycott Israel** If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of $100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. **This is your electronic signature. ☐ I agree and hereby certify. *(Required: Check if applicable)*
17	**TEXAS GOVERNMENT CODE Sec. 2252.152. CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED.** A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153. **This is your electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*
18	**TEXAS GOVERNMENT CODE Sec. 2252.153. LISTED COMPANIES** Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter. SECTION 2. Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to a contract or purchase for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. SECTION 3 This Act takes effect September 1, 2017. Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. **This is your electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*

19	**Non-Collusion Statement** Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or business or legal entity. **This is your electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*
20	**Contracts in Excess of $250,000** Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. **This is your electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*
21	**Contracts in Excess of $10,000** All contracts in excess of $10,000 must address termination for cause and for convenience including the manner by which it will be affected and the basis for settlement. **This is your electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*
22	**Equal Employment Opportunity** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity”(30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” **This is your electronic signature. ☐ I have read and hereby certify. *(Required: Check if applicable)*

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

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

29

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

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

**This is your electronic signature.

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

30

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

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

**This is your electronic signature.

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

31

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

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

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

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

**This is your electronic signature.

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

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

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

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

**This is your electronic signature.

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

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

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

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

**This is your electronic signature.

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

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

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

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

**This is your electronic signature.

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

35 Buy American Provision

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

**This is your electronic signature.

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

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

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

Bid Lines

1	**Services for Mowing, Edging, Trimming and Blowing**

2	Cost for Francisca Alvarez Elementary per visit (20 annual visits) *(Response required)* Quantity: 20 UOM: EA Price: $ Total: $ Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing. Supplier Notes: _____ ☐ No bid ☐ Additional notes *(Attach separate sheet)*

3	Cost for Dr. Carlos Castañeda Elementary per visit (20 annual visits) *(Response required)* Quantity: 20 UOM: EA Price: $ Total: $ Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing. Supplier Notes: _____ ☐ No bid ☐ Additional notes *(Attach separate sheet)*

4	Cost for Jose De Escandon Elementary per visit (20 annual visits) *(Response required)* Quantity: 20 UOM: EA Price: $ Total: $ Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing. Supplier Notes: _____ ☐ No bid ☐ Additional notes *(Attach separate sheet)*

5 Cost for Victor Fields Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes: _____

☐ No bid

☐ Additional notes *(Attach separate sheet)*

6 Cost for Reynaldo G. Garza Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes: _____

☐ No bid

☐ Additional notes *(Attach separate sheet)*

7 Cost for Leonelo H. Gonzalez Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes: _____

☐ No bid

☐ Additional notes *(Attach separate sheet)*

8 Cost for Lucile McKee Hendricks Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes: _____

☐ No bid

☐ Additional notes *(Attach separate sheet)*

9 Cost for Sam Houston Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes: _____

☐ No bid

☐ Additional notes *(Attach separate sheet)*

10 Cost for Andrew Jackson Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes: _____

☐ No bid

☐ Additional notes *(Attach separate sheet)*

11 Cost for Christa McAuliffe Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

12 Cost for Ben Milam Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

13 Cost for Dr. Pablo Perez Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

14 Cost for Sam Rayburn Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

15 Cost for Theodore Roosevelt Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

16 Cost for Blanca E. Sanchez Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

17 Cost for Juan Seguin Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes: _____

☐ No bid
☐ Additional notes *(Attach separate sheet)*

18 Cost for Thigpen-Zavala Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes: _____

☐ No bid
☐ Additional notes *(Attach separate sheet)*

19 Cost for Woodrow Wilson Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes: _____

☐ No bid
☐ Additional notes *(Attach separate sheet)*

20 Cost for Crockett Building per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes: _____

☐ No bid
☐ Additional notes *(Attach separate sheet)*

21 Cost for Jose Antonio Navarro Building per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes: _____

☐ No bid
☐ Additional notes *(Attach separate sheet)*

22 Cost for Instructional and Guidance Center per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes: _____

☐ No bid
☐ Additional notes *(Attach separate sheet)*

23 Cost for Agricultural Learning Center per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

24 **Services for Shrub Trimming and Bed Weed Control.**

25 Cost for Francisca Alvarez Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

26 Cost for Dr. Carlos Castañeda Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

27 Cost for Jose De Escandon Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

28 Cost for Victor Fields Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

29 Cost for Reynaldo G. Garza Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

30 Cost for Leonelo H. Gonzalez Elementary per visit (20 annual visits)
(Response required)
Quantity: 20 UOM: EA Price: $ Total: $
Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

31 Cost for Lucile McKee Hendricks Elementary per visit (20 annual visits)
(Response required)
Quantity: 20 UOM: EA Price: $ Total: $
Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

32 Cost for Sam Houston Elementary per visit (20 annual visits)
(Response required)
Quantity: 20 UOM: EA Price: $ Total: $
Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

33 Cost for Andrew Jackson Elementary per visit (20 annual visits)
(Response required)
Quantity: 20 UOM: EA Price: $ Total: $
Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

34 Cost for Christa McAuliffe Elementary per visit (20 annual visits)
(Response required)
Quantity: 20 UOM: EA Price: $ Total: $
Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

35 Cost for Ben Milam Elementary per visit (20 annual visits)
(Response required)
Quantity: 20 UOM: EA Price: $ Total: $
Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

36 Cost for Dr. Pablo Perez Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

37 Cost for Sam Rayburn Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

38 Cost for Theodore Roosevelt Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

39 Cost for Blanca E. Sanchez Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

40 Cost for Juan Seguin Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

41 Cost for Thigpen-Zavala Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

42 Cost for Woodrow Wilson Elementary per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

43 Cost for Crockett Building per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

44 Cost for Jose Antonio Navarro Building per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

45 Cost for Instructional and Guidance Center per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

46 Cost for Agricultural Learning Center per visit (20 annual visits)
(Response required)

Quantity: 20 UOM: EA Price: $ Total: $

Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

47 **Services for Ornamental tree pruning**

48 Tree Care Cost for Francisca Alvarez Elementary per visit (1 annual visit)
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Item Notes: Ornamental tree pruning

Supplier Notes:

☐ No bid
☐ Additional notes *(Attach separate sheet)*

49 Tree Care Cost for Dr. Carlos Castañeda Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

50 Tree Care Cost for Jose De Escandon Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

51 Tree Care Cost for Victor Fields Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

52 Tree Care Cost for Reynaldo G. Garza Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

53 Tree Care Cost for Leonelo H. Gonzalez Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

54 Tree Care Cost for Lucile McKee Hendricks Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

55 Tree Care Cost for Sam Houston Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

56 Tree Care Cost for Andrew Jackson Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

57 Tree Care Cost for Christa McAuliffe Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

58 Tree Care Cost for Ben Milam Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

59 Tree Care Cost for Dr. Pablo Perez Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

60 Tree Care Cost for Sam Rayburn Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

61 Tree Care Cost for Theodore Roosevelt Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

62 Tree Care Cost for Blanca E. Sanchez Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

63 Tree Care Cost for Juan Seguin Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

64 Tree Care Cost for Thigpen-Zavala Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

65 Tree Care Cost for Woodrow Wilson Elementary per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

66 Tree Care Cost for Crocket Building per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

67 Tree Care Cost for Jose Antonio Navarro per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

68 Tree Care Cost for Instructional and Guidance Center per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

69 Tree Care Cost for Agricultural Learning Center per visit (1 annual visit)
(Response required)
Quantity: 1 UOM: EA Price: $ Total: $
Item Notes: Ornamental tree pruning
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

70 **Services for chemically treat weeds in concrete asphalt.**

71 Chemically Treat weeds Cost for Francisca Alvarez Elementary per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

72 Chemically Treat weeds Cost for Dr. Carlos Castañeda Elementary per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

73 Chemically Treat weeds Cost for Jose De Escandon Elementary per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

74 Chemically Treat weeds Cost for Victor Fields Elementary per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

75 Chemically Treat weeds Cost for Reynaldo G. Garza Elementary per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

76 Chemically Treat weeds Cost for Leonelo H. Gonzalez Elementary per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

77 Chemically Treat weeds Cost for Lucile McKee Hendricks Elementary per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

78 Chemically Treat weeds Cost for Sam Houston Elementary per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

79 Chemically Treat weeds Cost for Andrew Jackson Elementary per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

80 Chemically Treat weeds Cost for Christa McAuliffe Elementary per visit (12 annual visits)
(Response required)

Quantity: 12 UOM: EA Price: $ Total: $

Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)

Supplier Notes: _____

☐ No bid
☐ Additional notes *(Attach separate sheet)*

81 Chemically Treat weeds Cost for Ben Milam Elementary per visit (12 annual visits)
(Response required)

Quantity: 12 UOM: EA Price: $ Total: $

Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)

Supplier Notes: _____

☐ No bid
☐ Additional notes *(Attach separate sheet)*

82 Chemically Treat weeds Cost for Dr. Pablo Perez Elementary per visit (12 annual visits)
(Response required)

Quantity: 12 UOM: EA Price: $ Total: $

Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)

Supplier Notes: _____

☐ No bid
☐ Additional notes *(Attach separate sheet)*

83 Chemically Treat weeds Cost for Sam Rayburn Elementary per visit (12 annual visits)
(Response required)

Quantity: 12 UOM: EA Price: $ Total: $

Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)

Supplier Notes: _____

☐ No bid
☐ Additional notes *(Attach separate sheet)*

84 Chemically Treat weeds Cost for Theodore Roosevelt Elementary per visit (12 annual visits)
(Response required)

Quantity: 12 UOM: EA Price: $ Total: $

Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)

Supplier Notes: _____

☐ No bid
☐ Additional notes *(Attach separate sheet)*

85 Chemically Treat weeds Cost for Blanca E. Sanchez Elementary per visit (12 annual visits)
(Response required)

Quantity: 12 UOM: EA Price: $ Total: $

Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)

Supplier Notes: _____

☐ No bid
☐ Additional notes *(Attach separate sheet)*

86 Chemically Treat weeds Cost for Juan Seguin Elementary per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

87 Chemically Treat weeds Cost for Thigpen-Zavala Elementary per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

88 Chemically Treat weeds Cost for Woodrow Wilson Elementary per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

89 Chemically Treat weeds Cost for Crocket Building per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

90 Chemically Treat weeds Cost for Jose Antonio Navarro Building per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

91 Chemically Treat weeds Cost for Instructional and Guidance Center per visit (12 annual visits)
(Response required)
Quantity: 12 UOM: EA Price: $ Total: $
Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)
Supplier Notes:
☐ No bid
☐ Additional notes *(Attach separate sheet)*

92 Chemically Treat weeds Cost for Agricultural Learning Center per visit (12 annual visits)
(Response required)

Quantity: 12 UOM: EA Price: $ Total: $

Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)

Supplier Notes: _____

☐ No bid

☐ Additional notes *(Attach separate sheet)*

93 **Miscellaneous Services**

94 Cost to Spot Treat Ants
(Response required)

Quantity: 1 UOM: EA Price: $ Total: $

Item Notes: This services will be as needed

Supplier Notes: _____

☐ No bid

☐ Additional notes *(Attach separate sheet)*

95 NORMAL HOURLY RATE - Hourly rate for Services during normal business hours 6:00 AM - 5:00 PM Monday - Friday. Pricing specified by the proposer shall include all such direct and indirect overhead costs such as transportation, fuel, labor cost, etc. Normal response time shall be within one business day after service call has been placed by the District.
(Response required)

Quantity: 1 UOM: HOURLY RATE Price: $ Total: $

Supplier Notes: _____

☐ No bid

☐ Alternate specification *(Attach separate sheet)*

☐ Additional notes *(Attach separate sheet)*

96 **Qualifications**

Item Attributes

1. Competence and Qualifications

Indicate the basis of demonstrated competence and qualifications to perform the services.

(Required: Maximum 4000 characters allowed)

2. Experience

Specify the length of time the company has been in practice.

(Required: Maximum 1000 characters allowed)

3. Areas of Expertise

- ☐ Turf management (Mow, Edge, Trim, Blow)
- ☐ Shrub and Bed Care (shrub trimming, weed control)
- ☐ Tree Care (ornamental tree pruning)
- ☐ Treat weeds in concreate asphalt
- ☐ Other (Provide description in line below)

(Required: Check all that apply)

4. Other:

Specify other area(s) of practice.

(Required: Maximum 1000 characters allowed)

5. Additional Information/Comments

Provide any additional information, identify any special knowledge, and/or skills provided by your company that may be related and/or are beneficial to the District for the services requested, that have not already been included.

(Required: Maximum 4000 characters allowed)

97 Equipment Inventory List

Item Notes: **If you have more than 5 items on your Equipment Inventory List, upload a list to the Response Attachments tab.**

Item Attributes

1. Equipment # 1 Type

(Required: Maximum 1000 characters allowed)

2. Equipment # 1 Quantity

(Required: Numbers only)

3. Equipment # 1 Brand, Model Number, and Manufacture Year

(Required: Maximum 1000 characters allowed)

4. Equipment # 1 Size

(Required: Maximum 1000 characters allowed)

5. Equipment # 1 Fuel Type

(Required: Maximum 1000 characters allowed)

6. Equipment # 1 Equipment Condition

(Required: Maximum 1000 characters allowed)

7. Equipment # 2 Type

(Required: Maximum 1000 characters allowed)

8. Equipment # 2 Quantity

(Required: Numbers only)

9. Equipment # 2 Brand, Model Number, and Manufacture Year

(Required: Maximum 1000 characters allowed)

10. Equipment # 2 Size

(Required: Maximum 1000 characters allowed)

11. Equipment # 2 Fuel Type

(Required: Maximum 1000 characters allowed)

12. Equipment # 2 Equipment Condition

(Required: Maximum 1000 characters allowed)

13. Equipment # 3 Type

(Required: Maximum 1000 characters allowed)

14. Equipment # 3 Quantity

(Required: Numbers only)

15. Equipment # 3 Brand, Model Number, and Manufacture Year

(Required: Maximum 1000 characters allowed)

16. Equipment # 3 Size

(Required: Maximum 1000 characters allowed)

17. Equipment # 3 Fuel Type

(Required: Maximum 1000 characters allowed)

18. Equipment # 3 Equipment Condition

(Required: Maximum 1000 characters allowed)

19. Equipment # 4 Type

(Required: Maximum 1000 characters allowed)

20. Equipment # 4 Quantity

(Required: Numbers only)

21. Equipment # 4 Brand, Model Number, and Manufacture Year

(Required: Maximum 1000 characters allowed)

22. Equipment # 4 Size

(Required: Maximum 1000 characters allowed)

23. Equipment # 4 Fuel Type

(Required: Maximum 1000 characters allowed)

24. Equipment # 4 Equipment Condition

(Required: Maximum 1000 characters allowed)

25. Equipment # 5 Type

(Required: Maximum 1000 characters allowed)

26. Equipment # 5 Quantity

(Required: Numbers only)

27. Equipment # 5 Brand, Model Number, and Manufacture Year

(Required: Maximum 1000 characters allowed)

28. Equipment # 5 Size

(Required: Maximum 1000 characters allowed)

29. Equipment # 5 Fuel Type

(Required: Maximum 1000 characters allowed)

30. Equipment # 5 Equipment Condition

(Required: Maximum 1000 characters allowed)

98 Staff Experience

List the employees who will service this contract.

Item Notes: **If you have more than 5 employees, upload your list on the Response Attachments Tab.**

Item Attributes

1. Employee # 1 Name

(Required: Maximum 1000 characters allowed)

2. Employee # 1 Title

(Required: Maximum 1000 characters allowed)

3. Employee # 1 years with company

(Required: Numbers only)

4. Employees # 1 years in the industry

(Required: Numbers only)

5. Employee # 2 Name

(Required: Maximum 1000 characters allowed)

6. Employee # 2 Title

(Required: Maximum 1000 characters allowed)

7. Employee # 2 years with company

(Required: Numbers only)

8. Employees # 2 years in the industry

(Required: Numbers only)

9. Employee # 3 Name

(Required: Maximum 1000 characters allowed)

10. Employee # 3 Title

(Required: Maximum 1000 characters allowed)

11. Employee # 3 years with company

(Required: Numbers only)

12. Employees # 3 years in the industry

(Required: Numbers only)

13. Employee # 4 Name

(Required: Maximum 1000 characters allowed)

14. Employee # 4 Title

(Required: Maximum 1000 characters allowed)

15. Employee # 4 years with company

(Required: Numbers only)

16. Employees # 4 years in the industry

(Required: Numbers only)

17. Employee # 5 Name

(Required: Maximum 1000 characters allowed)

18. Employee # 5 Title

(Required: Maximum 1000 characters allowed)

19. Employee # 5 years with company

(Required: Numbers only)

20. Employees # 5 years in the industry

(Required: Numbers only)

Supplier Information

Company Name:

Contact Name:

Address:

Phone:

Fax:

Email:

Supplier Notes

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

Print Name

Signature

ALEJANDRA GONZALEZ
Director of Purchasing Services

ADDENDUM #1

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

September 1, 2022

RE: Request for Proposals 2023-1020 Grounds Maintenance Services for Various Locations

Please note the following changes for the referenced project.

- Section 10.6 of Specifications and Scope of work has been modified as follows:

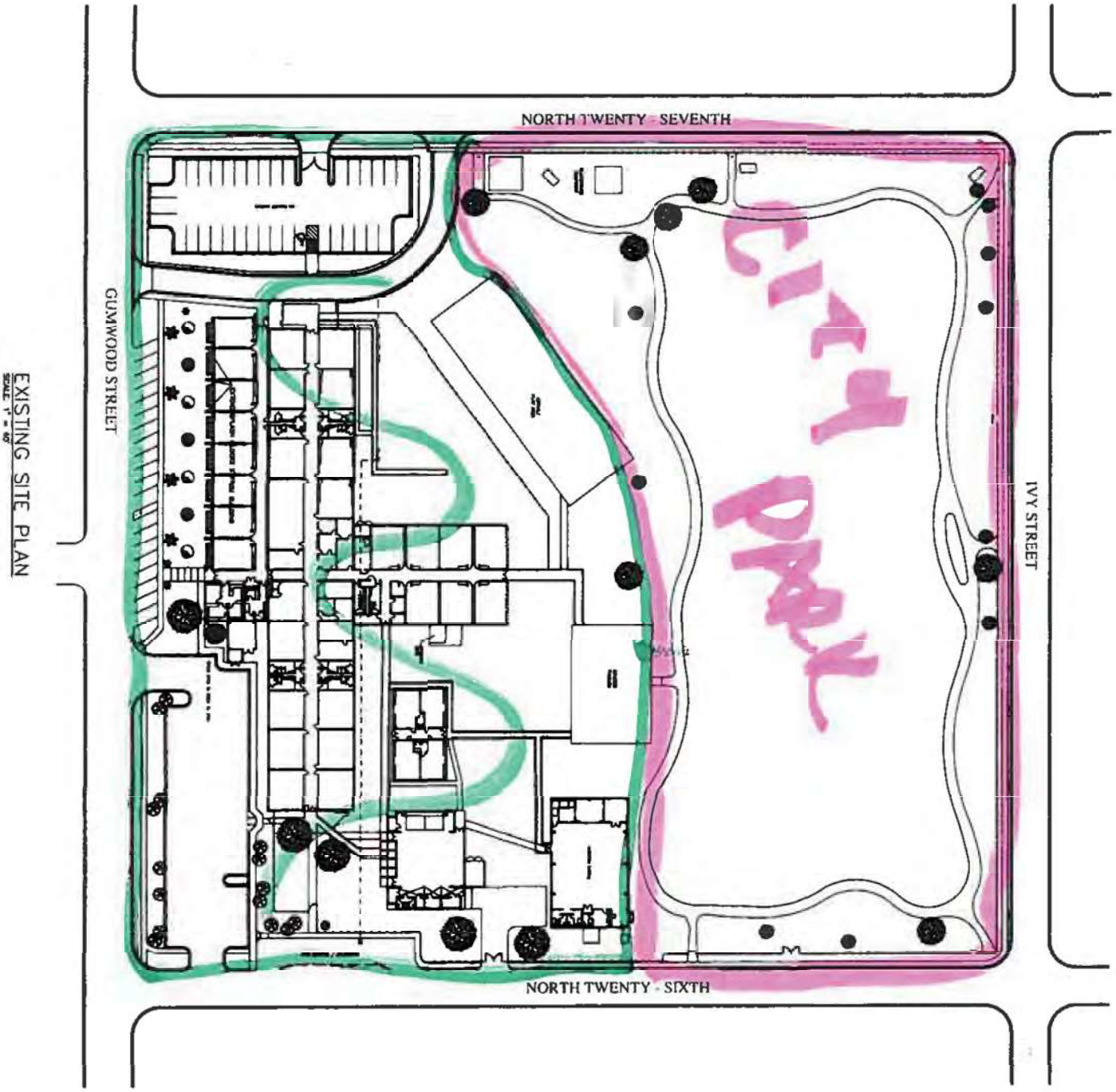
  Proposer shall submit a list of equipment intended for use in the performance of services under this contract. ~~Line Item # 93~~

- Additional location has been added to the list of locations. Refer to revised List of Locations under the attachments tab.
- Line items #23, #46, #69, and #92 have been added.
- Site Plans for all locations have been attached. (See Attachments Tab)

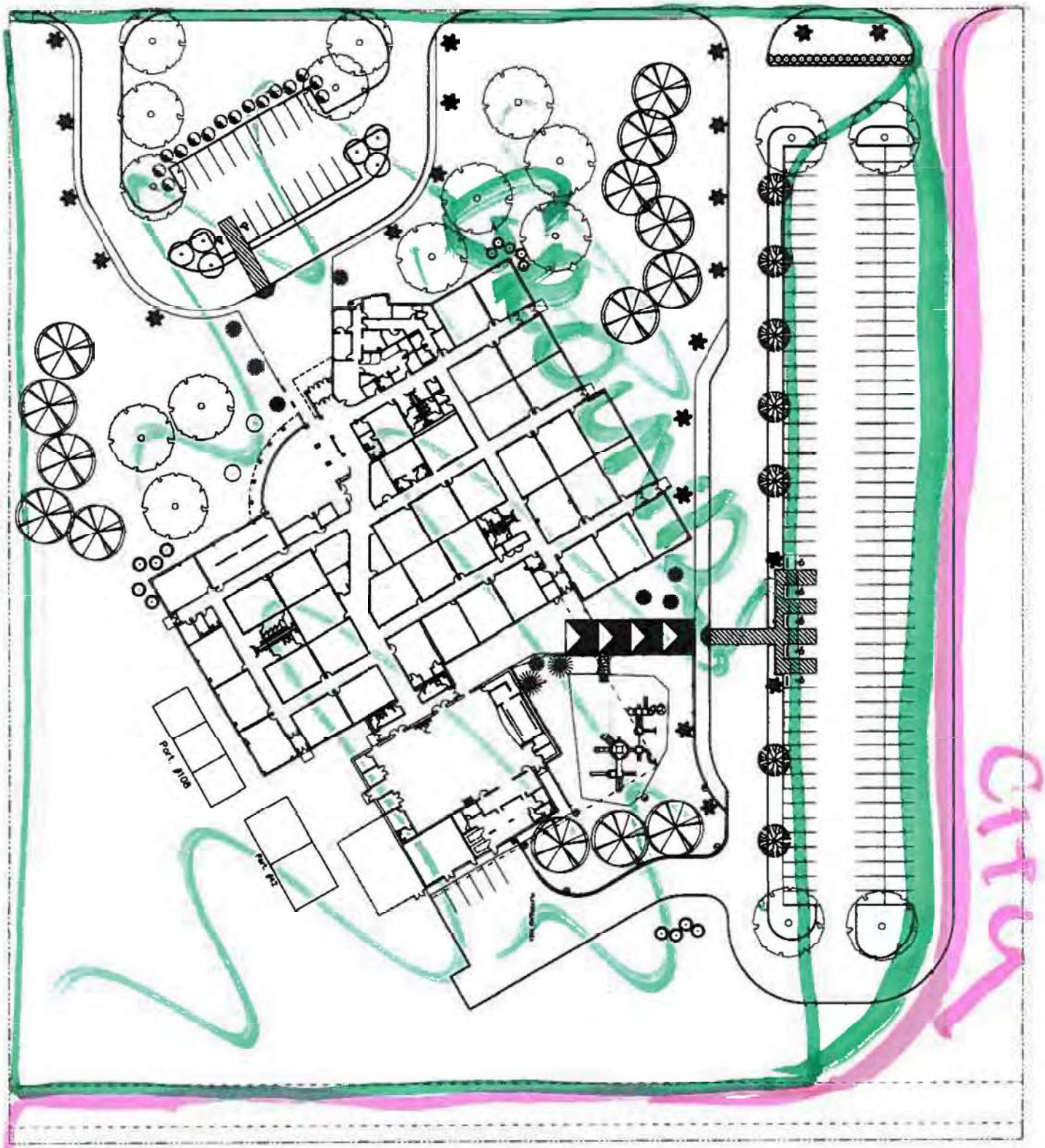
NOTE: Vendors are responsible for viewing Ionwave regularly to ensure that no addenda or additional information have been issued for the solicitation.

RFP 2023-1020 Grounds Maintenance Services for Various Locations Revised

	Location	Address
1	Francisca Alvarez Elementary	2606 Gumwood Street
2	Dr. Carlos Castañeda Elementary	4100 N. 34th St
3	Jose De Escandon Elementary	2901 Colbath Street
4	Victor Fields Elementary	500 West Dallas Avenue
5	Reynaldo G. Garza Elementary	6300 North 29th Street
6	Leonelo H. Gonzalez Elementary	201 East Martin Street
7	Lucile McKee Hendricks Elementary	3900 Goldcrest Street
8	Sam Houston Elementary	3221 Olga Street
9	Andrew Jackson Elementary	501 Harvey Street
10	Christa McAuliffe Elementary	3000 Daffodil Street
11	Ben Milam Elementary	3800 North Main Street
12	Dr. Pablo Perez Elementary	7801 North Main Street
13	Sam Rayburn Elementary	7000 North Main Street
14	Theodore Roosevelt Elementary	4801 South 26th Street
15	Blanca E. Sanchez Elementary	2901 Incarnate Word Street
16	Juan Seguin Elementary	2200 North 29th Street
17	Thigpen-Zavala Elementary	2500 Galveston Avenue
18	Woodrow Wilson Elementary	1200 Hackberry Street
19	Crockett Building	2112 N. Main St.
20	Jose Antonio Navarro Building	2100 Hackberry St.
21	Instructional and Guidance Center	2604 Galveston
22	Agricultural Learning Center	7821 N. 29th St.

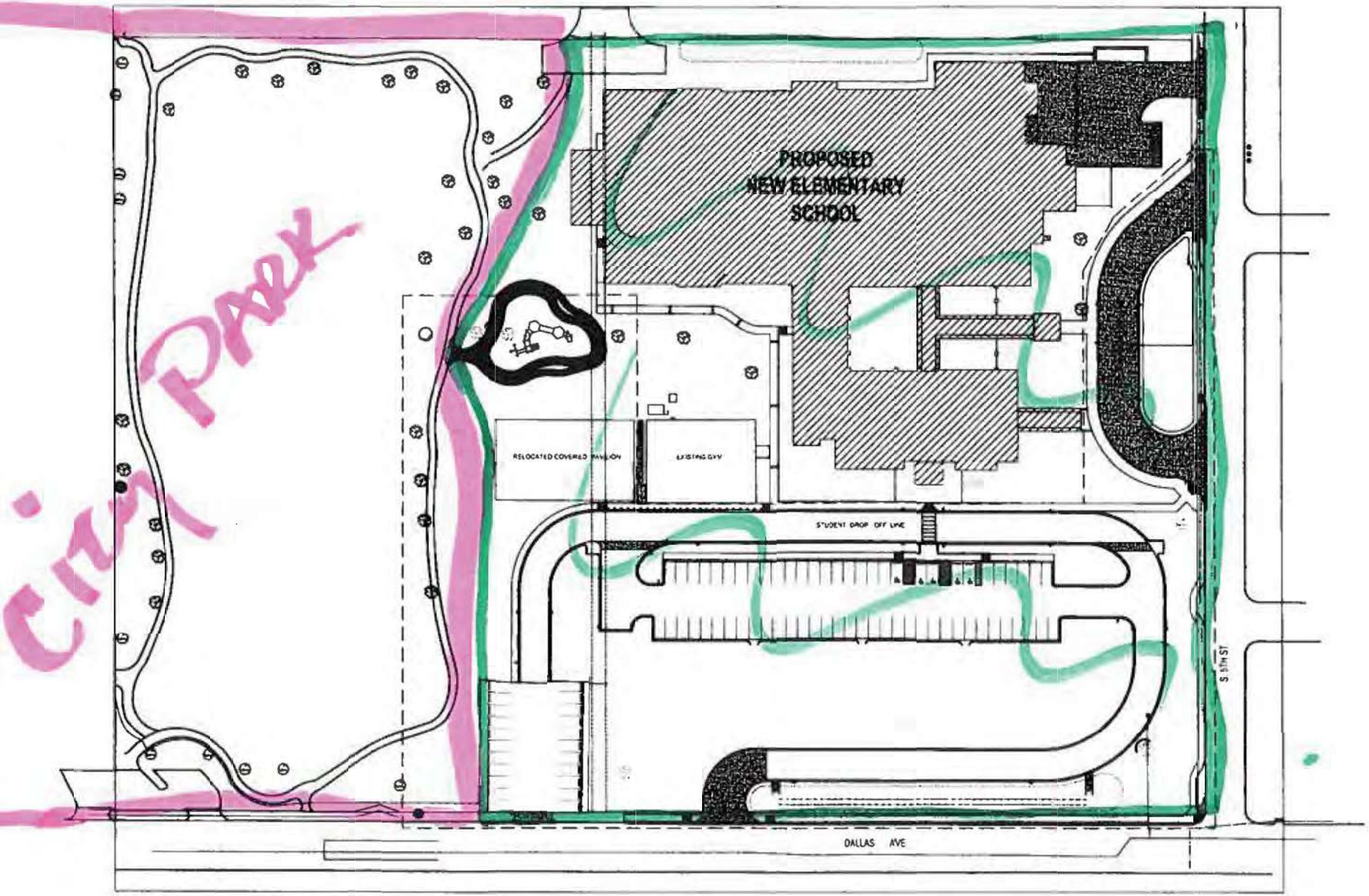


EXISTING SITE PLAN
SCALE: 1" = 40'


SITE PLAN
SCALE: 1" = 30'
Port. #108
Port. #12

CITY PARK
(29 TH. STREET) ROOTH ROAD
SONORA AVE.
COBALTH ROAD
ESCANDON ELEMENTARY SCHOOL (1978)

FIELDS ELEMENTARY (2001, 2007)



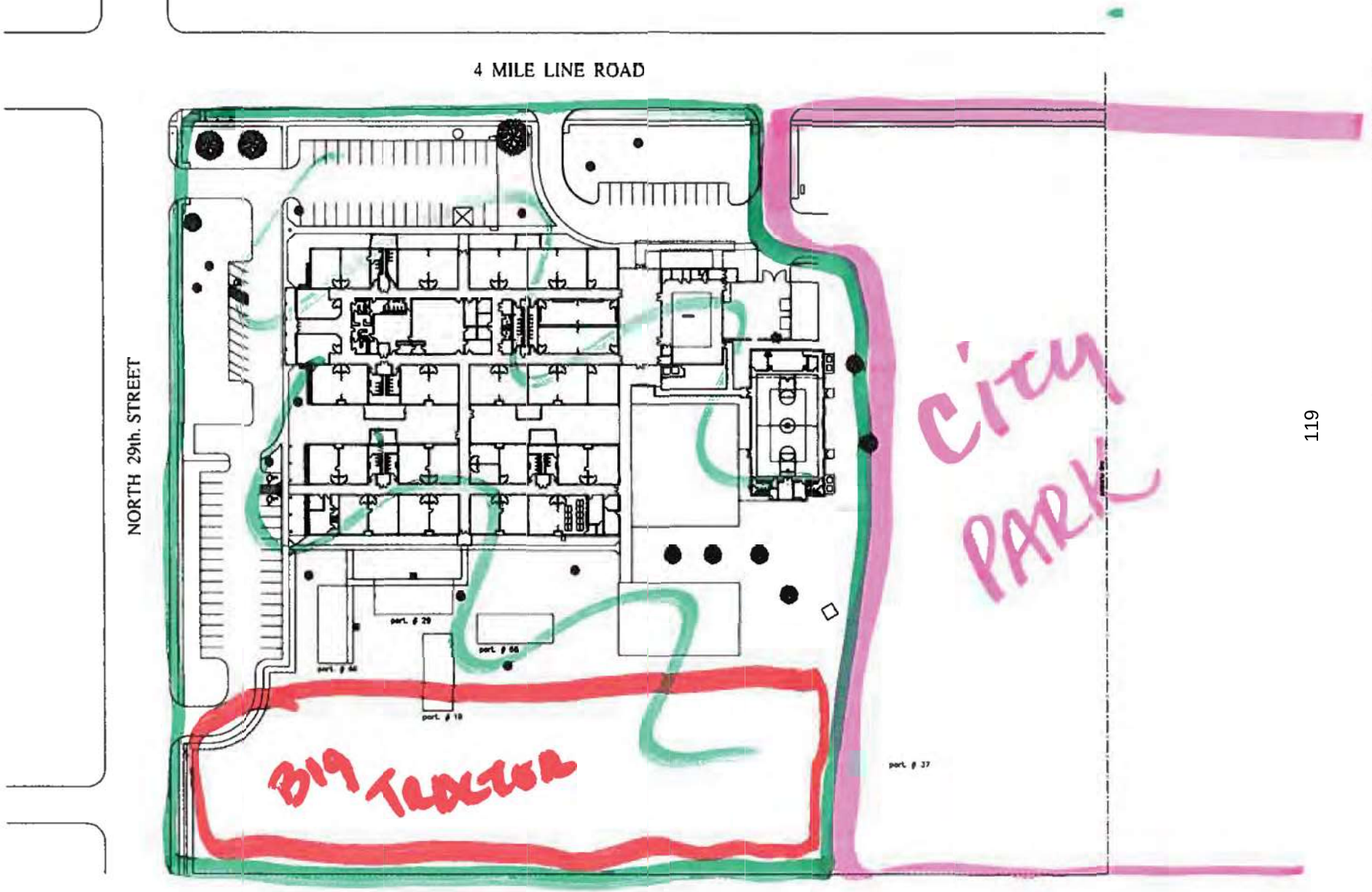
EXISTING SITE PLAN
SCALE: 1" = 40'

REVISIONS

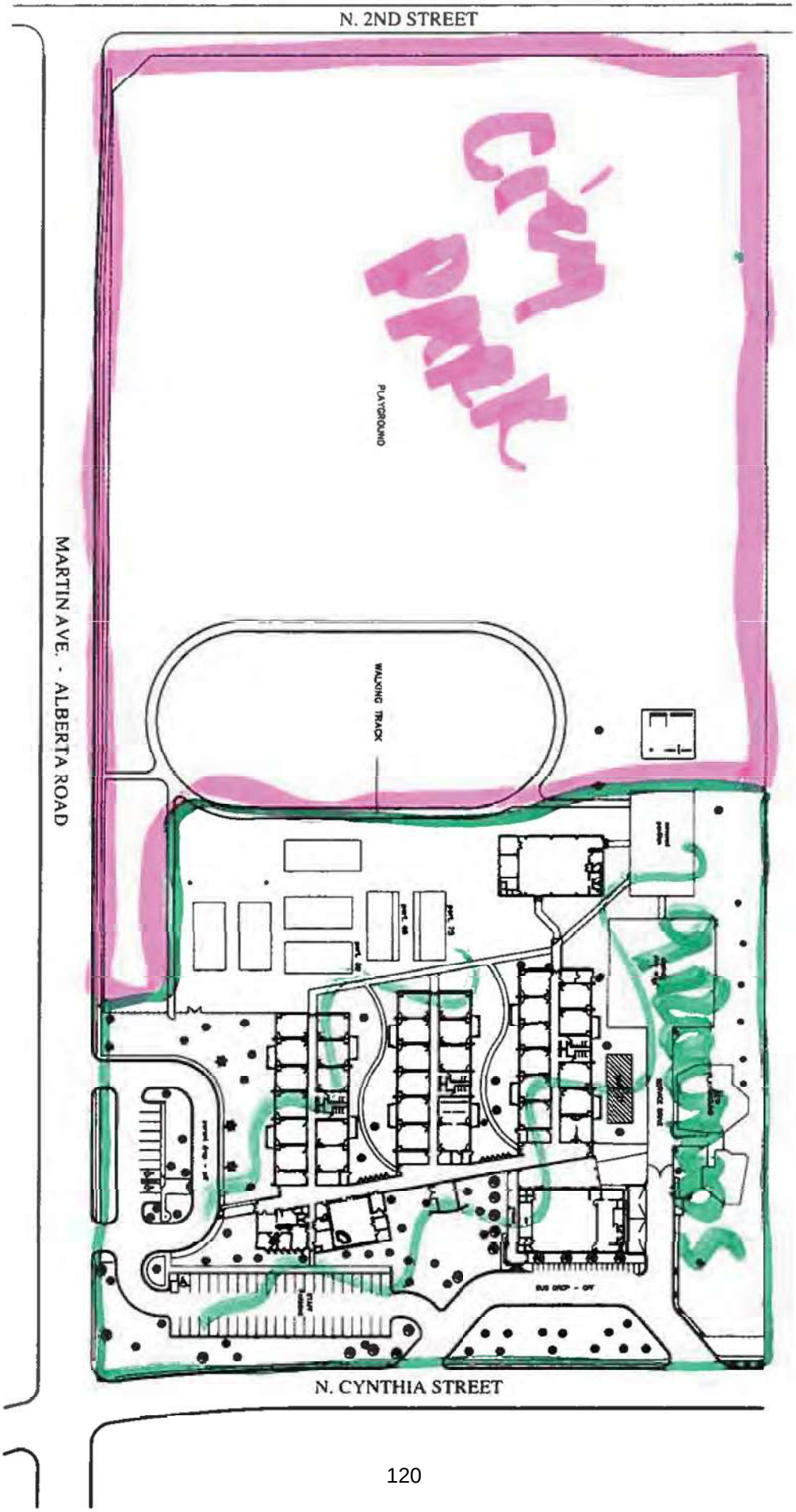
PROJECT NAME
FIELDS ELEMENTARY SCHOOL

SHEET NO.
A

REYNALDO G. GARZA ELEMENTARY (1983, 1990, 2000)

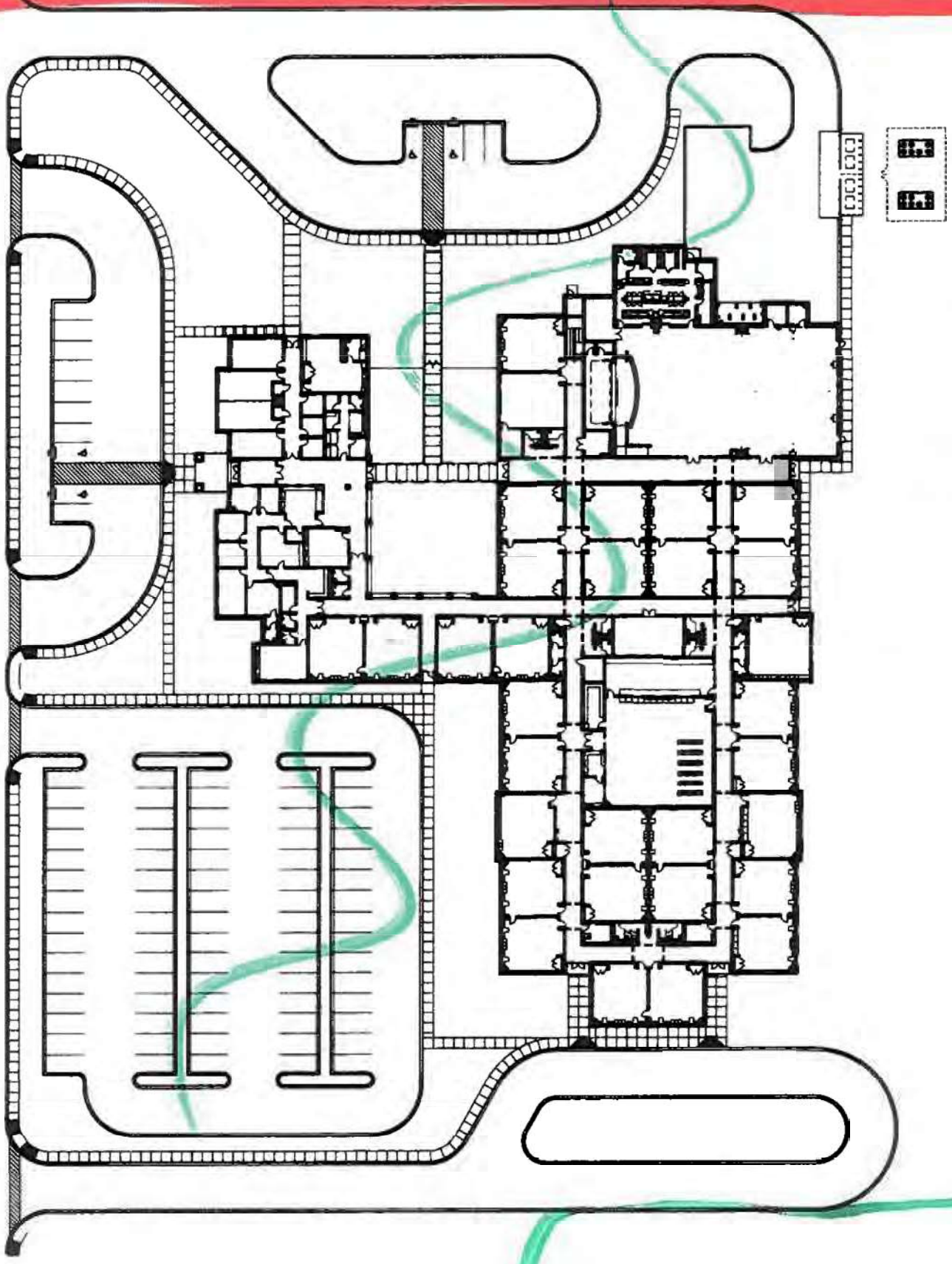


EXISTING SITE PLAN
SCALE : 1" = 40'



EXISTING SITE PLAN
SCALE: 1" = 50'

BIG TRACTOR

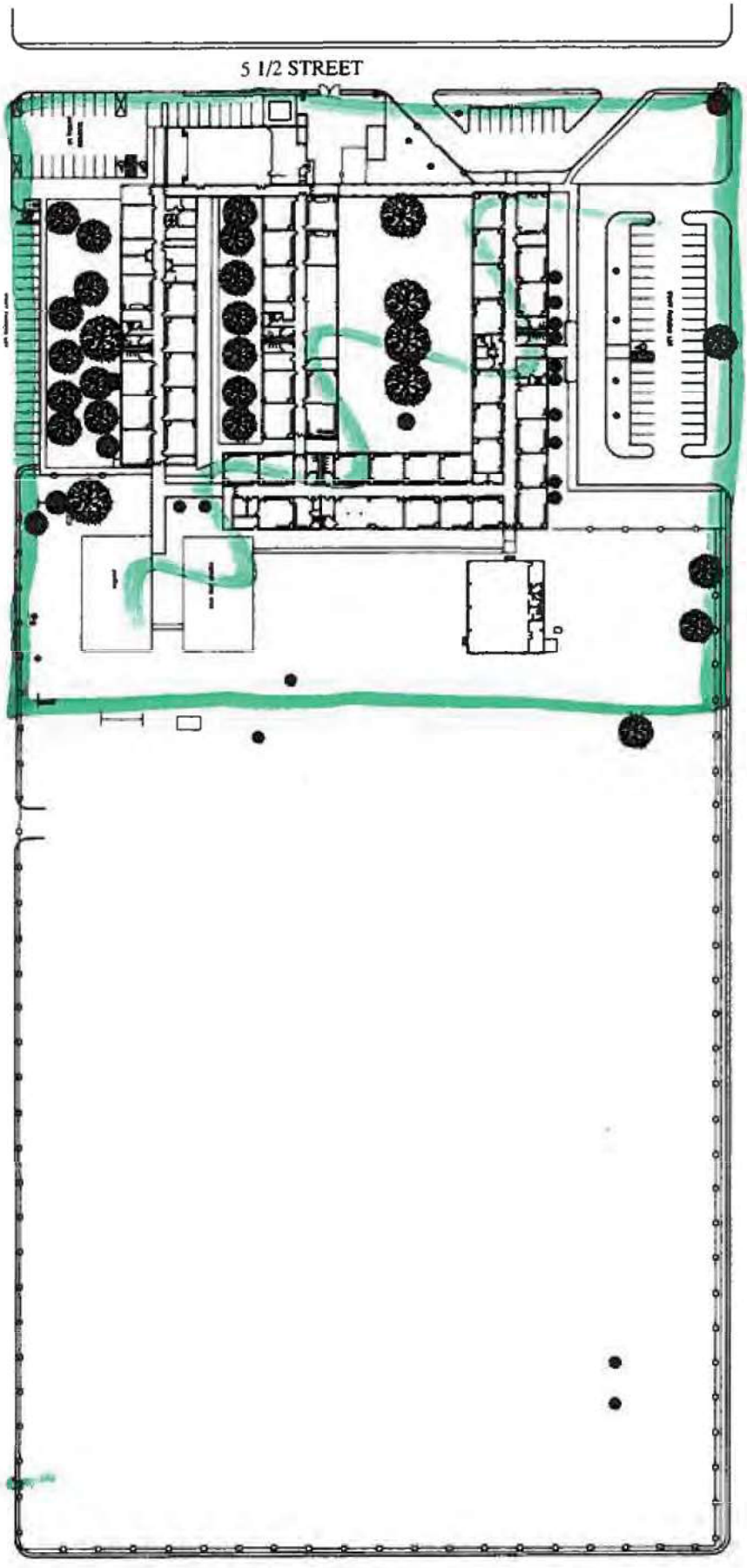


HENDRICKS ELEMENTARY SCHOOL (2008)

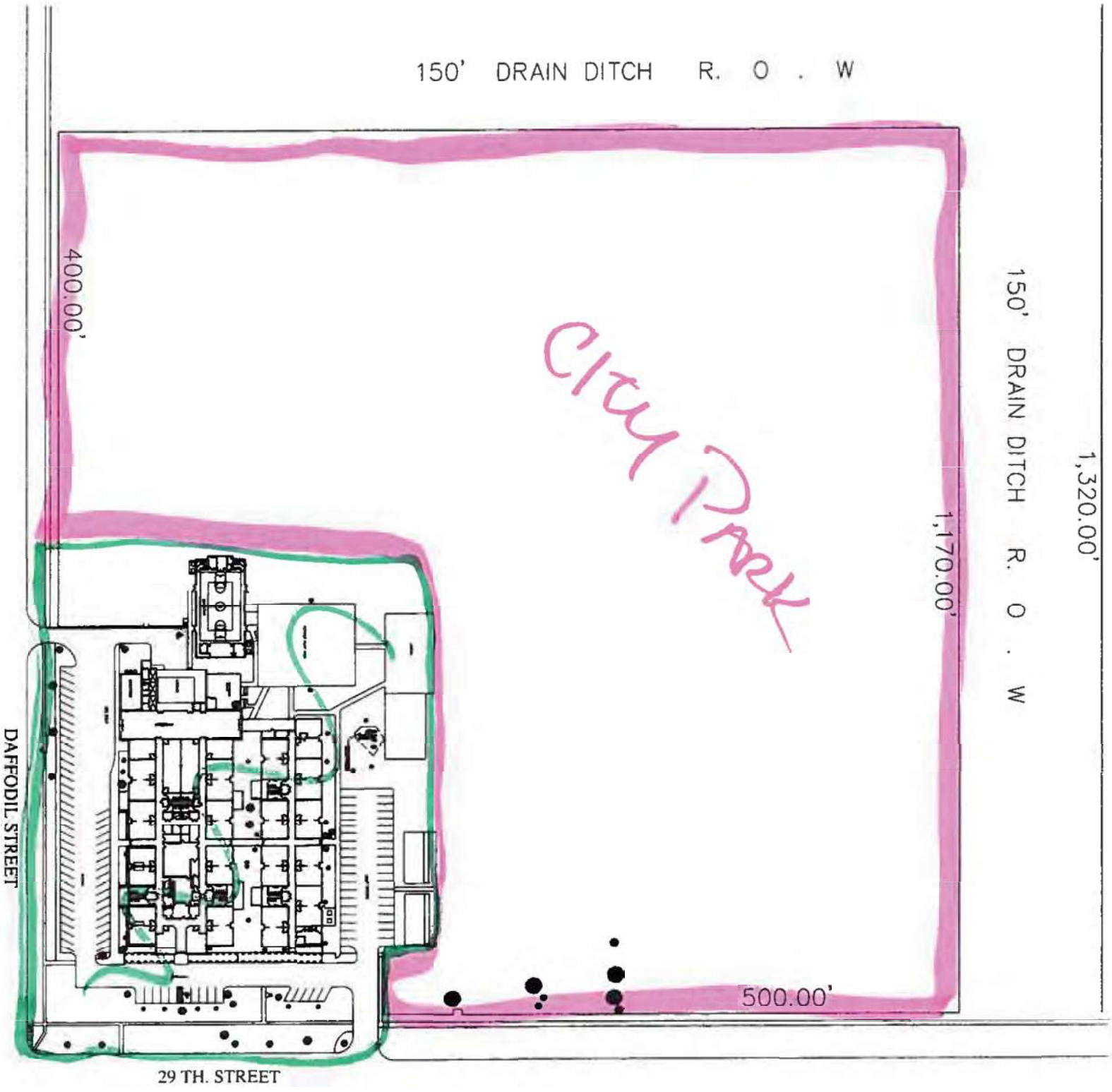
INCLUDE Big empty LOT

PROJECT NAME

STREET NAME
EXISTING SITE PLAN
SCALE: 1" = 30'

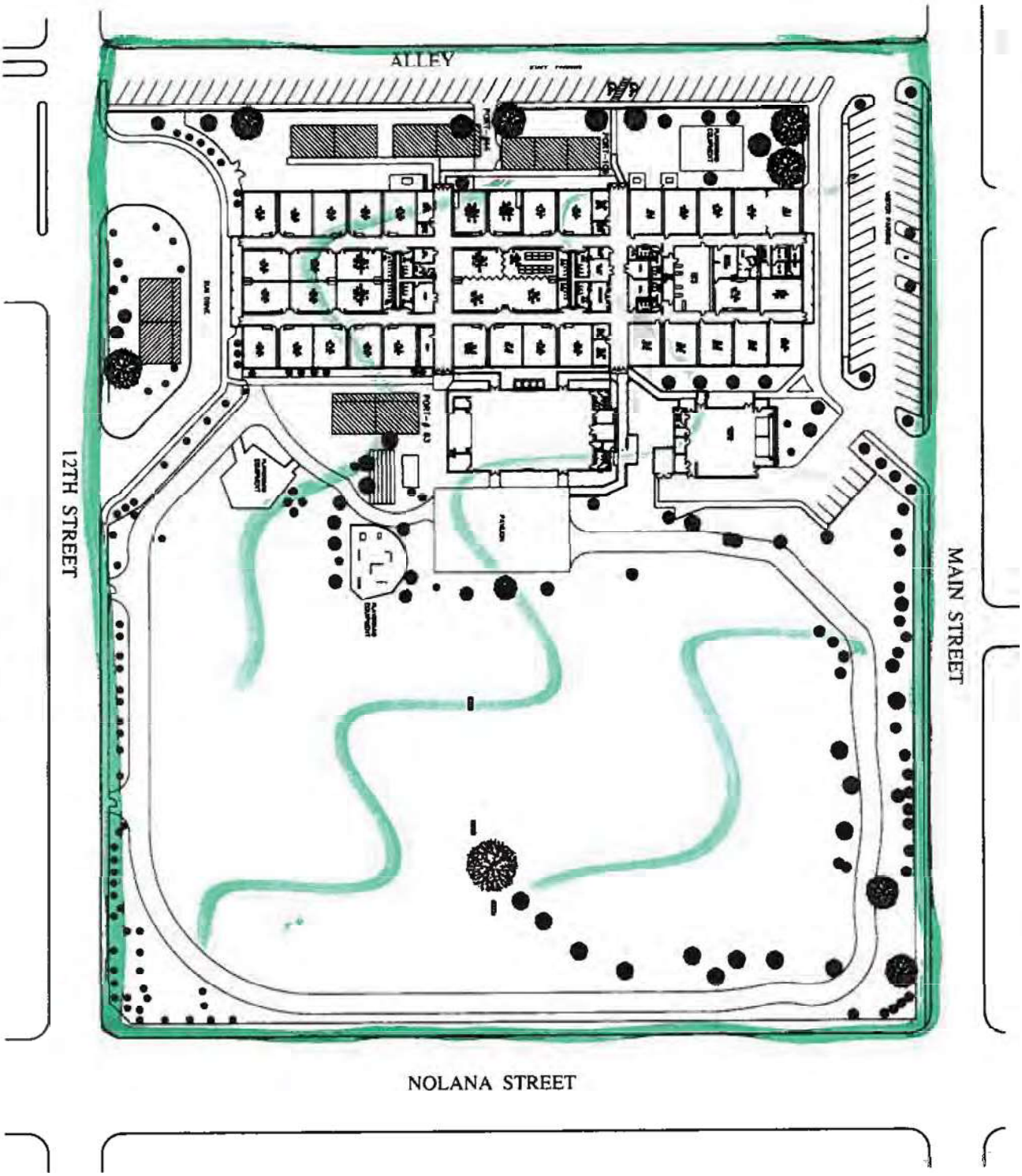


EXISTING SITE PLAN
SCALE 1" = 50'



EXISTING SITE PLAN

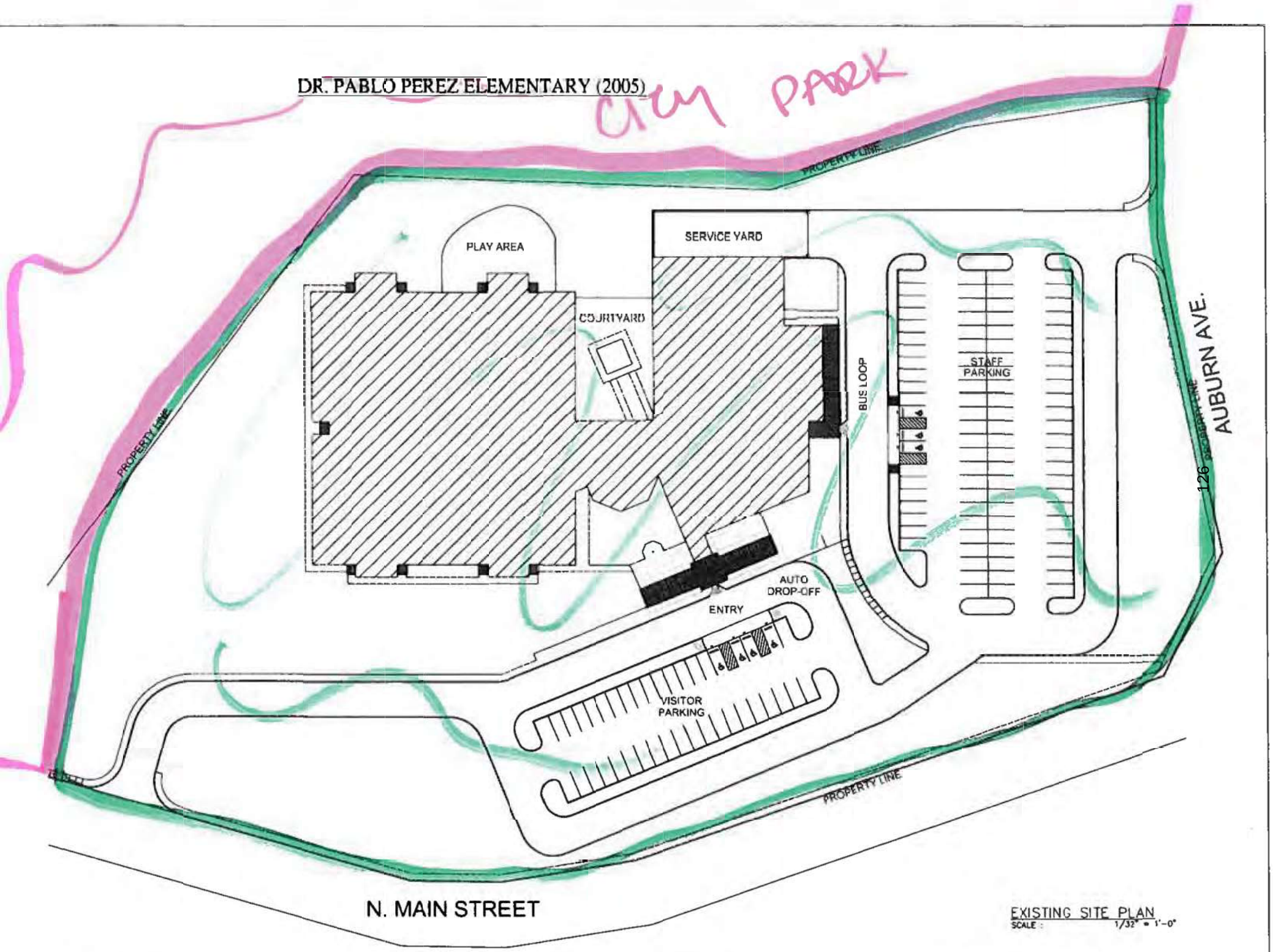
SCALE : 1" = 60'



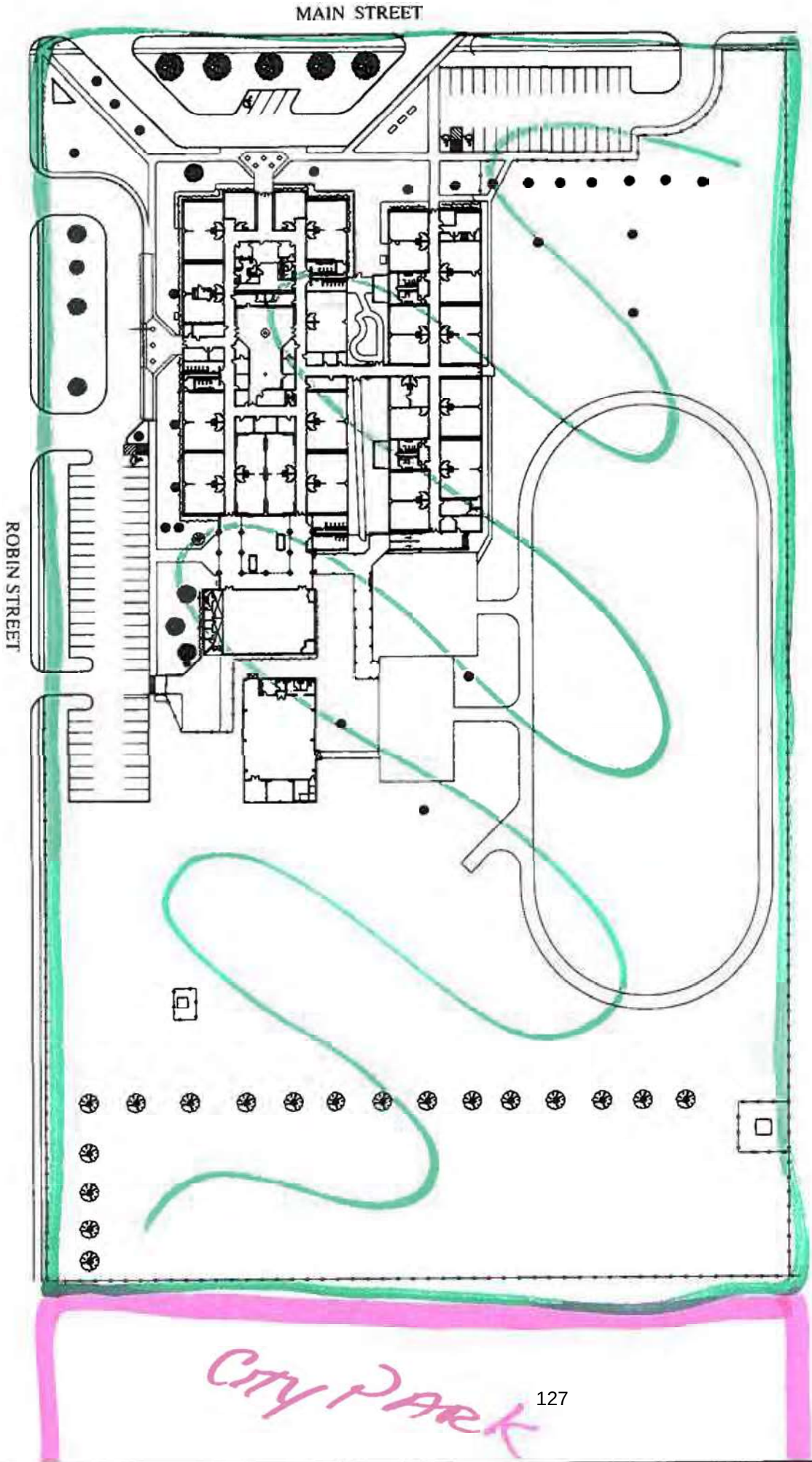
EXISTING SITE PLAN
SCALE 1" = 40'

PROJECT NAME
BEN MILAM ELEMENTARY SCHOOL

DR. PABLO PEREZ ELEMENTARY (2005)



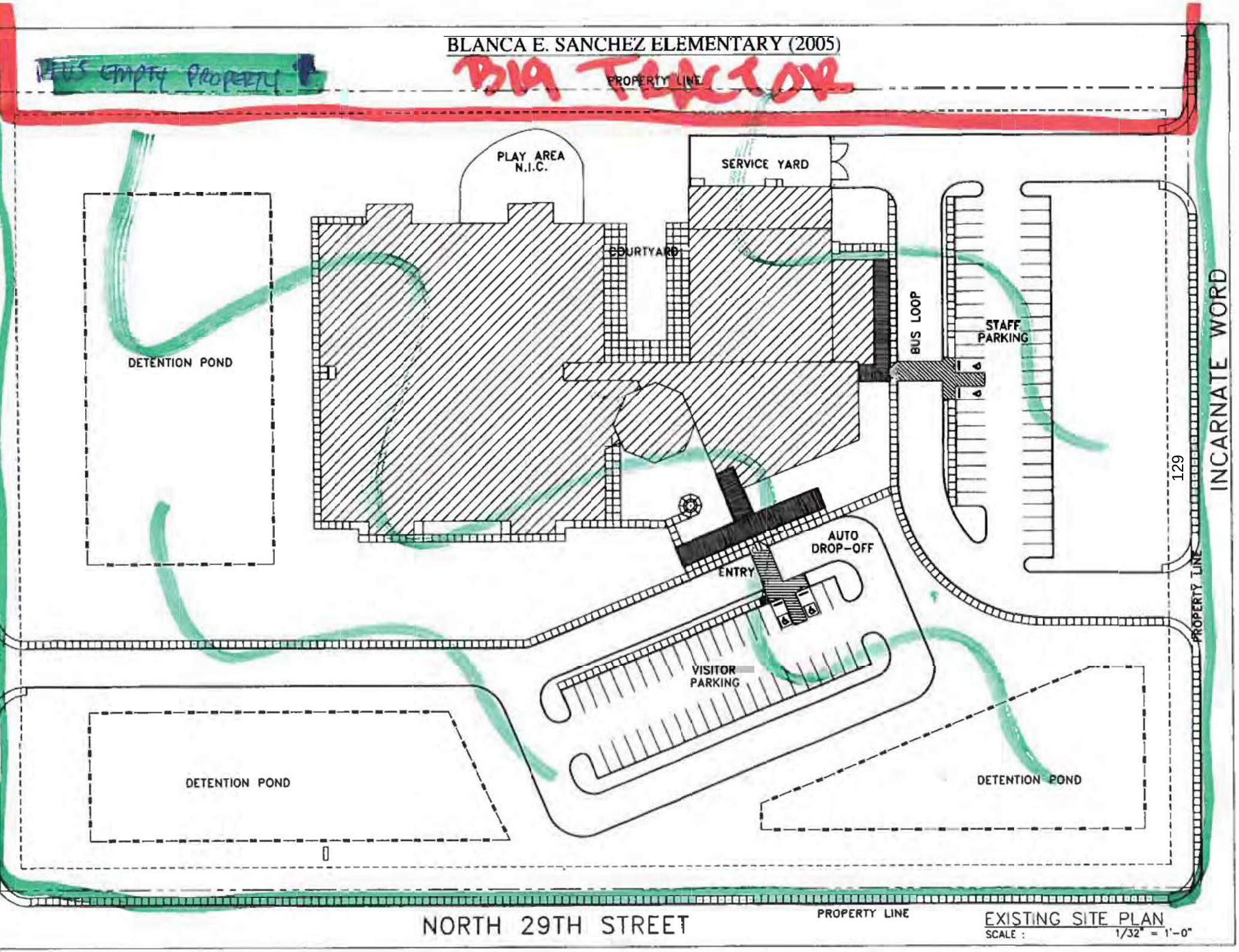
EXISTING SITE PLAN
SCALE : 1/32" = 1'-0"

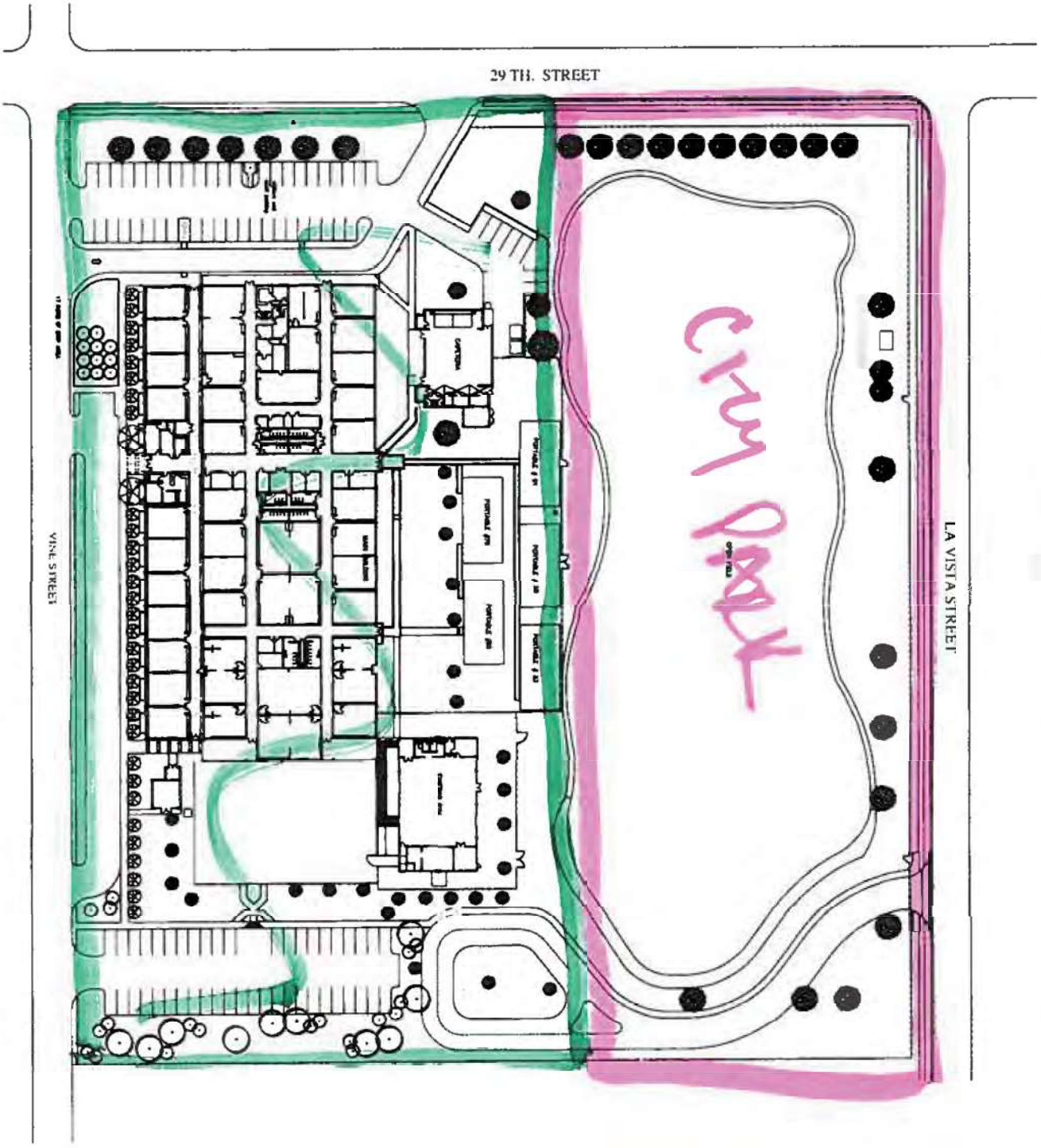


RAYBURN ELEMENTARY (1979/1990/2001)

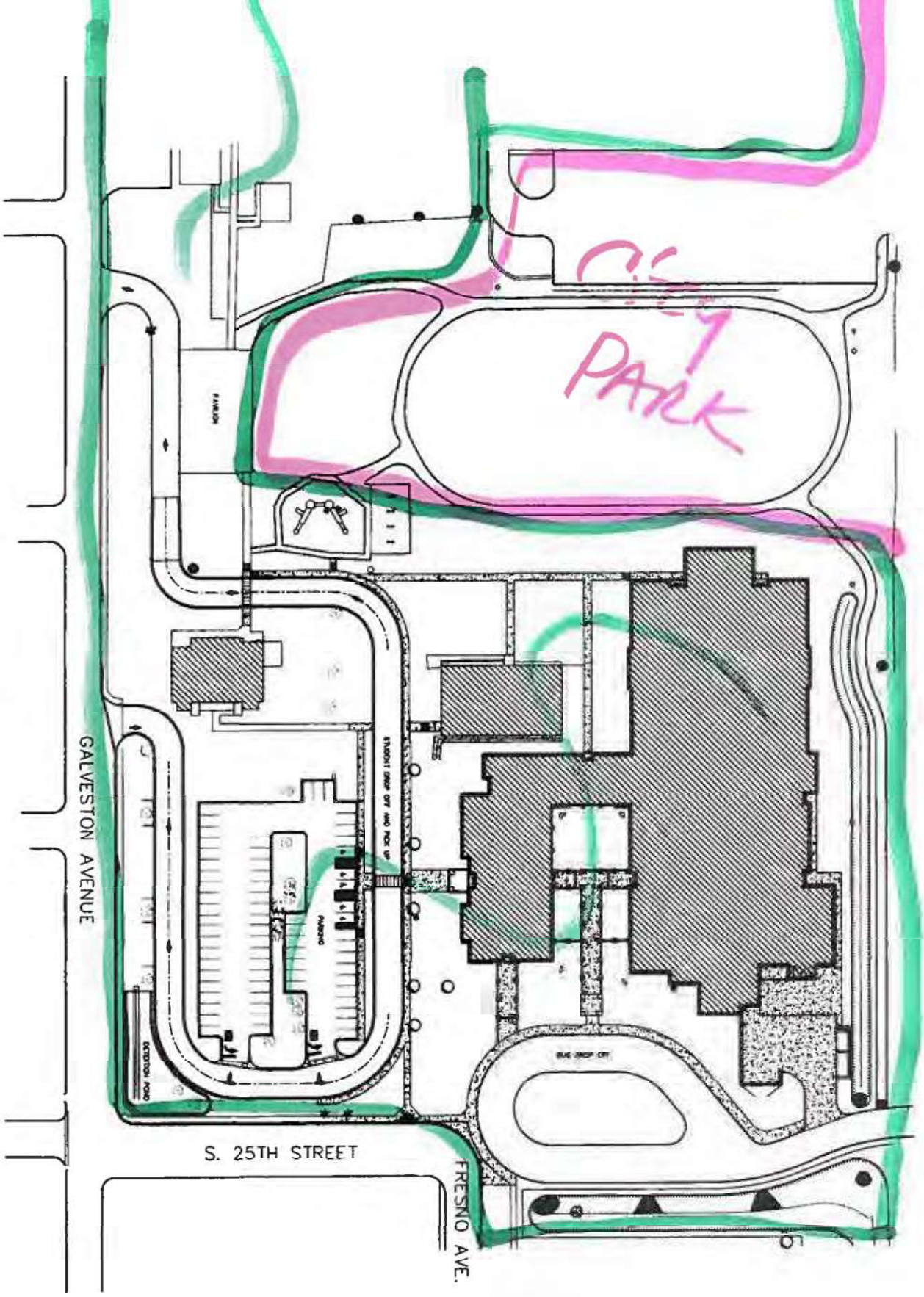
EXISTING SITE PLAN
SCALE 1" = 40'

PROJECT NAME
ROOSEVELT ELEMENTARY SCHOOL

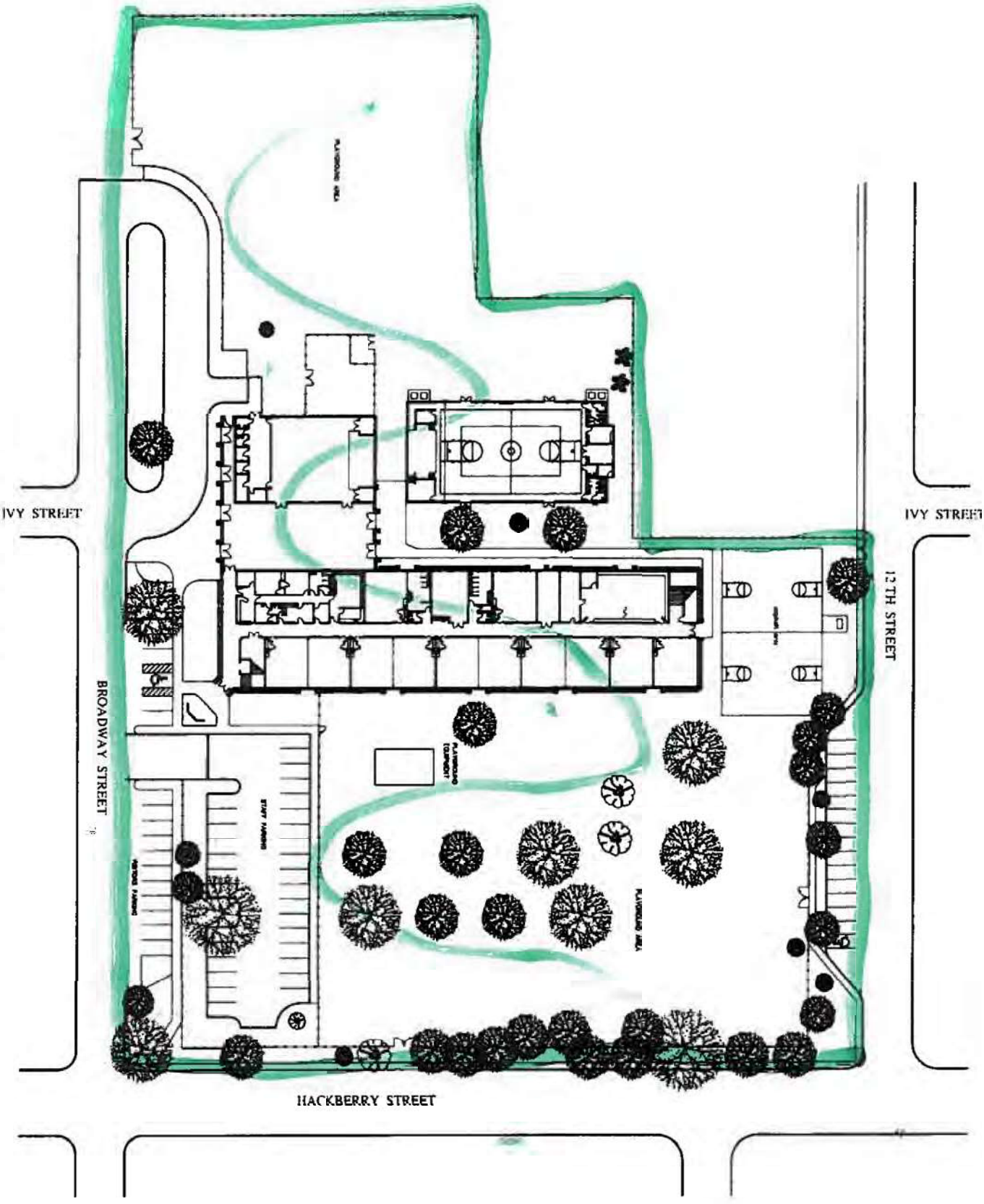

BLANCA E. SANCHEZ ELEMENTARY (2005)
PLUS EMPTY PROPERTY
BIG TRACTOR
PROPERTY LINE
PLAY AREA
N.I.C.
SERVICE YARD
COURTYARD
BUS LOOP
STAFF
PARKING
DETENTION POND
AUTO
DROP-OFF
ENTRY
VISITOR
PARKING
DETENTION POND
DETENTION POND
INCARNATE WORD
PROPERTY LINE
129
NORTH 29TH STREET
PROPERTY LINE
EXISTING SITE PLAN
SCALE : 1/32" = 1'-0"



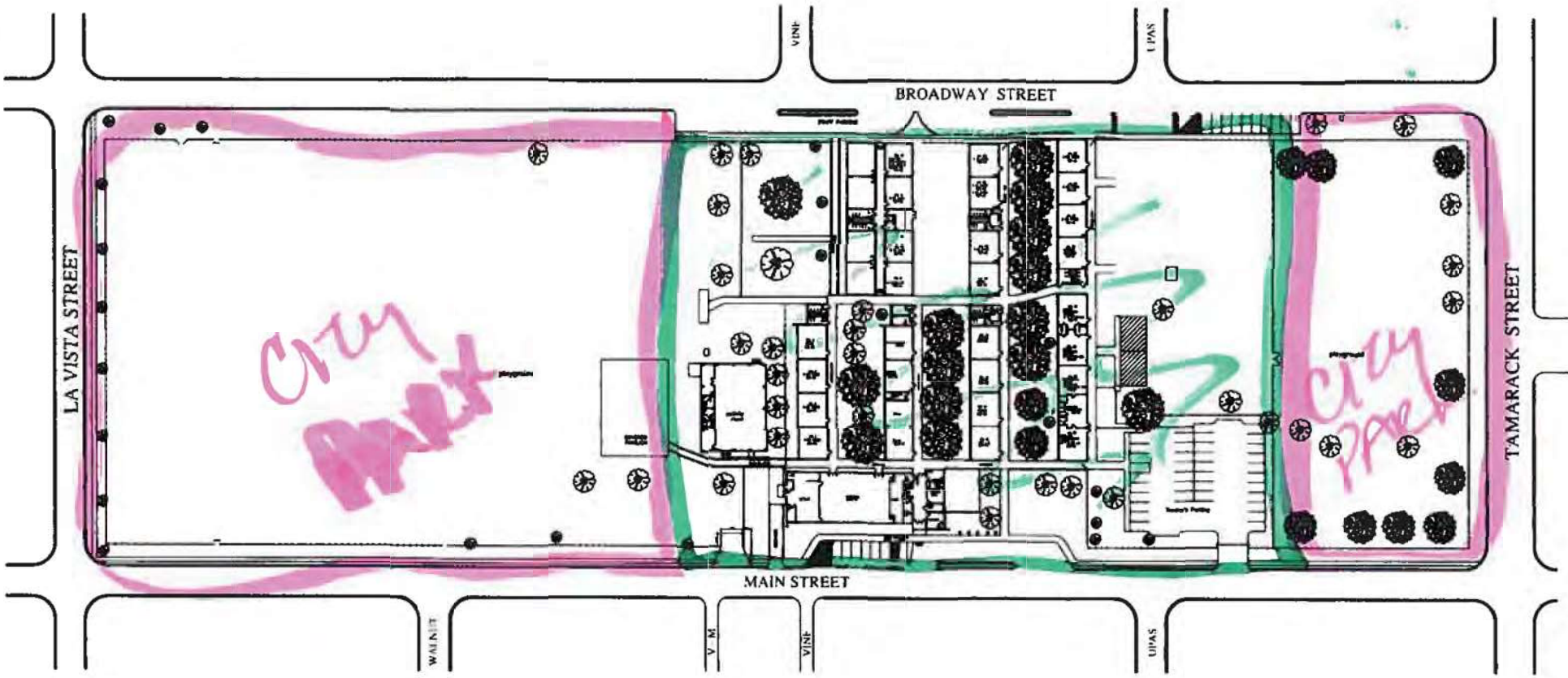
EXISTING SITE PLAN
SCALE: 1" = 40'



EXISTING SITE PLAN
SCALE: 1" = 40'

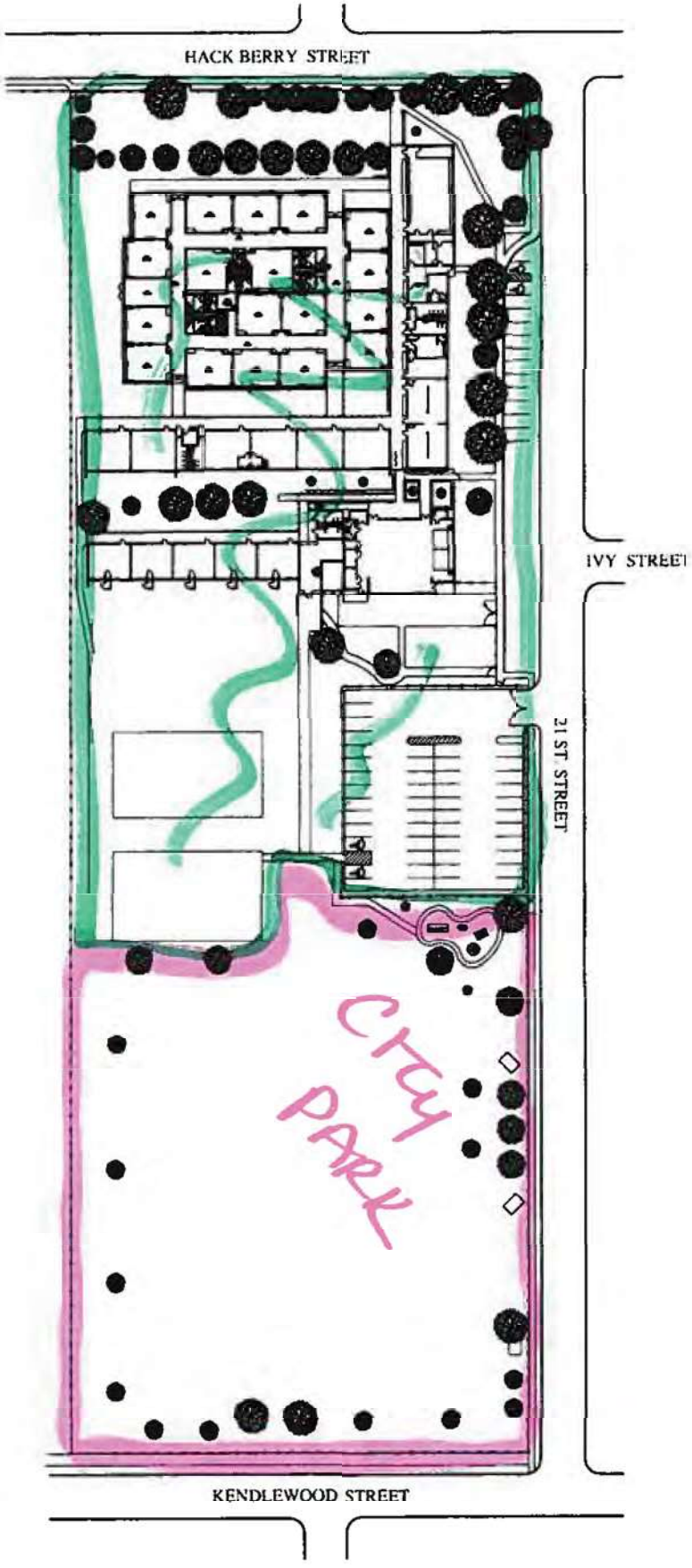

EXISTING SITE PLAN
SCALE 1" = 30'
IVY STREET
IVY STREET
BROADWAY STREET
12TH STREET
HACKBERRY STREET

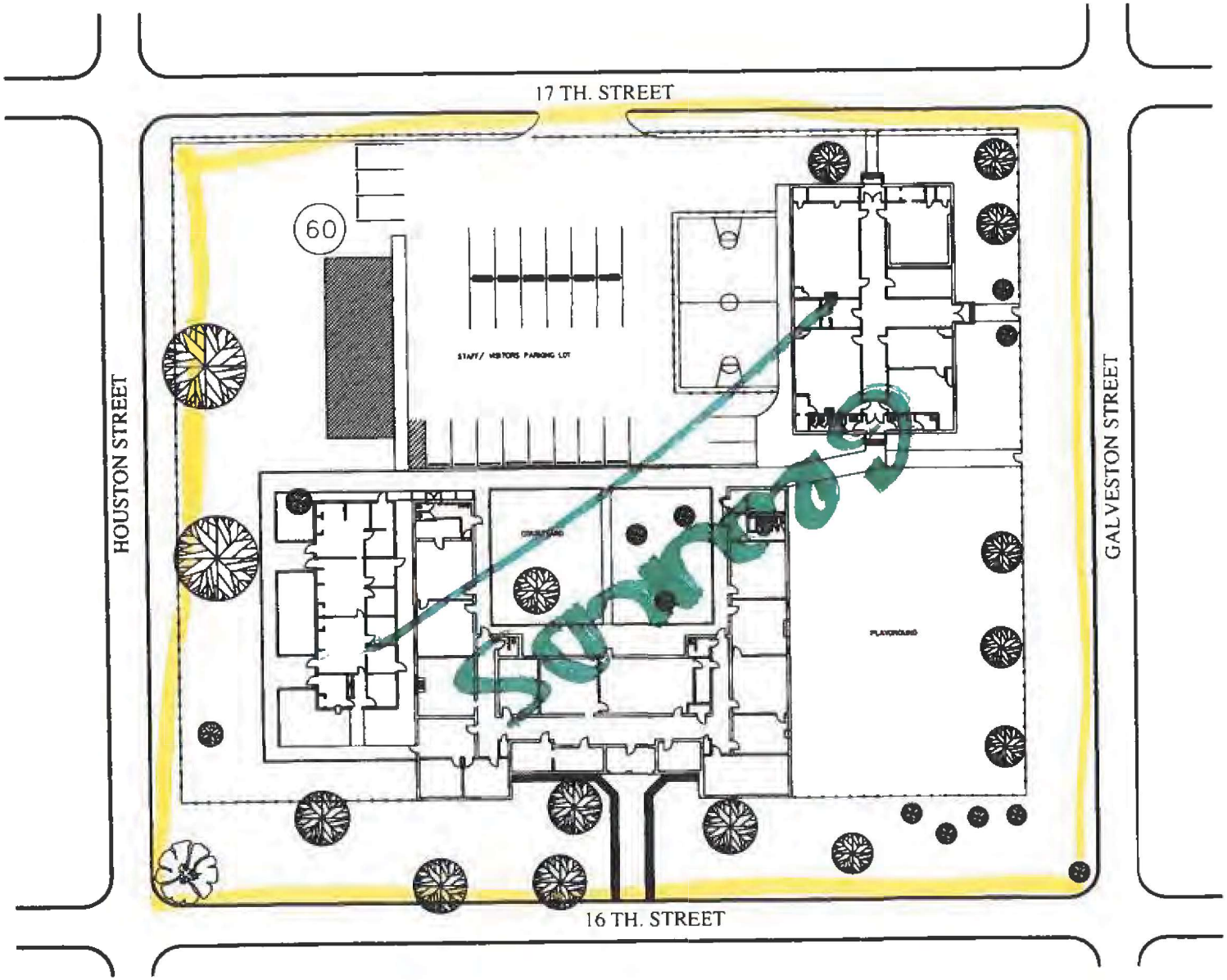
CROCKETT ELEMENTARY SCHOOL (1950, 2001)



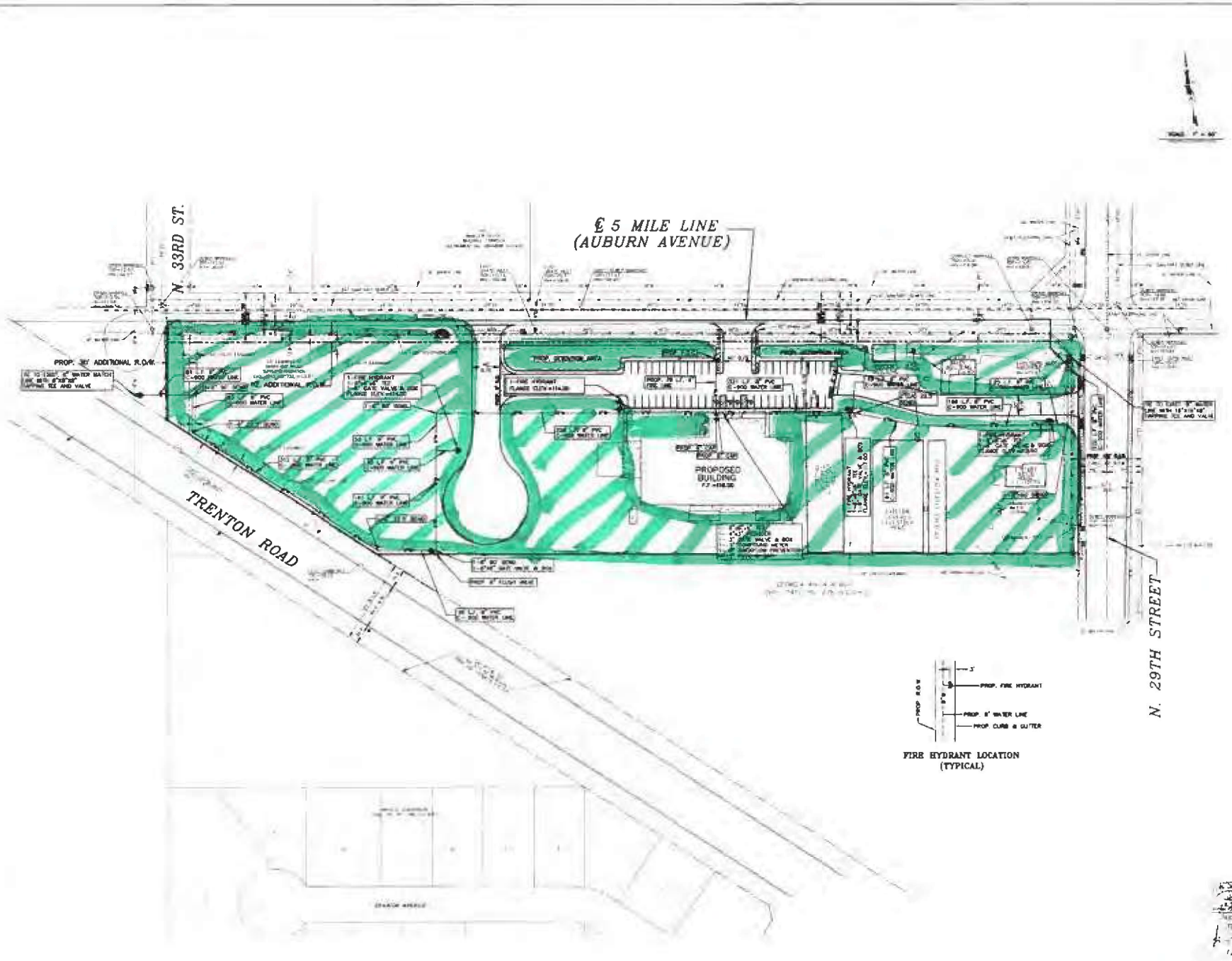
EXISTING SITE PLAN

SCALE: 1" = 60'


HACK BERRY STREET
IVY STREET
21 ST. STREET
CITY PARK
KENDLEWOOD STREET



EXISTING SITE PLAN
SCALE 1" = 20'



WATER DISTRIBUTION LAYOUT

CHANIN

JEH
JAVIER HINOJOSA ENGINEERING
CONSULTING ENGINEERS

MCALLEN ISD AGRICULTURAL LEARNING CENTER
N 29TH ST. & AUBURN AVE.
MCALLEN, TX 78504

KEY PLAN

JOB NO | 70903
DATE 06.19.20
DRAWN BY P.GONZALEZ
CHECKED BY J.H
REVISION

SHEET NAME
WATER DISTRIBUTION LA
DRAWING NO
C6

Exhibit "B" – Vendor's Services, Products and Fees Pursuant to

Request for Proposal No. 2023-1020

2023-1020 Addendum 1
Maldonado Nursery & Landscaping, Inc.
Supplier Response

Event Information

Number: 2023-1020 Addendum 1
Title: Grounds Maintenance Services for Various Locations
Type: Request for Proposal
Issue Date: 8/24/2022
Deadline: 9/7/2022 10:00 AM (CT)
Notes: McAllen Independent School District (the "District") invites your submittal on the above referenced project.

Interested respondents may obtain details through IonWave. The District prefers and encourages respondents to submit their proposals electronically, through IonWave.

Submittals received after this deadline will be void and unacceptable. Facsimile transmittals and/or emailed submittals will not be accepted.

Any questions regarding this solicitation must be submitted through the "Questions" option located on the Ionwave website, no later than the date and time specified on the solicitation. Questions/clarifications regarding this solicitation will not be answered by phone nor email.

Contact Information

Contact: Graciela Garza
Address: Purchasing Services
Administration Office
2000 N 23rd St
McAllen, TX 78501-6126
Phone: (956) 6574487
Fax: (956) 6574481
Email: ggarza@mcallenisd.net

Maldonado Nursery & Landscaping, Inc. Information

Contact: Jeremy Charo
Address: 16348 Nacogdoches Rd
San Antonio, TX 78247
Phone: (210) 599-1219 x1099
Email: jeremyc@mnlsa.com
Web Address: www.mnlsa.com

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

Jeremy Charo
Signature

jeremyc@mnlsa.com
Email

Submitted at 9/7/2022 09:30:43 AM (CT)

Requested Attachments

Completed W9 Form — Maldonado Nursery 2022 W9.pdf

Please upload your completed W9 form.

Assumed Name Certificate/Fictitious Name Documentation/Disregarded Entity Documentation — *No response*

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

Proof of employee (s) Pesticide Applicator Licenses — Pesticide Applicator License.pdf

Please upload your Proof of employee (s) Pesticide Applicator Licenses.

Completed Conflict of Interest Questionnaire. — CIQ FORM FILLABLE R1.1.2021.pdf

Please upload your completed CIQ.

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

Completed Form 1295 Form or Exemption Statement — Form 1295 Certificate 100953208 (1).pdf

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

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

HUB Certificate — HUB EXP 2022.pdf

Upload your HUB Certificate, if applicable.

Equipment Inventory List — *No response*

If you have more than 5 items on your Equipment Inventory List upload here.

Staff Experience — *No response*

If you have more than 5 employees, upload your list here.

Bid Attributes

1 General Terms and Conditions

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

**This is your electronic signature.

☑ I have read, understand and accept. (I have read, understand and accept.)

2 Specifications and Scope of Work

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

**This is your electronic signature.

☑ I hereby acknowledge. (I hereby acknowledge.)

3 Deviations and Exceptions

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

N/A

4 Form 1295 - Certificate of Interested Parties

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

Access form at:

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

If exempt, attach documentation.

☑ I have read and understand. (I have read and understand.)

5 Delinquent Taxpayers

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

**This is your electronic signature.

I am NOT a delinquent taxpayer to McAllen ISD

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

Maldonado Nursery & Landscaping, Inc.

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

☐ Yes (upload Assumed Name Certificate) (Yes (upload Assumed Name Certificate))

☑ No (No)

8 **Felony Conviction Notification**

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

Select where applicable:

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

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

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

**This is your electronic signature.

B. My company is not owned nor operated by a felon

9 **Felony Conviction Details**

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

N/A

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

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

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

OR

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

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

**This is your electronic signature.

A. None - I hereby agree and certify.

11 **Confidential/Copyrighted Information**

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

**This is your electronic signature.

☑ I have read and agree. (I have read and agree.)

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

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

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

**This is your electronic signature.

A. Principal place of business is in TX

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

Specify principal place of business (City/State).

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

***This is your electronic signature.

N/A

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

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

**This is your electronic signature.

☑ I have read and hereby certify. (I have read and hereby certify.)

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

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

**This is your electronic signature.

☑ I have read and hereby certify. (I have read and hereby certify.)

16 **Entities That Boycott Israel**

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

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

**This is your electronic signature.

☑ I agree and hereby certify. (I agree and hereby certify.)

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

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

**This is your electronic signature.

☑ I have read and hereby certify. (I have read and hereby certify.)

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

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

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

**This is your electronic signature.

☑ I have read and hereby certify. (I have read and hereby certify.)

19 **Non-Collusion Statement**

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

**This is your electronic signature.

☑ I have read and hereby certify. (I have read and hereby certify.)

20	**Contracts in Excess of $250,000** Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
21	**Contracts in Excess of $10,000** All contracts in excess of $10,000 must address termination for cause and for convenience including the manner by which it will be affected and the basis for settlement. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
22	**Equal Employment Opportunity** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity”(30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
23	**Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)** When required by Federal program legislation, all prime construction contracts in excess of $2,000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non- Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. **This is you electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)

24	**Contract Work Hours and Safety Standards Acts (40 U.S.C. 3701-3708)** Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
25	**Rights to Inventions Made Under a Contract or Agreement** If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401,“Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
26	**Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended** Contracts and subgrants of amounts in excess of $250,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
27	**(H) Debarment and Suspension (Executive Orders 12549 and 12689)** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Pursuant to Federal Rule (H) above, when federal funds are expended by the District, the vendor certifies that during the term of an award for all contracts by the District resulting from this procurement process, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas. Vendor shall immediately provide written notice to the District if at any time the vendor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The District may rely upon a certification of a vendor that the vendor is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the District knows the certification is erroneous. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)

28	**Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** Contractors that apply or submit an offer for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the award. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
29	**2 C.F.R. § 200.323 PROCUREMENT OF RECOVERED MATERIALS** An entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
30	**2 C.F.R. § 200.216 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT** The District, as a non-federal entity, is prohibited from obligating or expending Federal financial assistance, to include loan or grant funds, to: (1) procure or obtain, (2) extend or renew a contract to procure or obtain, or (3) enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system. Covered telecommunications equipment is telecommunications equipment produced Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) and physical security surveillance of critical infrastructure and other national security purposes, and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes detailed in 2 CFR § 200.216. The vendor shall certify that they will not purchase equipment, services, or systems that use covered telecommunications, as defined herein, as a substantial or essential component of any system, or as critical technology as part of any system. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)

31	**2 C.F.R. § 200.322 CERTIFICATION OF DOMESTIC PREFERENCES FOR PROCUREMENTS AND COMPLIANCE WITH BUY AMERICA PROVISIONS** As appropriate and to the extent consistent with law, the District should, to the greatest extent practicable under a Federal award, provide has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) when spending federal funds. Vendor agrees that the requirements of this section will be included in all subawards including all contracts and purchase orders for work or products under this award, to the greatest extent practicable under a Federal award. (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
32	**2 C.F.R § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms** CFR 200.321 requires that (a) non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (b) Affirmative steps must include: 1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists; 2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; 4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; 5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and 6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
33	**Texas Historically Underutilized Businesses (HUB) – Texas Education Code 44.031(b)(6) or Small and Minority Firms, Women's Business Enterprises, & Labor Surplus Area Firms** Contractor certifies the Bidder’s company is HUB certified with the State of Texas. [ ] I am an Active certified HUB vendor (attach HUB certificate): [ ] Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms [ ] I am neither. **This is your electronic signature. I am an Active certified HUB vendor (attach HUB ce

34	**2 C.F.R § 200.334 RECORDS RETENTION REQUIREMENTS** Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Contractor certifies that Contractor is in compliance with all applicable provisions of 2 CFR 200.334. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
35	**Buy American Provision** Contractor certifies that Contractor is in compliance with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must still follow the applicable procurement rules calling for free and open competition. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
36	**Federally Funded Purchases** Contractor certifies that Contractor is in compliance with all applicable provisions for federally funded purchases. **This is your electronic signature. ☑ I have read and hereby certify. (I have read and hereby certify.)
37	**Addendum** Bidder/Respondent acknowledges that he/she will download and review all addenda issued on this project, if applicable. **This is your electronic signature. ☑ I have read and hereby acknowledge. (I have read and hereby acknowledge.)

Bid Lines

1	**Services for Mowing, Edging, Trimming and Blowing**
2	Cost for Francisca Alvarez Elementary per visit (20 annual visits) Quantity: 20 UOM: EA Price: $238.96 Total: $4,779.20 Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.
3	Cost for Dr. Carlos Castañeda Elementary per visit (20 annual visits) Quantity: 20 UOM: EA Price: $345.94 Total: $6,918.80 Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.
4	Cost for Jose De Escandon Elementary per visit (20 annual visits) Quantity: 20 UOM: EA Price: $317.25 Total: $6,345.00 Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.

5	Cost for Victor Fields Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $309.51	Total:	$6,190.20
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
6	Cost for Reynaldo G. Garza Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $307.81	Total:	$6,156.20
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
7	Cost for Leonelo H. Gonzalez Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $385.76	Total:	$7,715.20
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
8	Cost for Lucile McKee Hendricks Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $544.74	Total:	$10,894.80
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
9	Cost for Sam Houston Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $316.59	Total:	$6,331.80
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
10	Cost for Andrew Jackson Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $308.82	Total:	$6,176.40
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
11	Cost for Christa McAuliffe Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $249.76	Total:	$4,995.20
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
12	Cost for Ben Milam Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $490.75	Total:	$9,815.00
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
13	Cost for Dr. Pablo Perez Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $470.81	Total:	$9,416.20
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
14	Cost for Sam Rayburn Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $382.40	Total:	$7,648.00
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
15	Cost for Theodore Roosevelt Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $328.05	Total:	$6,561.00
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					

16	Cost for Blanca E. Sanchez Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $631.15	Total:	$12,623.00
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
17	Cost for Juan Seguin Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $241.65	Total:	$4,833.00
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
18	Cost for Thigpen-Zavala Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $379.71	Total:	$7,594.20
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
19	Cost for Woodrow Wilson Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $238.97	Total:	$4,779.40
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
20	Cost for Crockett Building per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $242.33	Total:	$4,846.60
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
21	Cost for Jose Antonio Navarro Building per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $209.61	Total:	$4,192.20
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
22	Cost for Instructional and Guidance Center per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $192.38	Total:	$3,847.60
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
23	Cost for Agricultural Learning Center per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $327.68	Total:	$6,553.60
	Item Notes: Price shall include services for Mowing, Edging Trimming, and Blowing.					
24	**Services for Shrub Trimming and Bed Weed Control.**					
25	Cost for Francisca Alvarez Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $23.71	Total:	$474.20
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
26	Cost for Dr. Carlos Castañeda Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $19.58	Total:	$391.60
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
27	Cost for Jose De Escandon Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $19.43	Total:	$388.60
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					

28	Cost for Victor Fields Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $32.67	Total:	$653.40
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
29	Cost for Reynaldo G. Garza Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $22.72	Total:	$454.40
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
30	Cost for Leonelo H. Gonzalez Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $21.20	Total:	$424.00
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
31	Cost for Lucile McKee Hendricks Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $52.19	Total:	$1,043.80
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
32	Cost for Sam Houston Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $26.13	Total:	$522.60
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
33	Cost for Andrew Jackson Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $14.23	Total:	$284.60
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
34	Cost for Christa McAuliffe Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $15.37	Total:	$307.40
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
35	Cost for Ben Milam Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $16.19	Total:	$323.80
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
36	Cost for Dr. Pablo Perez Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $55.08	Total:	$1,101.60
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
37	Cost for Sam Rayburn Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $56.05	Total:	$1,121.00
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
38	Cost for Theodore Roosevelt Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $46.11	Total:	$922.20
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					

39	Cost for Blanca E. Sanchez Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $53.77	Total:	$1,075.40
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
40	Cost for Juan Seguin Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $9.58	Total:	$191.60
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
41	Cost for Thigpen-Zavala Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $21.65	Total:	$433.00
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
42	Cost for Woodrow Wilson Elementary per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $36.40	Total:	$728.00
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
43	Cost for Crockett Building per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $6.82	Total:	$136.40
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
44	Cost for Jose Antonio Navarro Building per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $31.22	Total:	$624.40
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
45	Cost for Instructional and Guidance Center per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $20.76	Total:	$415.20
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
46	Cost for Agricultural Learning Center per visit (20 annual visits)					
	Quantity: 20	UOM: EA		Price: $30.28	Total:	$605.60
	Item Notes: Price shall include services for Shrub Trimming, and Bed Weed Control.					
47	**Services for Ornamental tree pruning**					
48	Tree Care Cost for Francisca Alvarez Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA		Price: $74.80	Total:	$74.80
	Item Notes: Ornamental tree pruning					
49	Tree Care Cost for Dr. Carlos Castañeda Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA		Price: $172.80	Total:	$172.80
	Item Notes: Ornamental tree pruning					
50	Tree Care Cost for Jose De Escandon Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA		Price: $45.84	Total:	$45.84
	Item Notes: Ornamental tree pruning					

51	Tree Care Cost for Victor Fields Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA		Price: $17.23	Total:	$17.23
	Item Notes: Ornamental tree pruning					
52	Tree Care Cost for Reynaldo G. Garza Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA		Price: $178.20	Total:	$178.20
	Item Notes: Ornamental tree pruning					
53	Tree Care Cost for Leonelo H. Gonzalez Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA		Price: $212.66	Total:	$212.66
	Item Notes: Ornamental tree pruning					
54	Tree Care Cost for Lucile McKee Hendricks Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA		Price: $114.77	Total:	$114.77
	Item Notes: Ornamental tree pruning					
55	Tree Care Cost for Sam Houston Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA		Price: $28.61	Total:	$28.61
	Item Notes: Ornamental tree pruning					
56	Tree Care Cost for Andrew Jackson Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA		Price: $68.93	Total:	$68.93
	Item Notes: Ornamental tree pruning					
57	Tree Care Cost for Christa McAuliffe Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA		Price: $143.73	Total:	$143.73
	Item Notes: Ornamental tree pruning					
58	Tree Care Cost for Ben Milam Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA		Price: $68.93	Total:	$68.93
	Item Notes: Ornamental tree pruning					
59	Tree Care Cost for Dr. Pablo Perez Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA		Price: $143.73	Total:	$143.73
	Item Notes: Ornamental tree pruning					
60	Tree Care Cost for Sam Rayburn Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA		Price: $172.34	Total:	$172.34
	Item Notes: Ornamental tree pruning					
61	Tree Care Cost for Theodore Roosevelt Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA		Price: $28.61	Total:	$28.61
	Item Notes: Ornamental tree pruning					

62	Tree Care Cost for Blanca E. Sanchez Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA	Price:	$310.20	Total:	$310.20
	Item Notes: Ornamental tree pruning					
63	Tree Care Cost for Juan Seguin Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA	Price:	$57.56	Total:	$57.56
	Item Notes: Ornamental tree pruning					
64	Tree Care Cost for Thigpen-Zavala Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA	Price:	$200.94	Total:	$200.94
	Item Notes: Ornamental tree pruning					
65	Tree Care Cost for Woodrow Wilson Elementary per visit (1 annual visit)					
	Quantity: 1	UOM: EA	Price:	$48.84	Total:	$48.84
	Item Notes: Ornamental tree pruning					
66	Tree Care Cost for Crocket Building per visit (1 annual visit)					
	Quantity: 1	UOM: EA	Price:	$45.84	Total:	$45.84
	Item Notes: Ornamental tree pruning					
67	Tree Care Cost for Jose Antonio Navarro per visit (1 annual visit)					
	Quantity: 1	UOM: EA	Price:	$45.84	Total:	$45.84
	Item Notes: Ornamental tree pruning					
68	Tree Care Cost for Instructional and Guidance Center per visit (1 annual visit)					
	Quantity: 1	UOM: EA	Price:	$74.80	Total:	$74.80
	Item Notes: Ornamental tree pruning					
69	Tree Care Cost for Agricultural Learning Center per visit (1 annual visit)					
	Quantity: 1	UOM: EA	Price:	$24.65	Total:	$24.65
	Item Notes: Ornamental tree pruning					
70	**Services for chemically treat weeds in concrete asphalt.**					
71	Chemically Treat weeds Cost for Francisca Alvarez Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA	Price:	$0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
72	Chemically Treat weeds Cost for Dr. Carlos Castañeda Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA	Price:	$0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
73	Chemically Treat weeds Cost for Jose De Escandon Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA	Price:	$0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					

74	Chemically Treat weeds Cost for Victor Fields Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
75	Chemically Treat weeds Cost for Reynaldo G. Garza Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
76	Chemically Treat weeds Cost for Leonelo H. Gonzalez Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
77	Chemically Treat weeds Cost for Lucile McKee Hendricks Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
78	Chemically Treat weeds Cost for Sam Houston Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
79	Chemically Treat weeds Cost for Andrew Jackson Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
80	Chemically Treat weeds Cost for Christa McAuliffe Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
81	Chemically Treat weeds Cost for Ben Milam Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
82	Chemically Treat weeds Cost for Dr. Pablo Perez Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
83	Chemically Treat weeds Cost for Sam Rayburn Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
84	Chemically Treat weeds Cost for Theodore Roosevelt Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					

85	Chemically Treat weeds Cost for Blanca E. Sanchez Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
86	Chemically Treat weeds Cost for Juan Seguin Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
87	Chemically Treat weeds Cost for Thigpen-Zavala Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
88	Chemically Treat weeds Cost for Woodrow Wilson Elementary per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
89	Chemically Treat weeds Cost for Crocket Building per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
90	Chemically Treat weeds Cost for Jose Antonio Navarro Building per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
91	Chemically Treat weeds Cost for Instructional and Guidance Center per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
92	Chemically Treat weeds Cost for Agricultural Learning Center per visit (12 annual visits)					
	Quantity: 12	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: Prosper shall chemically treat weeds in concrete asphalt (once a month)					
93	**Miscellaneous Services**					
94	Cost to Spot Treat Ants					
	Quantity: 1	UOM: EA		Price: $0.00	Total:	$0.00
	Item Notes: This services will be as needed					
	Supplier Notes: This will depend on Square footage and will be proposed upon request					
95	NORMAL HOURLY RATE - Hourly rate for Services during normal business hours 6:00 AM - 5:00 PM Monday - Friday. Pricing specified by the proposer shall include all such direct and indirect overhead costs such as transportation, fuel, labor cost, etc. Normal response time shall be within one business day after service call has been placed by the District.					
	Quantity: 1	UOM: HOURLY RATE		Price: $40.00	Total:	$40.00
96	**Qualifications**					

Item Attributes

1. Competence and Qualifications

Indicate the basis of demonstrated competence and qualifications to perform the services.

Maldonado frequently handles large school districts including NISD, NEISD, JISD, and FBISD. We have the manpower and know how to make sure all your needs are met.

2. Experience

Specify the length of time the company has been in practice.

35 Years

3. Areas of Expertise

- ☑ Turf management (Mow, Edge, Trim, Blow) (Turf management (Mow, Edge, Trim, Blow))
- ☑ Shrub and Bed Care (shrub trimming, weed control) (Shrub and Bed Care (shrub trimming, weed control))
- ☑ Tree Care (ornamental tree pruning) (Tree Care (ornamental tree pruning))
- ☑ Treat weeds in concreate asphalt (Treat weeds in concreate asphalt)
- ☐ Other (Provide description in line below) (Other (Provide description in line below))

4. Other:

Specify other area(s) of practice.

Design Build, Construction, Irrigation

5. Additional Information/Comments

Provide any additional information, identify any special knowledge, and/or skills provided by your company that may be related and/or are beneficial to the District for the services requested, that have not already been included.

Maldonado frequently handles large school districts including NISD, NEISD, JISD, and FBISD. We have the manpower and know how to make sure all your needs are met.

97 Equipment Inventory List

Item Notes: **If you have more than 5 items on your Equipment Inventory List, upload a list to the Response Attachments tab.**

Item Attributes

1. Equipment # 1 Type

Ride on Mower

2. Equipment # 1 Quantity

14

3. Equipment # 1 Brand, Model Number, and Manufacture Year

2020

4. Equipment # 1 Size

60"

5. Equipment # 1 Fuel Type

Gasoline

6. Equipment # 1 Equipment Condition

Good

7. Equipment # 2 Type

Stand Up Mower

8. Equipment # 2 Quantity

12

9. Equipment # 2 Brand, Model Number, and Manufacture Year

2020

10. Equipment # 2 Size

48"

11. Equipment # 2 Fuel Type

Gasoline

12. Equipment # 2 Equipment Condition

Good

13. Equipment # 3 Type

Line Trimmer

14. Equipment # 3 Quantity

20

15. Equipment # 3 Brand, Model Number, and Manufacture Year

2020

16. Equipment # 3 Size

N/A

17. Equipment # 3 Fuel Type

Gasoline

18. Equipment # 3 Equipment Condition

Good

19. Equipment # 4 Type

Edger

20. Equipment # 4 Quantity

20

21. Equipment # 4 Brand, Model Number, and Manufacture Year

2020

22. Equipment # 4 Size

N/A

23. Equipment # 4 Fuel Type

Gasoline

24. Equipment # 4 Equipment Condition

Good

25. Equipment # 5 Type

Back Pack blower

26. Equipment # 5 Quantity

16

27. Equipment # 5 Brand, Model Number, and Manufacture Year

2020

28. Equipment # 5 Size

N/A

29. Equipment # 5 Fuel Type

Gasoline

30. Equipment # 5 Equipment Condition

Good

98 Staff Experience

List the employees who will service this contract.

Item Notes: **If you have more than 5 employees, upload your list on the Response Attachments Tab.**

Item Attributes

1. Employee # 1 Name

Jerry Maldonado

2. Employee # 1 Title

Owner/President - Maintenance

3. Employee # 1 years with company

35

4. Employees # 1 years in the industry

35

5. Employee # 2 Name

Richard Waterman

6. Employee # 2 Title

Vice President - Maintenance

7. Employee # 2 years with company

9

8. Employees # 2 years in the industry

9

9. Employee # 3 Name

Juan Velasquez

10. Employee # 3 Title

Branch Manager - Maintenance

11. Employee # 3 years with company

0.5

12. Employees # 3 years in the industry

20

13. Employee # 4 Name

David Cisneros

14. Employee # 4 Title

Production Manager

15. Employee # 4 years with company

1

16. Employees # 4 years in the industry

15

17. Employee # 5 Name

Tanner Bates

18. Employee # 5 Title

Regional Manager - Maintenance

19. Employee # 5 years with company

5

20. Employees # 5 years in the industry

18

Response Total: $164,155.25

McAllen Independent School District
2023-1020 Grounds Maintenance Services for Various Locations
Maldonado Nursery Landscaping, Inc. Price Clarification

				Maldonado Nursery & Landscaping, Inc.	
				Total Price	$164,155.25
Line #	Description	QTY	UOM	Unit	Extended
1	Services for Mowing, Edging, Trimming and Blowing				
2	Cost for Francisca Alvarez Elementary per visit (20 annual visits)	20	EA	$226.96	$4,539.20
3	Cost for Dr. Carlos Castaeda Elementary per visit (20 annual visits)	20	EA	**$333.94**	$6,678.80
4	Cost for Jose De Escandon Elementary per visit (20 annual visits)	20	EA	**$305.25**	$6,105.00
5	Cost for Victor Fields Elementary per visit (20 annual visits)	20	EA	**$297.51**	$5,950.20
6	Cost for Reynaldo G. Garza Elementary per visit (20 annual visits)	20	EA	**$295.81**	$5,916.20
7	Cost for Leonelo H. Gonzalez Elementary per visit (20 annual visits)	20	EA	**$373.76**	$7,475.20
8	Cost for Lucile McKee Hendricks Elementary per visit (20 annual visits)	20	EA	**$532.74**	$10,654.80
9	Cost for Sam Houston Elementary per visit (20 annual visits)	20	EA	**$304.59**	$6,091.80
10	Cost for Andrew Jackson Elementary per visit (20 annual visits)	20	EA	**$296.82**	$5,936.40
11	Cost for Christa McAuliffe Elementary per visit (20 annual visits)	20	EA	**$237.76**	$4,755.20
12	Cost for Ben Milam Elementary per visit (20 annual visits)	20	EA	**$478.75**	$9,575.00
13	Cost for Dr. Pablo Perez Elementary per visit (20 annual visits)	20	EA	**$458.81**	$9,176.20
14	Cost for Sam Rayburn Elementary per visit (20 annual visits)	20	EA	**$370.40**	$7,408.00
15	Cost for Theodore Roosevelt Elementary per visit (20 annual visits)	20	EA	**$316.05**	$6,321.00
16	Cost for Blanca E. Sanchez Elementary per visit (20 annual visits)	20	EA	**$619.15**	$12,383.00
17	Cost for Juan Seguin Elementary per visit (20 annual visits)	20	EA	**$229.65**	$4,593.00
18	Cost for Thigpen-Zavala Elementary per visit (20 annual visits)	20	EA	**$367.71**	$7,354.20
19	Cost for Woodrow Wilson Elementary per visit (20 annual visits)	20	EA	**$226.97**	$4,539.40
20	Cost for Crockett Building per visit (20 annual visits)	20	EA	**$230.33**	$4,606.60
21	Cost for Jose Antonio Navarro Building per visit (20 annual visits)	20	EA	$197.61	$3,952.20
22	Cost for Instructional and Guidance Center per visit (20 annual visits)	20	EA	$180.38	$3,607.60
23	Cost for Agricultural Learning Center per visit (20 annual visits)	20	EA	**$315.68**	$6,313.60
24	Services for Shrub Trimming and Bed Weed Control.				
25	Cost for Francisca Alvarez Elementary per visit (20 annual visits)	20	EA	$23.71	$474.20
26	Cost for Dr. Carlos Castaeda Elementary per visit (20 annual visits)	20	EA	$19.58	$391.60
27	Cost for Jose De Escandon Elementary per visit (20 annual visits)	20	EA	$19.43	$388.60
28	Cost for Victor Fields Elementary per visit (20 annual visits)	20	EA	$32.67	$653.40
29	Cost for Reynaldo G. Garza Elementary per visit (20 annual visits)	20	EA	$22.72	$454.40
30	Cost for Leonelo H. Gonzalez Elementary per visit (20 annual visits)	20	EA	$21.20	$424.00
31	Cost for Lucile McKee Hendricks Elementary per visit (20 annual visits)	20	EA	$52.19	$1,043.80
32	Cost for Sam Houston Elementary per visit (20 annual visits)	20	EA	$26.13	$522.60
33	Cost for Andrew Jackson Elementary per visit (20 annual visits)	20	EA	$14.23	$284.60
34	Cost for Christa McAuliffe Elementary per visit (20 annual visits)	20	EA	$15.37	$307.40
35	Cost for Ben Milam Elementary per visit (20 annual visits)	20	EA	$16.19	$323.80
36	Cost for Dr. Pablo Perez Elementary per visit (20 annual visits)	20	EA	$55.08	$1,101.60
37	Cost for Sam Rayburn Elementary per visit (20 annual visits)	20	EA	$56.05	$1,121.00
38	Cost for Theodore Roosevelt Elementary per visit (20 annual visits)	20	EA	$46.11	$922.20
39	Cost for Blanca E. Sanchez Elementary per visit (20 annual visits)	20	EA	$53.77	$1,075.40
40	Cost for Juan Seguin Elementary per visit (20 annual visits)	20	EA	$9.58	$191.60
41	Cost for Thigpen-Zavala Elementary per visit (20 annual visits)	20	EA	$21.65	$433.00
42	Cost for Woodrow Wilson Elementary per visit (20 annual visits)	20	EA	$36.40	$728.00
43	Cost for Crockett Building per visit (20 annual visits)	20	EA	$6.82	$136.40
44	Cost for Jose Antonio Navarro Building per visit (20 annual visits)	20	EA	$31.22	$624.40
45	Cost for Instructional and Guidance Center per visit (20 annual visits)	20	EA	$20.76	$415.20
46	Cost for Agricultural Learning Center per visit (20 annual visits)	20	EA	$30.28	$605.60
47	Services for Ornamental tree pruning				
48	Tree Care Cost for Francisca Alvarez Elementary per visit (1 annual visit)	1	EA	$74.80	$74.80
49	Tree Care Cost for Dr. Carlos Castaeda Elementary per visit (1 annual visit)	1	EA	$172.80	$172.80
50	Tree Care Cost for Jose De Escandon Elementary per visit (1 annual visit)	1	EA	$45.84	$45.84
51	Tree Care Cost for Victor Fields Elementary per visit (1 annual visit)	1	EA	$17.23	$17.23

52	Tree Care Cost for Reynaldo G. Garza Elementary per visit (1 annual visit)	1	EA	$178.20	$178.20
53	Tree Care Cost for Leonelo H. Gonzalez Elementary per visit (1 annual visit)	1	EA	$212.66	$212.66
54	Tree Care Cost for Lucile McKee Hendricks Elementary per visit (1 annual visit)	1	EA	$114.77	$114.77
55	Tree Care Cost for Sam Houston Elementary per visit (1 annual visit)	1	EA	$28.61	$28.61
56	Tree Care Cost for Andrew Jackson Elementary per visit (1 annual visit)	1	EA	$68.93	$68.93
57	Tree Care Cost for Christa McAuliffe Elementary per visit (1 annual visit)	1	EA	$143.73	$143.73
58	Tree Care Cost for Ben Milam Elementary per visit (1 annual visit)	1	EA	$68.93	$68.93
59	Tree Care Cost for Dr. Pablo Perez Elementary per visit (1 annual visit)	1	EA	$143.73	$143.73
60	Tree Care Cost for Sam Rayburn Elementary per visit (1 annual visit)	1	EA	$172.34	$172.34
61	Tree Care Cost for Theodore Roosevelt Elementary per visit (1 annual visit)	1	EA	$28.61	$28.61
62	Tree Care Cost for Blanca E. Sanchez Elementary per visit (1 annual visit)	1	EA	$310.20	$310.20
63	Tree Care Cost for Juan Seguin Elementary per visit (1 annual visit)	1	EA	$57.56	$57.56
64	Tree Care Cost for Thigpen-Zavala Elementary per visit (1 annual visit)	1	EA	$200.94	$200.94
65	Tree Care Cost for Woodrow Wilson Elementary per visit (1 annual visit)	1	EA	$48.84	$48.84
66	Tree Care Cost for Crocket Building per visit (1 annual visit)	1	EA	$45.84	$45.84
67	Tree Care Cost for Jose Antonio Navarro per visit (1 annual visit)	1	EA	$45.84	$45.84
68	Tree Care Cost for Instructional and Guidance Center per visit (1 annual visit)	1	EA	$74.80	$74.80
69	Tree Care Cost for Agricultural Learning Center per visit (1 annual visit)	1	EA	$24.65	$24.65
70	Services for chemically treat weeds in concrete asphalt.				
71	Chemically Treat weeds Cost for Francisca Alvarez Elementary per visit (12 annual visits)	12	EA	$20.00	$240.00
72	Chemically Treat weeds Cost for Dr. Carlos Castaeda Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
73	Chemically Treat weeds Cost for Jose De Escandon Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
74	Chemically Treat weeds Cost for Victor Fields Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
75	Chemically Treat weeds Cost for Reynaldo G. Garza Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
76	Chemically Treat weeds Cost for Leonelo H. Gonzalez Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
77	Chemically Treat weeds Cost for Lucile McKee Hendricks Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
78	Chemically Treat weeds Cost for Sam Houston Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
79	Chemically Treat weeds Cost for Andrew Jackson Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
80	Chemically Treat weeds Cost for Christa McAuliffe Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
81	Chemically Treat weeds Cost for Ben Milam Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
82	Chemically Treat weeds Cost for Dr. Pablo Perez Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
83	Chemically Treat weeds Cost for Sam Rayburn Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
84	Chemically Treat weeds Cost for Theodore Roosevelt Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
85	Chemically Treat weeds Cost for Blanca E. Sanchez Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
86	Chemically Treat weeds Cost for Juan Seguin Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
87	Chemically Treat weeds Cost for Thigpen-Zavala Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
88	Chemically Treat weeds Cost for Woodrow Wilson Elementary per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
89	Chemically Treat weeds Cost for Crocket Building per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
90	Chemically Treat weeds Cost for Jose Antonio Navarro Building per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00

91	Chemically Treat weeds Cost for Instructional and Guidance Center per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
92	Chemically Treat weeds Cost for Agricultural Learning Center per visit (12 annual visits)	12	EA	$ 20.00	$ 240.00
93	Miscellaneous Services				
94	Cost to Spot Treat Ants	1	EA	$ 100.00	$ 100.00
95	NORMAL HOURLY RATE - Hourly rate for Services during normal business hours 6:00 AM - 5:00 PM Monday - Friday. Pricing specified by the proposer shall include all such direct and indirect overhead costs such as transportation, fuel, labor cost, etc. Normal response time shall be within one business day after service call has been placed by the District.	1	HOURLY RATE	$40.00	$40.00

Exhibit “C” – Certificate of Insurance

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 9/14/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Catto & Catto LLP, a division of HUB International Texas, Inc.
One Alamo Center
106 S. St. Mary's Street, Suite 800
San Antonio TX 78205

CONTACT NAME: Nancy Pruski
PHONE (A/C, No, Ext): 210-298-7162 **FAX (A/C, No):** 210-298-7162
E-MAIL ADDRESS: npruski@catto.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : FCCI Insurance Company	10178
INSURER B : Cincinnati Insurance Company	10677
INSURER C : Texas Mutual Insurance Company	22945
INSURER D : Travelers Lloyds Ins. Co.	41262
INSURER E : CNA - Bonds	
INSURER F : Indian Harbor Ins. Co.	36940

INSURED MALDO-1
Maldonado Nursery & Landscaping Inc.
16348 Nacogdoches Road
San Antonio TX 78247

COVERAGES **CERTIFICATE NUMBER:** 541177058 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			CPP100043207-04	5/26/2022	5/26/2023	EACH OCCURRENCE	$ 1,000,000
	[ ] CLAIMS-MADE [X] OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
	X On/Off-site Covg						MED EXP (Any one person)	$ 10,000
	X Ded $2,000						PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	[ ] POLICY [X] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	X OTHER: Electronic Data						Limit	$ 1,000,000
A	AUTOMOBILE LIABILITY			CA100025670-04	5/26/2022	5/26/2023	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	[ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
B	[ ] UMBRELLA LIAB [X] OCCUR			EXS0578818	5/26/2022	5/26/2023	EACH OCCURRENCE	$ 5,000,000
	X EXCESS LIAB [ ] CLAIMS-MADE						AGGREGATE	$ 5,000,000
	[ ] DED [X] RETENTION $ 0							$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N			0002048062	5/26/2022	5/26/2023	X PER STATUTE [ ] OTH-ER	
	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [N] (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
E	Business Service Dishonesty			70673285	3/30/2021	3/30/2024	Limit:	$200,000
D	Installation Floater			660-3N264990	5/26/2022	5/26/2023	Limit:	$400,000/Ded $2500
F	Professional/Pollution			PEC0058405	5/26/2022	5/26/2023	Occurrence/Aggregate	$1M/$2M/Ded $10000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
IF YOU REQUIRE COPIES OF THE ENDORSEMENT FORMS, PLEASE EMAIL YOUR REQUEST TO NPRUSKI@CATTO.COM*

No Exclusion for X,C,U on the General Liability policy.

Commercial General Liability Policy includes a blanket automatic additional insured endorsement that provides additional insured status only when there is a written contract requiring such status. Form CGL121 0221-Additional Insured-Owners, Lessees or Contractors-Automatic Status When Required in Contract or See Attached...

CERTIFICATE HOLDER

McAllen Independent School District
2000 N 23rd St
McAllen TX 78501

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

167

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AGENCY CUSTOMER ID: MALDO-1

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Catto & Catto LLP, a division of HUB International Texas, Inc.	Maldonado Nursery & Landscaping Inc. 16348 Nacogdoches Road San Antonio TX 78247
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Agreement-Ongoing Operations and Products-Completed Operations (Texas Limited Sole Negligence)

Commercial General Liability Policy includes a primary and non-contributory provision only when there is a written contract that requires it. Form CG2001 0413-Primary/Non-Contributory Coverage When Required by Contract

Commercial General Liability Policy includes a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract that requires it. Form CGL088 0221-First Choice Contractors Liability Endorsement

Commercial General Liability Policy includes an endorsement providing 30 days' notice of cancellation to be furnished to the certificate holder except for 10 day notice of nonpayment of premium per Form IL060 0713.

Business Auto Policy includes a blanket automatic additional insured insurance that provides additional insured status including Primary/Non-contributory Coverage when there is a written contract that requires such status. Form CAU042 0115-Additional Insured Designated Person or Organization Primary/Non-Contributory Coverage

Business Auto Policy includes a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract that requires it. Form CAU058 05-19-Auto First Choice Coverage Endorsement

Business Auto Policy includes an endorsement providing 30 days' notice of cancellation to be furnished to the certificate except 10 day notice of nonpayment of premium where required by written contact. Form IL060 0713-Blanket Notification to Others of Cancellation

Workers Compensation Policy includes a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract that requires it. Form WC420304 B - Texas Waiver of Our Right to Recover from Others Endorsement.

Workers Compensation Policy includes an endorsement providing 30 days' notice of cancellation to be furnished to the certificate holder except 10 day notice of nonpayment of premium where required by written contract. WC420601

Excess Liability: The coverage provided by this policy shall follow the terms, definitions, conditions and exclusions of the applicable underlying insurance. Underlying Policies include General Liability CPP10004320702, Auto Liability CA10002567002 and Employers Liability 0002048062. Excess Liability Policy includes a primary and non-contributory provision only when there is a written contract that requires it. Form US4096 1116-Automatic Non-Contributory Coverage Endorsement Where Required by Written Contract.

Excess Liability Policy includes an endorsement providing 30 days' notice of cancellation to be furnished to the certificate holder except 10 day notice of nonpayment of premium where required by written contract. Form IA40870811.

Project: Grounds Maintenance Services for Various Locations

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 30, 2023

SUBJECT: Report Regarding Taxes Collected for September 2023

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

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

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Tax roll modifications are due to late homestead exemptions, properties under protest, omitted properties and rollbacks. These modifications resulted in a monthly net increase to taxes receivable of $38,958.77 for September 2023. Modifications are posted to the general ledger on a monthly basis and are included as part of the monthly tax report.

The September 2023 Tax Collections Report is attached. The amount collected was $205,436.60.

September:

Local Maintenance Collection $190,966.33
Debt Service Collection $14,470.27

LEGAL REVIEW:

Not required.

BUDGETARY CONSIDERATIONS:

Not required.

RECOMMENDED BOARD ACTION:

The Report Regarding Taxes Collected for September 2023 is submitted to the Board for information purposes only and requires no Board action.

Attachment: ☑

SUBMITTED BY: _____ **SUPERVISOR:** _____

For further information contact:
Name: Iris Luna, RTSBA
Office: Business Office (956) 618-6016
eMail: iris.luna@mcallenisd.net

Approved for presentation to the Board of Education:

_____
Superintendent of Schools

PREPARED BY: Jessica Rodriguez

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

COMPARATIVE RATE OF COLLECTIONS

MCALLEN I.S.D. SML - 47	ORIGINAL TAX LEVY	COLLECTED TO DATE	DROPPED YRS AFTER PURGE	MODIF. TO DATE	TAXES OUTSTANDING	PERCENT 2023/2024	COLLECTED 2022/2023
2023 TAX ROLL	-	-	-	-	-	#DIV/0!	0.00%
2022 & PRIOR YRS	7,120,885.27	1,072,605.68	(142,591.06)	(40,953.58)	5,864,734.95	15.46%	15.28%
ROLLBACK	34,512.82	-	-	62,834.49	97,347.31	0.00%	0.00%
TOTALS	7,155,398.09	1,072,605.68	(142,591.06)	21,880.91	5,962,082.26		

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

	MCALLEN ISD	MONTHLY MODIFICATIONS	
CURRENT YEAR-BASE TAX		-	CURRENT
CURRENT YEAR-P&I			
PRIOR YEARS-BASE TAX	205,436.60	-	PRIOR
PRIOR YEARS-P&I	44,940.87		
ROLLBACK		38,958.77	ROLLBACK
ROLLBACK P&I			
ATTORNEY FEES	33,871.61		PURGED
TOTAL COLLECTIONS	284,249.08	38,958.77	
LESS TRANSFERRED	189,197.39		
LESS IN TRANSIT	81,077.60		
LESS DUE TO HCAD COMM FEES	120.09		
LESS DUE TO CO TREASURER	13,854.00		
LESS COURT ORDER INTEREST			
BALANCE	(0.00)		

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

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

HIDALGO COUNTY ASSESSOR & COLL OF TEXAS

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

SWORN AND SUBSCRIBED BEFORE ME THIS 11TH DAY OF OCTOBER 2023 A.D.

NOTARY PUBLIC, HIDALGO COUNTY, TEXAS

NOTARY PUBLIC
Mark A. Martinez
Notary ID#
13366428-4
My Comm. Exp.
04-18-2026
STATE OF TEXAS

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 30, 2023

SUBJECT: Report Regarding the Monthly Financial and Investment Report for August 2023

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

CDA Local requires the submission of an investment report at least quarterly. In addition, the District has a Board directive to supply monthly financial information.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The monthly financial reflects the following:

-General Fund Comparison of Budget to Revenues, Expenditures and Encumbrances

-Monthly Investment Report

LEGAL REVIEW:

Not required.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

The Report Regarding the Monthly Financial and Investment Report for August 2023 is submitted to the Board for information purposes only and requires no Board action.

Attachment: ☑

SUBMITTED BY: _____ **SUPERVISOR:** _____

For further information contact:
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Approved for presentation to the Board of Education:

Interim Superintendent of Schools

COMPARISON OF BUDGET TO REVENUES, EXPENDITURES AND ENCUMBRANCES
FOR THE MONTH OF AUGUST 31, 2023

	A APPROVED BUDGET 2022-23 08/31/22	B YTD ACTUAL 07/01/22 TO 08/31/22	C APPROVED BUDGET 2023-24 08/31/23	D YTD ACTUAL 07/01/23 TO 08/31/23	E DIFFERENCE C - D	F OUTSTANDING ENCUMBRANCES 09/1/23 06/30/24	G YTD REVENUES, EXPENSES AND ENCUMBRANCES D + F	H BUDGET LESS EXPENSES AND ENCUMBRANCES C - G
REVENUES:								
LOCAL AND INTERMEDIATE SOURCES	$3,026,801	$633,936	$6,327,795	$1,382,991	$4,944,804		$1,382,991	$4,944,804
PROPERTY TAXES	84,847,227	715,402	87,833,337	1,207,825	86,625,512		1,207,825	86,625,512
STATE PROGRAM REVENUES	122,747,887	10,440,153	123,728,809	12,027,496	111,701,313		12,027,496	111,701,313
FEDERAL PROGRAM REVENUES	24,168,809	1,404,815	23,679,760	1,028,449	22,651,311		1,028,449	22,651,311
OTHER RESOURCES/NON-OPERATING REVENUES	35,273	76,847	0	0	0		0	0
SUB TOTAL	$234,825,997	$13,271,152	$241,569,701	$15,646,761	$225,922,940		$15,646,761	$225,922,940
EXPENDITURES:								
11 INSTRUCTION	$112,172,965	$2,825,550	$133,199,710	$1,979,111	$131,220,599	104,561,761	$106,540,872	$26,658,838
12 INST. RES. & MEDIA SERVICES	3,452,538	121,149	3,540,411	107,651	3,432,760	2,739,895	2,847,546	692,865
13 CURRICULUM DEV. & INST. STAFF DEV.	4,519,928	614,066	4,350,464	510,561	3,839,903	2,174,851	2,685,412	1,665,052
21 INST. LEADERSHIP	3,291,018	468,524	3,256,204	399,733	2,856,471	1,778,247	2,177,980	1,078,224
23 SCHOOL LEADERSHIP	13,087,325	1,389,576	13,544,721	1,372,918	12,171,803	10,412,097	11,785,015	1,759,706
31 GUID., COUNSELING & EVAL. SER.	9,878,948	671,672	9,889,689	609,285	9,280,404	7,839,968	8,449,254	1,440,435
32 SOCIAL WORK SERVICES	1,940,262	177,613	2,246,964	171,617	2,075,347	1,639,944	1,811,560	435,404
33 HEALTH SERVICES	3,014,152	103,178	2,997,055	70,416	2,926,639	2,416,248	2,486,663	510,392
34 STUDENT (PUPIL) TRANS.	4,984,764	384,517	4,286,529	363,135	3,923,394	660,822	1,023,957	3,262,572
35 FOOD SERVICES	19,491,121	1,238,492	20,297,147	1,238,504	19,058,643	9,319,706	10,558,210	9,738,937
36 CURRICULAR/EXTRACURRICULAR ACT.	11,724,535	751,875	11,173,086	761,281	10,411,805	4,717,514	5,478,795	5,694,291
41 GENERAL ADMINISTRATION	8,063,313	1,437,891	8,443,485	1,292,841	7,150,644	4,799,989	6,092,830	2,350,655
51 PLANT MAINT. & OPERATIONS	21,597,063	3,491,125	21,636,519	3,854,914	17,781,605	8,750,053	12,604,968	9,031,551
52 SECURITY AND MONITORING SERV.	5,760,283	945,164	6,933,157	757,167	6,175,990	3,483,191	4,240,357	2,692,800
53 DATA PROCESSING SERVICES	5,562,095	1,143,320	5,926,306	822,653	5,103,653	2,261,678	3,084,332	2,841,974
61 COMMUNITY SERVICES	111,373	964	113,585	535	113,050	66,098	66,632	46,953
71 DEBT SERVICE	5,912,711	961,672	4,693,408	1,138,059	3,555,349	17,911	1,155,969	3,537,439
81 FAC. ACQUISITION & CONST.	26,418,223	239,506	16,991,375	382,538	16,608,837	2,550,130	2,932,668	14,058,707
95 PMT. TO JUV. JUSTICE ALT. ED. PRG.	40,000	0	40,000	0	40,000	0	0	40,000
99 OTHER INTERGOVERNMENTAL CHARGES	965,919	234,539	1,048,026	250,780	797,246	250,489	501,269	546,757
00 OTHER USES/NON-OPERATING EXPENSES	12,500,000	0			0		0	0
SUB TOTAL	$274,488,536	$17,200,395	$274,607,841	$16,083,700	$258,524,141	$170,440,591	$186,524,291	$88,083,550
REVENUES OVER (UNDER) EXPENDITURES		($3,929,243)		($436,939)				
PRELIMINARY BEGINNING FUND BALANCE		149,968,397		134,836,210				
PRELIMINARY ENDING FUND BALANCE		$146,039,154		$134,399,271				
PRELIMINARY OPTIMUM FUND BALANCE FOR UNFORESEEN EVENTS		$143,884,203		$140,630,411				

MONTHLY INVESTMENT REPORT

McAllen ISD

AUGUST 31, 2023

MEEDER

PUBLIC FUNDS

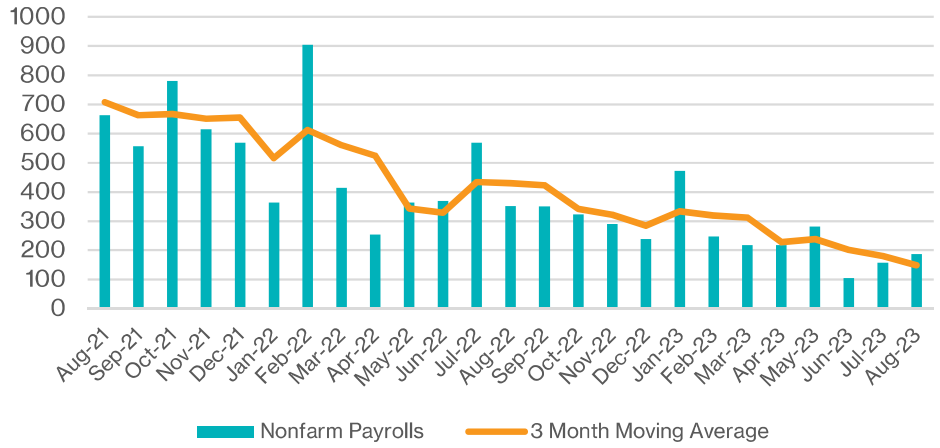
A Slowly Slowing Economy

August is a notoriously slow month for markets, with this year being no exception. Economic data received in August showed a slowly softening labor market and inflation that is steadily declining. Although the Federal Reserve didn't officially meet in August, Chairman Jerome Powell spoke at the annual Jackson Hole Symposium and used his speech to reaffirm the Federal Reserve's commitment to their 2 percent inflation target. Powell stated that bringing inflation down to 2% will require a period of below-trend economic growth and that monetary policy will need to remain restrictive for the foreseeable future. Powell also acknowledged the uncertainties that the Federal Reserve is facing, as it is "challenging to know in real time" when monetary policy is restrictive enough, given the lag between restrictive policy and the economic slowdown.

The July US Employment report showed that the labor market continued to cool in July, as nonfarm payrolls missed estimates and increased by just 187,000. Likewise, the prior two months were revised down by a total of 49,000. Job growth has slowed over the last 18 to 24 months, with the 3-month moving average down to just 218,000. Wage growth is still elevated, as wages have increased by 4.4% over the last year. For now, the labor market is not growing fast enough for the Federal Reserve to hike again, but the stickiness of wages should keep cuts off the table until 2024.

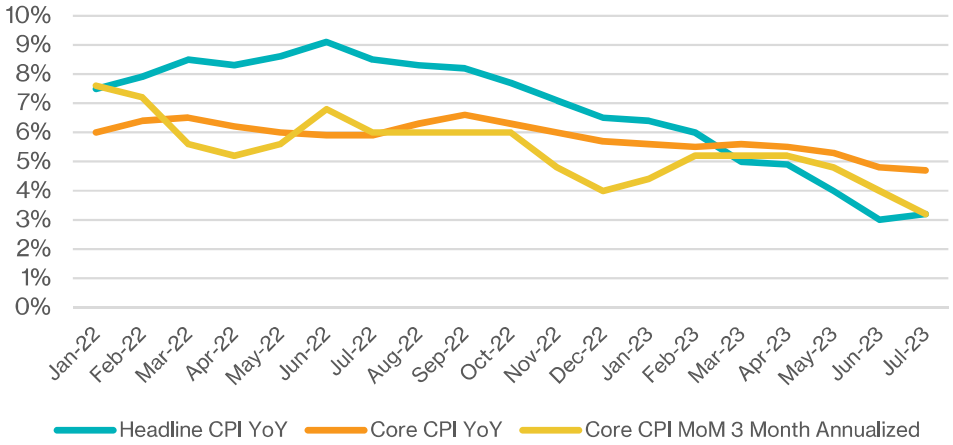
The Consumer Price Index (CPI) report from July pointed to more disinflation. Both headline and core CPI increased by 0.2% on the month, and on a year-over-year (YoY) basis increased by 3.2% and 4.7%, respectively. Comparatively, annualized core CPI over the last 3 months is down to 3.1% as the most recent data indicates that inflation is slowing and is likely more reflective of current pricing momentum than YoY figures that include data from nearly a year ago. The Federal Reserve and market participants will be keenly watching the next few months of data to see if the recent momentum sticks.

LABOR MARKET GROWTH



SOURCE: BLOOMBERG

INFLATION COOLING



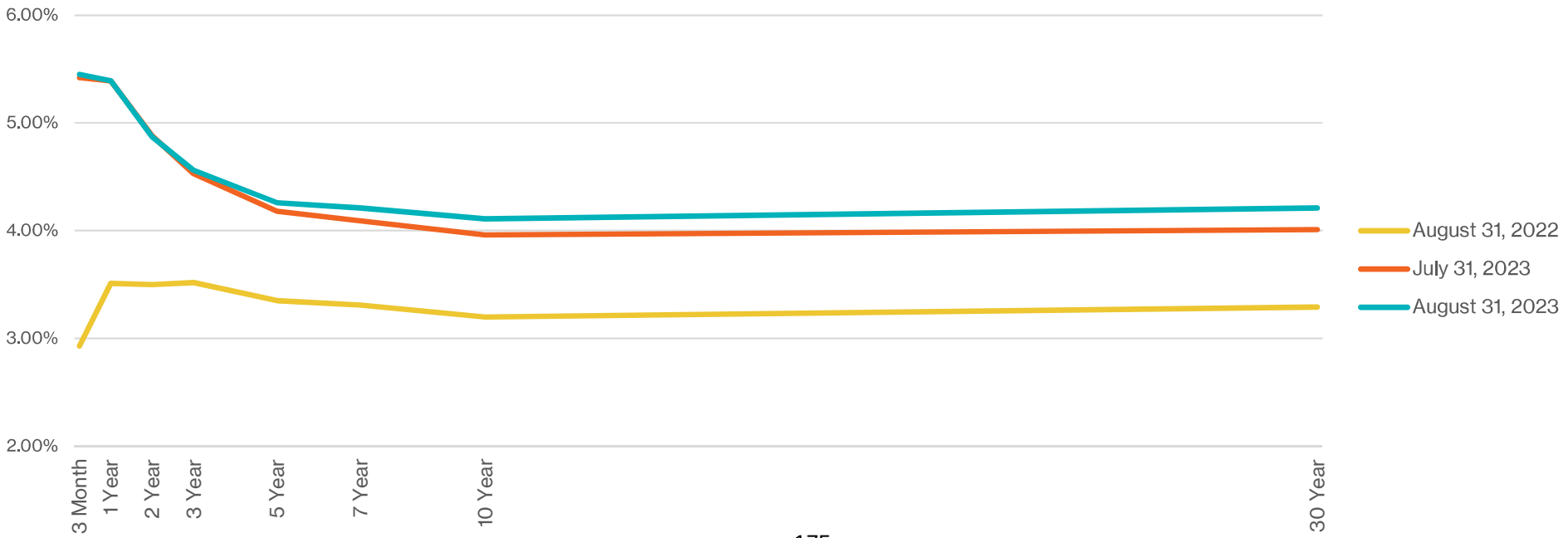
SOURCE: BLOOMBERG

Rates Move Higher

With economic data lacking many surprises, bond markets remained generally unchanged throughout August. Market pricing for rate hikes and/or cuts started and ended the month in the same place, with a full rate cut still not priced in until mid-2024. Throughout August, markets continued to price in a more positive tone, leading to rates increasing. The 2-year US Treasury yield decreased 0.02% to 4.86%, while longer-term bonds increased as they are more reflective of growth. The 5-year US Treasury yield increased by 0.07% to 4.25%, and the 10-year US Treasury yield increased by 0.15% to 4.11%, steeping the curve some. At the end of July, the yield curve was still inverted by 0.77% as markets are pricing in rate cuts in 2024.

We will continue to look to add value by picking up incremental yield on high-quality bonds as cash flows permit. Even though the yield curve remains inverted and cash products yield more than longer-term bonds, adding duration and buying at current yields will benefit portfolio income over the full economic cycle. The Federal Reserve will cut rates and the curve will normalize, and we are closer now to the end of the cycle than we ever have been.

US Treasury Yield Curve



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

Portfolio Summary Management Report

This report and investment portfolio of the District is in compliance with the District investment strategy as expressed in the District's investment policy and relevant provisions of the Government Code, Chapter 2256, the Public Funds Investment Act.

Portfolio as of 07/31/23:		**Portfolio as of 08/31/23:**	
Beginning Book Value	$ 151,437,291	Ending Book Value	$ 155,564,970
Beginning Market Value	$ 150,754,534	Ending Market Value	$ 154,978,725
		Unrealized Gain/Loss	$ (586,245)
WAM at Beginning Period Date[1]	82 days	WAM at Ending Period Date[1]	104 days
(Increase in market value is due to seasonal cash inflows)		Change in Market Value[2]	$ 4,224,191

Average Yield to Maturity for period	**4.400%**
Average Yield 1-year Treasury Bill for period	**5.370%**
Average Yield 2-year Treasury Note for period	**4.900%**

Iris Luna, Interim Asst. Superintendent of Business Operations
McAllen ISD

Dyanira Diaz, Director of Accounting
McAllen ISD

Vanessa Arrezola, Coordinator for Accounting
McAllen ISD

1 WAM – weighted average maturity

2 "Change in Market Value" is required data, but will primarily reflect the receipt and expenditure of the District's funds from month to month.
Meeder Public Funds has assisted in the preparation of this consolidated investment report, with additional input provided by McAllen ISD.

Your Portfolio

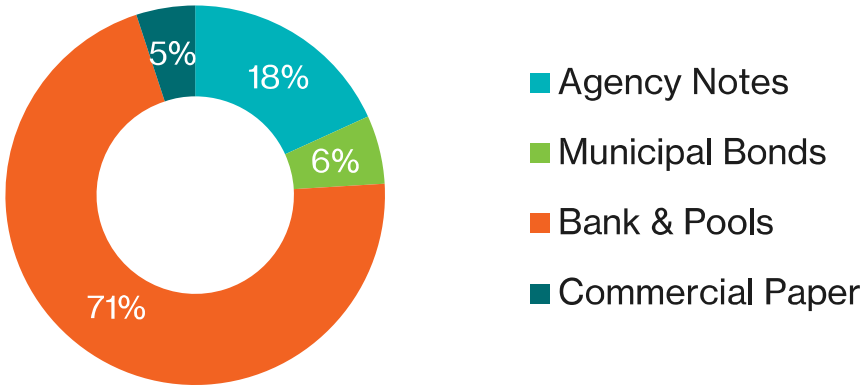
As of August 31, 2023

MEEDER

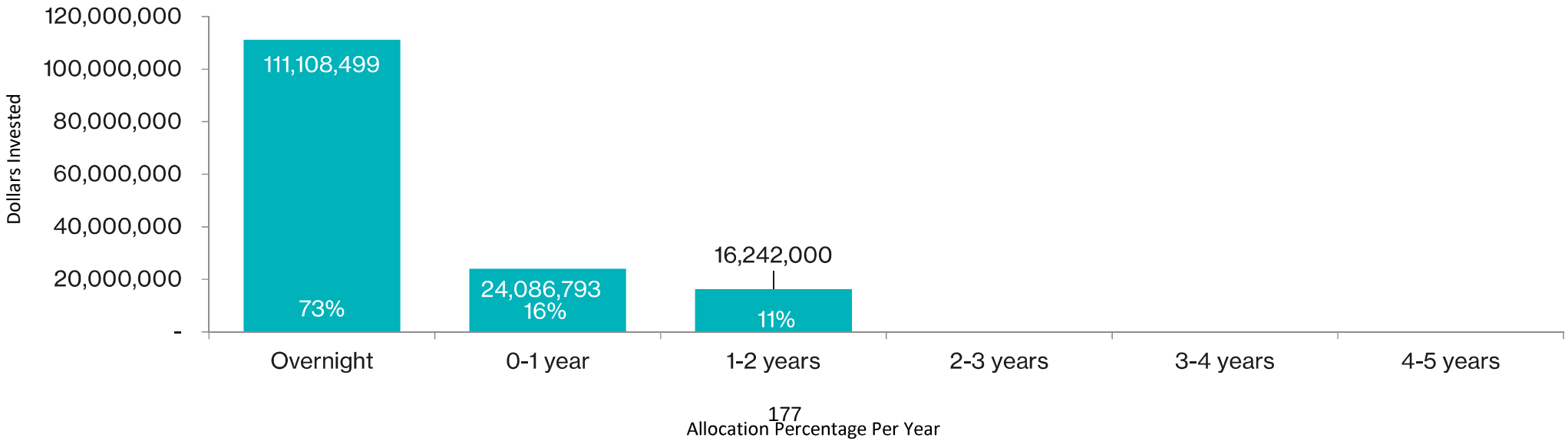
Your Portfolio Statistics

Weighted Average Maturity	0.28 years
Weighted Average Yield (All Funds)	4.40%

Your Asset Allocation



Your Maturity Distribution



Meeder Public Funds
901 S. MoPac
Suite 300
Austin, TX 78746
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McAllen ISD
Portfolio Management
Portfolio Summary
August 31, 2023

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 365 Equiv.
BNY Mellon	474,148.31	474,148.31	474,148.31	0.30	1	1	0.000
Frost Bank	26,151,620.02	26,151,620.02	26,151,620.02	16.81	1	1	2.750
Commercial Paper Disc. -Amortizing	8,000,000.00	7,796,613.00	7,798,797.22	5.01	249	162	5.695
Federal Agency Coupon Securities	28,582,000.00	27,754,370.14	28,310,433.90	18.20	807	427	3.097
Municipal Bonds	9,260,000.00	9,072,225.00	9,100,221.08	5.85	651	305	3.080
Texpool/Texpool Prime	22,246,197.68	22,246,197.68	22,246,197.68	14.30	1	1	5.434
Lone Star	61,483,551.32	61,483,551.32	61,483,551.32	39.52	1	1	5.394
Investments	**156,197,517.33**	**154,978,725.47**	**155,564,969.53**	**100.00%**	**198**	**104**	**4.400**
Cash and Accrued Interest							
Accrued Interest at Purchase		2,284.65	2,284.65				
Subtotal		2,284.65	2,284.65				
Total Cash and Investments	**156,197,517.33**	**154,981,010.12**	**155,567,254.18**		**198**	**104**	**4.400**

Total Earnings	August 31 Month Ending	Fiscal Year To Date
Current Year	560,608.15	1,104,832.72

The following reports are submitted in accordance with the Public Funds Investment Act (Texas Gov't Code 2256). The reports also offer supplemental information not required by the Act in order to fully inform the governing body of McAllen ISD of the position and activity within the District's portfolio of investment. The reports include a management summary overview, a detailed inventory report for the end of the period, a transaction report, as well as graphic representations of the portfolio to provide full disclosure to the governing body.

Oct 24, 2023

Iris Luna, Interim Asst Supt of Bus Operations

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

Meeder Public Funds
901 S. MoPac
Suite 300
Austin, TX 78746
-

Security Type		Number of Investments	Par Value	Book Value	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Activity Fund							
Frost Bank		1	2,073,706.07	2,073,706.07	1.33	2.750	1
	Subtotal	1	2,073,706.07	2,073,706.07	1.33	2.750	1
Fund: Clearing Fund							
Frost Bank		1	5,767,720.82	5,767,720.82	3.71	2.750	1
	Subtotal	1	5,767,720.82	5,767,720.82	3.71	2.750	1
Fund: Capital Projects Fund							
Frost Bank		2	8,272,975.21	8,272,975.21	5.32	2.750	1
Lone Star		4	6,464,457.39	6,464,457.39	4.16	5.395	1
	Subtotal	6	14,737,432.60	14,737,432.60	9.48	3.910	1
Fund: Debt Service Fund							
Frost Bank		1	107,666.13	107,666.13	0.07	2.750	1
Lone Star		2	3,035,527.56	3,035,527.56	1.95	5.384	1
	Subtotal	3	3,143,193.69	3,143,193.69	2.02	5.294	1
Fund: General Fund							
Frost Bank		1	8,372,115.59	8,372,115.59	5.38	2.750	1
Federal Agency Coupon Securities		6	20,200,000.00	20,200,000.00	12.98	2.840	334
Lone Star		3	45,024,619.14	45,024,619.14	28.94	5.394	1
Commercial Paper Disc. -Amortizing		3	8,000,000.00	7,798,797.22	5.01	5.695	162
Municipal Bonds		2	3,595,000.00	3,612,172.01	2.32	3.962	185
Texpool/Texpool Prime		2	22,246,197.68	22,246,197.68	14.30	5.434	1
	Subtotal	17	107,437,932.41	107,253,901.64	68.93	4.688	82
Fund: Plan 457 Fund							
Frost Bank		1	0.00	0.00	0.00	0.000	0
	Subtotal	1	0.00	0.00	0.00	0.000	0

Security Type	Number of Investments	Par Value	Book Value	% of Portfolio	Average YTM 365	Average Days to Maturity
Fund: Proprietary Fund						
Frost Bank	1	1,557,436.20	1,557,436.20	1.00	2.750	1
Lone Star	2	6,958,947.23	6,958,947.23	4.47	5.395	1
Subtotal	3	8,516,383.43	8,516,383.43	5.47	4.911	1
Fund: QSCB - Reserve Fund						
BNY Mellon	1	474,148.31	474,148.31	0.30	0.000	1
Federal Agency Coupon Securities	3	8,382,000.00	8,110,433.90	5.21	3.737	660
Municipal Bonds	3	5,665,000.00	5,488,049.07	3.53	2.499	384
Subtotal	7	14,521,148.31	14,072,631.28	9.04	3.128	530
Fund: QSCB - Debt Service						
BNY Mellon	1	0.00	0.00	0.00	0.000	0
Subtotal	1	0.00	0.00	0.00	0.000	0
Total and Average	40	156,197,517.33	155,564,969.53	100.00	4.400	104

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

Meeder Public Funds
901 S. MoPac
Suite 300
Austin, TX 78746
-

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999915	10020	Frost Bank Public Checking	07/01/2023	2,073,706.07	2,073,706.07	2,073,706.07	2.750	2.712	2.750	1
		Subtotal and Average		2,073,706.07	2,073,706.07	2,073,706.07		2.712	2.750	1
		Total Investments and Average		2,073,706.07	2,073,706.07	2,073,706.07		2.712	2.750	1

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

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999914	10019	Frost Bank Public Checking	07/01/2023	5,767,720.82	5,767,720.82	5,767,720.82	2.750	2.712	2.750	1
			Subtotal and Average	5,767,720.82	5,767,720.82	5,767,720.82		2.712	2.750	1
			Total Investments and Average	5,767,720.82	5,767,720.82	5,767,720.82		2.712	2.750	1

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

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999922	10103	Frost Bank Public Checking	07/01/2023	5,444,621.69	5,444,621.69	5,444,621.69	2.750	2.712	2.750	1
SYS10109	10109	Frost Bank Public Checking	07/01/2023	2,828,353.52	2,828,353.52	2,828,353.52	2.750	2.712	2.750	1
		Subtotal and Average		8,272,975.21	8,272,975.21	8,272,975.21		2.712	2.750	1
Lone Star										
108906G	10101	Lone Star Corporate Overnight	12/18/2019	402,876.33	402,876.33	402,876.33	5.490	5.414	5.490	1
108906I	10108	Lone Star Corporate Overnight	02/21/2020	2,844,768.91	2,844,768.91	2,844,768.91	5.490	5.414	5.490	1
108906H	10102	Lone Star Government ON	12/18/2019	396,294.98	396,294.98	396,294.98	5.300	5.227	5.300	1
108906J	10113	Lone Star Government ON	03/12/2020	2,820,517.17	2,820,517.17	2,820,517.17	5.300	5.227	5.300	1
		Subtotal and Average		6,464,457.39	6,464,457.39	6,464,457.39		5.322	5.395	1
		Total Investments and Average		14,737,432.60	14,737,432.60	14,737,432.60		3.857	3.910	1

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

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999918	10023	Frost Bank Public Checking	07/01/2023	107,666.13	107,666.13	107,666.13	2.750	2.712	2.750	1
			Subtotal and Average	107,666.13	107,666.13	107,666.13		2.712	2.750	1
Lone Star										
108906B	10032	Lone Star Corporate Overnight	10/22/2015	1,339,839.03	1,339,839.03	1,339,839.03	5.490	5.414	5.490	1
108906C	10089	Lone Star Government ON	08/05/2019	1,695,688.53	1,695,688.53	1,695,688.53	5.300	5.227	5.300	1
			Subtotal and Average	3,035,527.56	3,035,527.56	3,035,527.56		5.310	5.384	1
			Total Investments and Average	3,143,193.69	3,143,193.69	3,143,193.69		5.221	5.294	1

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Date	Days To Maturity
Frost Bank											
999917	10022	Frost Bank Public Checking	07/01/2023	8,372,115.59	8,372,115.59	8,372,115.59	2.750	2.712	2.750		1
			Subtotal and Average	8,372,115.59	8,372,115.59	8,372,115.59		2.712	2.750		1
Commercial Paper Disc. -Amortizing											
4497W1XG6	10163	ING Funding CP	01/27/2023	2,981,475.00	3,000,000.00	2,979,291.00	4.940	5.149	5.221	10/16/2023	45
62479LEH4	10170	MUFG Bank CP	08/25/2023	2,879,565.00	3,000,000.00	2,879,490.00		5.890	5.972	05/17/2024	259
63307LCJ8	10171	Nat'l Bank of Canada CP	08/28/2023	1,937,757.22	2,000,000.00	1,937,832.00		5.928	6.010	03/18/2024	199
			Subtotal and Average	7,798,797.22	8,000,000.00	7,796,613.00		5.617	5.695		162
Federal Agency Coupon Securities											
3130AUQC1	10164	FHLB Note	01/30/2023	5,000,000.00	5,000,000.00	4,987,462.70	4.875	4.808	4.875	01/30/2024	151
3130APQM0	10150	FHLB Call Note	11/18/2021	3,000,000.00	3,000,000.00	2,843,989.71	1.000	0.986	1.000	11/18/2024	444
3130APQU2	10151	FHLB Call Note	11/22/2021	2,000,000.00	2,000,000.00	1,977,474.14	0.650	0.641	0.650	11/22/2023	82
3130AQLR2	10153	FHLB Call Note	02/07/2022	2,500,000.00	2,500,000.00	2,451,065.75	1.000	0.986	1.000	02/07/2024	159
3130AQYM9	10156	FHLB Step Note	02/28/2022	4,500,000.00	4,500,000.00	4,400,311.91	2.500	2.054	2.083	02/28/2025	546
3135GAH20	10165	FNMA Call Note	04/28/2023	3,200,000.00	3,200,000.00	3,174,818.30	5.250	5.182	5.254	01/27/2025	514
			Subtotal and Average	20,200,000.00	20,200,000.00	19,835,122.51		2.801	2.840		334
Municipal Bonds											
476637AU7	10167	Jersey City NJ Redev Agency	05/24/2023	2,512,172.01	2,495,000.00	2,515,234.45	6.500	5.516	5.592	05/24/2024	266
678720KM4	10145	Oklahoma County OK ISD	09/23/2021	1,100,000.00	1,100,000.00	1,100,000.00	0.500	0.234	0.238	09/01/2023	0
			Subtotal and Average	3,612,172.01	3,595,000.00	3,615,234.45		3.908	3.962		184
Texpool/Texpool Prime											
999921	10092	Texpool	08/05/2019	11,079,529.49	11,079,529.49	11,079,529.49	5.305	5.232	5.304		1
999920	10034	Texpool Prime	11/03/2015	11,166,668.19	11,166,668.19	11,166,668.19	5.563	5.486	5.562		1
			Subtotal and Average	22,246,197.68	22,246,197.68	22,246,197.68		5.360	5.434		1
Lone Star											
108906F	10099	Lone Star Corporate Overnight+	11/18/2019	0.00	0.00	0.00					1
108906	10003	Lone Star Corporate Overnight	11/01/2014	22,236,037.93	22,236,037.93	22,236,037.93	5.490	5.414	5.490		1
108906D	10090	Lone Star Government ON	08/05/2019	22,788,581.21	22,788,581.21	22,788,581.21	5.300	5.227	5.300		1
			Subtotal and Average	45,024,619.14	45,024,619.14	45,024,619.14		5.320	5.394		1

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
		Total Investments and Average		107,253,901.64	107,437,932.41	106,889,902.37		4.624	4.688	81

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999916	10021	Frost Bank Public Checking	07/01/2023	0.00	0.00	0.00				1
			Subtotal and Average	0.00	0.00	0.00		0.000	0.000	0
			Total Investments and Average	0.00	0.00	0.00		0.000	0.000	0

Fund PROP - Proprietary Fund
Investments by Fund
August 31, 2023

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
Frost Bank										
999919	10024	Frost Bank Public Checking	07/01/2023	1,557,436.20	1,557,436.20	1,557,436.20	2.750	2.712	2.750	1
			Subtotal and Average	1,557,436.20	1,557,436.20	1,557,436.20		2.712	2.750	1
Lone Star										
108906A	10025	Lone Star Corporate Overnight	08/05/2015	3,483,961.95	3,483,961.95	3,483,961.95	5.490	5.414	5.490	1
108906E	10091	Lone Star Government ON	08/05/2019	3,474,985.28	3,474,985.28	3,474,985.28	5.300	5.227	5.300	1
			Subtotal and Average	6,958,947.23	6,958,947.23	6,958,947.23		5.321	5.395	1
			Total Investments and Average	8,516,383.43	8,516,383.43	8,516,383.43		4.844	4.911	1

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

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Date	Days To Maturity
BNY Mellon											
882521	10014	BNY Mellon - Cash	07/01/2023	474,148.31	474,148.31	474,148.31		0.000	0.000		1
			Subtotal and Average	474,148.31	474,148.31	474,148.31		0.000	0.000		1
Federal Agency Coupon Securities											
3130AQJM6	10152	FHLB Call Note	01/28/2022	3,000,000.00	3,000,000.00	2,830,619.34	1.250	1.276	1.294	01/28/2025	515
3130AKQX7	10168	FHLB Call Note	08/03/2023	2,568,433.90	2,840,000.00	2,564,933.82	0.700	4.901	4.969	01/28/2026	880
3134GYQP0	10166	FHLMC Call Note	05/01/2023	2,542,000.00	2,542,000.00	2,523,694.47	5.375	5.301	5.375	05/01/2025	608
			Subtotal and Average	8,110,433.90	8,382,000.00	7,919,247.63		3.686	3.737		659
Municipal Bonds											
578060EQ4	10161	Mayes County OK ISD	06/29/2022	1,603,052.72	1,600,000.00	1,571,088.00	3.300	2.351	2.384	06/01/2024	274
678720KM4	10146	Oklahoma County OK ISD	09/23/2021	2,000,000.00	2,000,000.00	2,000,000.00	0.500	0.234	0.238	09/01/2023	0
882669CQ5	10169	Texas St Public Fin Auth Rev	08/25/2023	1,884,996.35	2,065,000.00	1,885,902.55	1.120	4.926	4.995	02/01/2026	884
			Subtotal and Average	5,488,049.07	5,665,000.00	5,456,990.55		2.465	2.499		383
			Total Investments and Average	14,072,631.28	14,521,148.31	13,850,386.49		3.086	3.128		529

CUSIP	Investment #	Issuer	Purchase Date	Book Value	Par Value	Market Value	Current Rate	YTM 360	YTM 365	Maturity Days To Date Maturity
BNY Mellon										
882520	10040	BNY Mellon - Cash	07/01/2023	0.00	0.00	0.00				1
			Subtotal and Average	0.00	0.00	0.00		0.000	0.000	0
			Total Investments and Average	0.00	0.00	0.00		0.000	0.000	0

Meeder Public Funds
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McAllen ISD
Cash Reconciliation Report
For the Period August 1, 2023 - August 31, 2023

Trans. Date	Investment #	Fund	Trans. Type	Security ID	Par Value	Security Description	Maturity Date	Purchases	Interest	Redemptions	Cash
08/03/2023	10168	QSCB	Purchase	3130AKQX7	2,840,000.00	FHLBC 2.8M 0.70% Mat. 01/28/2026	01/28/2026	-2,559,663.60	-276.11	0.00	-2,559,939.71
08/07/2023	10153	GEN	Interest	3130AQLR2	2,500,000.00	FHLBC 2.5M 1.00% Mat. 02/07/2024	02/07/2024	0.00	12,500.00	0.00	12,500.00
08/18/2023	10143	GEN	Interest	3130ANDP2	2,400,000.00	FHLBC 2.4M 0.25% Mat. 08/18/2023	08/18/2023	0.00	3,000.00	0.00	3,000.00
08/18/2023	10144	QSCB	Interest	3130ANDP2	2,000,000.00	FHLBC 2.0M 0.25% Mat. 08/18/2023	08/18/2023	0.00	2,500.00	0.00	2,500.00
08/18/2023	10143	GEN	Maturity	3130ANDP2	2,400,000.00	FHLBC 2.4M 0.25% Mat. 08/18/2023	08/18/2023	0.00	0.00	2,400,000.00	2,400,000.00
08/18/2023	10144	QSCB	Maturity	3130ANDP2	2,000,000.00	FHLBC 2.0M 0.25% Mat. 08/18/2023	08/18/2023	0.00	0.00	2,000,000.00	2,000,000.00
08/25/2023	10169	QSCB	Purchase	882669CQ5	2,065,000.00	TXSTPF 2.1M 1.12% Mat.	02/01/2026	-1,883,754.95	-1,541.87	0.00	-1,885,296.82
08/25/2023	10170	GEN	Purchase	62479LEH4	3,000,000.00	MUFGBK 3.0M 0.00% Mat.	05/17/2024	-2,876,310.00	0.00	0.00	-2,876,310.00
08/28/2023	10156	GEN	Interest	3130AQYM9	4,500,000.00	FHLBS 4.5M 1.25% Mat. 02/28/2025	02/28/2025	0.00	56,250.00	0.00	56,250.00
08/28/2023	10171	GEN	Purchase	63307LCJ8	2,000,000.00	NABKCN 2.0M 0.00% Mat.	03/18/2024	-1,936,506.11	0.00	0.00	-1,936,506.11
							Subtotal	-9,256,234.66	72,432.02	4,400,000.00	-4,783,802.64
							Total	-9,256,234.66	72,432.02	4,400,000.00	-4,783,802.64

MEEDER PUBLIC FUNDS

Meeder Public Funds
901 S. MoPac
Suite 300
Austin, TX 78746
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McAllen ISD
Purchases Report
Sorted by Fund - Issuer
August 1, 2023 - August 31, 2023

CUSIP	Investment #	Fund	Sec. Type	Issuer	Original Par Value	Purchase Date	Payment Periods	Principal Purchased	Accrued Interest at Purchase	Rate at Purchase	Maturity Date	YTM	Ending Book Value
General Fund													
62479LEH4	10170	GEN	ACP	MUFGBK	3,000,000.00	08/25/2023	05/17 - At Maturity	2,876,310.00			05/17/2024	5.890	2,879,565.00
63307LCJ8	10171	GEN	ACP	NABKCN	2,000,000.00	08/28/2023	03/18 - At Maturity	1,936,506.11			03/18/2024	5.929	1,937,757.22
				Subtotal	5,000,000.00			4,812,816.11	0.00				4,817,322.22
QSCB - Reserve Fund													
3130AKQX7	10168	QSCB	FAC	FHLBC	2,840,000.00	08/03/2023	01/28 - 07/28	2,559,663.60	276.11	0.700	01/28/2026	4.970	2,568,433.90
882669CQ5	10169	QSCB	MC2	TXSTPF	2,065,000.00	08/25/2023	02/01 - 08/01	1,883,754.95	1,541.87	1.120	02/01/2026	4.995	1,884,996.35
				Subtotal	4,905,000.00			4,443,418.55	1,817.98				4,453,430.25
				Total Purchases	9,905,000.00			9,256,234.66	1,817.98				9,270,752.47

Meeder Public Funds
901 S. MoPac
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McAllen ISD
Maturity Report
Sorted by Maturity Date
Amounts due during August 1, 2023 - August 31, 2023

CUSIP	Investment #	Fund	Sec. Type	Issuer	Par Value	Maturity Date	Purchase Date	Rate at Maturity	Book Value at Maturity	Interest	Maturity Proceeds	Net Income
3130ANDP2	10143	GEN	FAC	FHLBC	2,400,000.00	08/18/2023	08/18/2021	0.250	2,400,000.00	3,000.00	2,403,000.00	3,000.00
3130ANDP2	10144	QSCB	FAC	FHLBC	2,000,000.00	08/18/2023	08/18/2021	0.250	2,000,000.00	2,500.00	2,002,500.00	2,500.00
			Total Maturities		4,400,000.00				4,400,000.00	5,500.00	4,405,500.00	5,500.00

Meeder Public Funds
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McAllen ISD
Interest Earnings
Sorted by Fund - Fund
August 1, 2023 - August 31, 2023
Yield on Beginning Book Value

CUSIP	Investment #	Fund	Security Type	Ending Par Value	Beginning Book Value	Ending Book Value	Maturity Date	Current Rate	Annualized Yield	Adjusted Interest Earnings: Interest Earned	Adjusted Interest Earnings: Amortization/ Accretion	Adjusted Interest Earnings: Adjusted Interest Earnings
Fund: Activity Fund												
999915	10020	ACT	LA2	2,073,706.07	2,015,797.89	2,073,706.07		2.750	3.273	5,602.82	0.00	5,602.82
			Subtotal	2,073,706.07	2,015,797.89	2,073,706.07			3.273	5,602.82	0.00	5,602.82
Fund: Clearing Fund												
999914	10019	CLEAR	LA2	5,767,720.82	3,261,141.77	5,767,720.82		2.750	4.155	11,507.50	0.00	11,507.50
			Subtotal	5,767,720.82	3,261,141.77	5,767,720.82			4.155	11,507.50	0.00	11,507.50
Fund: Capital Projects Fund												
108906G	10101	CP	RR2	402,876.33	401,008.12	402,876.33		5.490	5.485	1,868.21	0.00	1,868.21
108906I	10108	CP	RR2	2,844,768.91	4,673,608.41	2,844,768.91		5.490	5.331	21,160.50	0.00	21,160.50
999922	10103	CP	LA2	5,444,621.69	611,084.88	5,444,621.69		2.750	6.090	3,160.58	0.00	3,160.58
SYS10109	10109	CP	LA2	2,828,353.52	8,297.63	2,828,353.52		2.750	73.753	519.76	0.00	519.76
108906J	10113	CP	RR2	2,820,517.17	3,953,013.65	2,820,517.17		5.300	5.213	17,503.52	0.00	17,503.52
108906H	10102	CP	RR2	396,294.98	394,519.64	396,294.98		5.300	5.298	1,775.34	0.00	1,775.34
			Subtotal	14,737,432.60	10,041,532.33	14,737,432.60			5.392	45,987.91	0.00	45,987.91
Fund: Debt Service Fund												
108906B	10032	DS	RR2	1,339,839.03	1,992,011.49	1,339,839.03		5.490	4.058	6,865.59	0.00	6,865.59
999918	10023	DS	LA2	107,666.13	103,201.28	107,666.13		2.750	5.303	464.85	0.00	464.85
108906C	10089	DS	RR2	1,695,688.53	1,688,092.13	1,695,688.53		5.300	5.298	7,596.40	0.00	7,596.40
			Subtotal	3,143,193.69	3,783,304.90	3,143,193.69			4.645	14,926.84	0.00	14,926.84
Fund: General Fund												
3130AUQC1	10164	GEN	FAC	5,000,000.00	5,000,000.00	5,000,000.00	01/30/2024	4.875	4.783	20,312.50	0.00	20,312.50
999921	10092	GEN	RRP	11,079,529.49	11,029,835.68	11,079,529.49		5.305	5.305	49,693.81	0.00	49,693.81
108906	10003	GEN	RR2	22,236,037.93	26,164,538.53	22,236,037.93		5.490	5.684	126,316.96	0.00	126,316.96
999917	10022	GEN	LA2	8,372,115.59	15,346,341.76	8,372,115.59		2.750	2.233	29,109.70	0.00	29,109.70
999920	10034	GEN	RRP	11,166,668.19	11,114,158.84	11,166,668.19		5.563	5.563	52,509.35	0.00	52,509.35
3130ANDP2	10143	GEN	FAC	0.00	2,400,000.00	0.00	08/18/2023	0.250	0.253	283.33	0.00	283.33

CUSIP	Investment #	Fund	Security Type	Ending Par Value	Beginning Book Value	Ending Book Value	Maturity Date	Current Rate	Annualized Yield	Adjusted Interest Earnings: Interest Earned	Adjusted Interest Earnings: Amortization/ Accretion	Adjusted Interest Earnings: Adjusted Interest Earnings
Fund: General Fund												
3130APQU2	10151	GEN	FAC	2,000,000.00	2,000,000.00	2,000,000.00	11/22/2023	0.650	0.638	1,083.33	0.00	1,083.33
3130AQLR2	10153	GEN	FAC	2,500,000.00	2,500,000.00	2,500,000.00	02/07/2024	1.000	0.981	2,083.34	0.00	2,083.34
3130APQM0	10150	GEN	FAC	3,000,000.00	3,000,000.00	3,000,000.00	11/18/2024	1.000	0.981	2,500.00	0.00	2,500.00
108906D	10090	GEN	RR2	22,788,581.21	16,709,452.37	22,788,581.21		5.300	5.576	79,128.84	0.00	79,128.84
678720KM4	10145	GEN	MC2	1,100,000.00	1,100,182.49	1,100,000.00	09/01/2023	0.500	0.295	458.33	-182.49	275.84
3130AQYM9	10156	GEN	FAC	4,500,000.00	4,500,000.00	4,500,000.00	02/28/2025	2.500	2.453	9,375.00	0.00	9,375.00
4497W1XG6	10163	GEN	ACP	3,000,000.00	2,968,713.33	2,981,475.00	10/16/2023	4.940	5.061	0.00	12,761.67	12,761.67
3135GAH20	10165	GEN	FAC	3,200,000.00	3,200,000.00	3,200,000.00	01/27/2025	5.250	5.151	14,000.00	0.00	14,000.00
476637AU7	10167	GEN	MC2	2,495,000.00	2,514,173.26	2,512,172.01	05/24/2024	6.500	5.603	13,965.07	-2,001.25	11,963.82
62479LEH4	10170	GEN	ACP	3,000,000.00	0.00	2,879,565.00	05/17/2024		5.901	0.00	3,255.00	3,255.00
63307LCJ8	10171	GEN	ACP	2,000,000.00	0.00	1,937,757.22	03/18/2024		5.895	0.00	1,251.11	1,251.11
			Subtotal	107,437,932.41	109,547,396.26	107,253,901.64			4.478	400,819.56	15,084.04	415,903.60
Fund: Proprietary Fund												
108906A	10025	PROP	RR2	3,483,961.95	3,467,806.17	3,483,961.95		5.490	5.485	16,155.78	0.00	16,155.78
999919	10024	PROP	LA2	1,557,436.20	2,129,763.03	1,557,436.20		2.750	2.047	3,703.48	0.00	3,703.48
108906E	10091	PROP	RR2	3,474,985.28	3,459,417.92	3,474,985.28		5.300	5.298	15,567.36	0.00	15,567.36
			Subtotal	8,516,383.43	9,056,987.12	8,516,383.43			4.606	35,426.62	0.00	35,426.62
Fund: QSCB - Reserve Fund												
882521	10014	QSCB	LA1	474,148.31	2,585,407.46	474,148.31				0.00	0.00	0.00
3134GYQP0	10166	QSCB	FAC	2,542,000.00	2,542,000.00	2,542,000.00	05/01/2025	5.375	5.274	11,386.04	0.00	11,386.04
3130ANDP2	10144	QSCB	FAC	0.00	2,000,000.00	0.00	08/18/2023	0.250	0.253	236.11	0.00	236.11
3130AQJM6	10152	QSCB	FAC	3,000,000.00	3,000,000.00	3,000,000.00	01/28/2025	1.250	1.226	3,125.00	0.00	3,125.00
3130AKQX7	10168	QSCB	FAC	2,840,000.00	0.00	2,568,433.90	01/28/2026	0.700	5.073	1,546.22	8,770.30	10,316.52
678720KM4	10146	QSCB	MC2	2,000,000.00	2,000,331.81	2,000,000.00	09/01/2023	0.500	0.295	833.33	-331.81	501.52
578060EQ4	10161	QSCB	MC2	1,600,000.00	1,603,391.91	1,603,052.72	06/01/2024	3.300	2.982	4,400.00	-339.19	4,060.81
882669CQ5	10169	QSCB	MC2	2,065,000.00	0.00	1,884,996.35	02/01/2026	1.120	4.503	385.46	1,241.40	1,626.86
			Subtotal	14,521,148.31	13,731,131.18	14,072,631.28			2.352	21,912.16	9,340.70	31,252.86
			Total	156,197,517.33	151,437,291.45	155,564,969.53			4.309	536,183.41	24,424.74	560,608.15

MEEDER PUBLIC FUNDS

Meeder Public Funds
901 S. MoPac
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McAllen ISD
Amortization Schedule
August 1, 2023 - August 31, 2023
Sorted By Fund - Fund

Investment # / Issuer	Fund	Maturity Date / Amort. Date	Beginning Par Value / Current Rate	Purchase Principal	Original Premium or Discount	Ending Book Value	Amounts Amortized And Unamortized As of 08/01/2023	Amount Amortized This Period	Amt Amortized Through 08/31/2023	Amount Unamortized Through 08/31/2023
General Fund										
10163 ING Funding CP	GEN	10/16/2023	3,000,000.00 4.940	2,892,143.33	-107,856.67	2,981,475.00	76,570.00 -31,286.67	12,761.67	89,331.67	-18,525.00
10167 Jersey City NJ Redev Agency	GEN	05/24/2024	2,495,000.00 6.500	2,518,627.65	23,627.65	2,512,172.01	-4,454.39 19,173.26	-2,001.25	-6,455.64	17,172.01
10170 MUFG Bank CP	GEN	05/17/2024	3,000,000.00	2,876,310.00	-123,690.00	2,879,565.00	0.00 -123,690.00	3,255.00	3,255.00	-120,435.00
10171 Nat'l Bank of Canada CP	GEN	03/18/2024	2,000,000.00	1,936,506.11	-63,493.89	1,937,757.22	0.00 -63,493.89	1,251.11	1,251.11	-62,242.78
10145 Oklahoma County OK ISD	GEN	09/01/2023	1,100,000.00 0.500	1,104,246.00	4,246.00	1,100,000.00	-4,063.51 182.49	-182.49	-4,246.00	0.00
			Subtotal	11,327,833.09	-267,166.91	11,410,969.23	68,052.10 -199,114.81	15,084.04	83,136.14	-184,030.77
QSCB - Reserve Fund										
10152 FHLB Call Note	QSCB	01/28/2025 04/28/2022	3,000,000.00 1.250	2,996,100.00	-3,900.00	3,000,000.00	3,900.00 0.00	0.00	3,900.00	0.00
10168 FHLB Call Note	QSCB	01/28/2026	2,840,000.00 0.700	2,559,663.60	-280,336.40	2,568,433.90	0.00 -280,336.40	8,770.30	8,770.30	-271,566.10
10161 Mayes County OK ISD	QSCB	06/01/2024	1,600,000.00 3.300	1,607,824.00	7,824.00	1,603,052.72	-4,432.09 3,391.91	-339.19	-4,771.28	3,052.72
10146 Oklahoma County OK ISD	QSCB	09/01/2023	2,000,000.00 0.500	2,007,720.00	7,720.00	2,000,000.00	-7,388.19 331.81	-331.81	-7,720.00	0.00
10169 Texas St Public Fin Auth Rev	QSCB	02/01/2026	2,065,000.00 1.120	1,883,754.95	-181,245.05	1,884,996.35	0.00 -181,245.05	1,241.40	1,241.40	-180,003.65
			Subtotal	11,055,062.55	-449,937.45	11,056,482.97	-7,920.28 -457,857.73	9,340.70	1,420.42	-448,517.03
			Total	22,382,895.64	-717,104.36	22,467,452.20	60,131.82 -656,972.54	24,424.74	84,556.56	-632,547.80

MEEDER PUBLIC FUNDS

Meeder Public Funds
901 S. MoPac
Suite 300
Austin, TX 78746
-

McAllen ISD
Projected Cashflow Report
Sorted by Fund
For the Period September 1, 2023 - March 31, 2024

Projected Trans. Date	Investment #	Fund	Security ID	Transaction Type	Issuer	Par Value	Original Cost	Principal	Interest	Total
General Fund										
09/01/2023	10145	GEN	678720KM4	Maturity	Oklahoma County OK ISD	1,100,000.00	1,104,246.00	1,100,000.00	2,750.00	1,102,750.00
09/07/2023	10153	GEN	3130AQLR2	Call	FHLB Call Note	2,500,000.00	2,500,000.00	2,500,000.00	0.00	2,500,000.00
10/16/2023	10163	GEN	4497W1XG6	Maturity	ING Funding CP	3,000,000.00	2,892,143.33	3,000,000.00	0.00	3,000,000.00
10/27/2023	10165	GEN	3135GAH20	Interest	FNMA Call Note	0.00	0.00	0.00	84,000.00	84,000.00
10/27/2023	10165	GEN	3135GAH20	Call	FNMA Call Note	3,200,000.00	3,200,000.00	3,200,000.00	0.00	3,200,000.00
11/18/2023	10150	GEN	3130APQM0	Interest	FHLB Call Note	0.00	0.00	0.00	15,000.00	15,000.00
11/18/2023	10150	GEN	3130APQM0	Call	FHLB Call Note	3,000,000.00	3,000,000.00	3,000,000.00	0.00	3,000,000.00
11/22/2023	10151	GEN	3130APQU2	Maturity	FHLB Call Note	2,000,000.00	2,000,000.00	2,000,000.00	6,500.00	2,006,500.00
11/28/2023	10156	GEN	3130AQYM9	Call	FHLB Step Note	4,500,000.00	4,500,000.00	4,500,000.00	0.00	4,500,000.00
01/30/2024	10164	GEN	3130AUQC1	Maturity	FHLB Note	5,000,000.00	5,000,000.00	5,000,000.00	121,875.00	5,121,875.00
02/07/2024	10153	GEN	3130AQLR2	Maturity	FHLB Call Note	2,500,000.00	2,500,000.00	2,500,000.00	12,500.00	2,512,500.00
02/28/2024	10156	GEN	3130AQYM9	Interest	FHLB Step Note	0.00	0.00	0.00	56,250.00	56,250.00
03/18/2024	10171	GEN	63307LCJ8	Maturity	Nat'l Bank of Canada CP	2,000,000.00	1,936,506.11	2,000,000.00	0.00	2,000,000.00
					Total for General Fund	28,800,000.00	28,632,895.44	28,800,000.00	298,875.00	29,098,875.00
QSCB - Reserve Fund										
09/01/2023	10146	QSCB	678720KM4	Maturity	Oklahoma County OK ISD	2,000,000.00	2,007,720.00	2,000,000.00	5,000.00	2,005,000.00
10/28/2023	10152	QSCB	3130AQJM6	Call	FHLB Call Note	3,000,000.00	2,996,100.00	3,000,000.00	0.00	3,000,000.00
11/01/2023	10166	QSCB	3134GYQP0	Interest	FHLMC Call Note	0.00	0.00	0.00	68,316.25	68,316.25
11/01/2023	10166	QSCB	3134GYQP0	Call	FHLMC Call Note	2,542,000.00	2,542,000.00	2,542,000.00	0.00	2,542,000.00
12/01/2023	10161	QSCB	578060EQ4	Interest	Mayes County OK ISD	0.00	0.00	0.00	26,400.00	26,400.00
01/28/2024	10152	QSCB	3130AQJM6	Interest	FHLB Call Note	0.00	0.00	0.00	18,750.00	18,750.00
01/28/2024	10168	QSCB	3130AKQX7	Interest	FHLB Call Note	0.00	0.00	0.00	9,940.00	9,940.00
02/01/2024	10169	QSCB	882669CQ5	Interest	Texas St Public Fin Auth Rev	0.00	0.00	0.00	11,564.00	11,564.00
					Total for QSCB - Reserve Fund	7,542,000.00	7,545,820.00	7,542,000.00	139,970.25	7,681,970.25
					GRAND TOTALS:	36,342,000.00	36,178,715.44	36,342,000.00	438,845.25	36,780,845.25

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Meeder Public Funds

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78746

866.633.3371

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 30, 2023

SUBJECT: Discussion and Possible Action on Competitive Sealed Proposal ("CSP") No. 2024-1016 McAllen Veterans Memorial Stadium Fiber Installation for Scoreboard Operations at New Press Box

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The District solicited proposals to install fiber for the new Press Box.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
One hundred five (105) contractors were invited to submit proposals, five (5) contractors responded including two (2) no bids, and one (1) non-responsive. On October 20, 2023, the evaluation committee, comprised of Ruben Treviño, Executive Director for Facilities, Maintenance, and Operations; Melissa Ortiz, Project Manager for Facilities, Maintenance, and Operations; Judith Escamilla, Executive Director for Technology, Domingo Ramos, Director of Technology; Laura Williams, Purchasing Director; and Graciela Garza, Senior Buyer, evaluated the proposals.

LEGAL REVIEW:
A draft copy of the AIA contract is attached.

BUDGETARY CONSIDERATIONS:
Funds for this project are available through the General Fund.

RECOMMENDED BOARD ACTION:
Administration recommends that the Board of Trustees:

A. approve the ranking for selection of General Contractor for Competitive Sealed Proposal ("CSP") No. 2024-1016 McAllen Veterans Memorial Stadium Fiber Installation for Scoreboard Operations at New Press Box; and
B. approve that Administration begin with negotiations with the highest-ranked Contractor. If the District is unable to negotiate a satisfactory contract with the selected Contractor, the District shall, formally and in writing, end negotiations with that Contractor and proceed to the next Contractor in the order of the selection ranking until the contract is reached or all submittals are rejected; and
C. authorize the Superintendent to execute a contract in accordance with the procedures set out in Texas Government Code, Section 2269.254, once Contractor negotiations have been successfully achieved.

Attachment: ☑

SUBMITTED BY: Judith Escamilla _____ **SUPERVISOR:** _____

For further information contact:
Name: Judith Escamilla, Executive Director of Technology
Office: (956) 632-3238
Email: judith.escamilla@mcallenisd.net

Approved for presentation to the Board of Education:

Rosalva De Hoyos

Interim Superintendent of Schools

McAllen Independent School District
CSP 2024-1016 McAllen Veterans Memorial Stadium Fiber Installation for Scoreboard Operations at New Press Box
Evaluation Matrix

		Vendor # 1	Vendor # 2
Vendor Names		Network Cabling Services, Inc.	Telepro Communications (JSJ Rodriguez Inc)
Rank		1	2
Maximum points	100.00	94.50	80.52
Price	62	62	48
Base Bid (Includes Contingency)		$141,816.00	$185,027.00
Offeror's experience and reputation	18	13.5	13
Three (3) K-12 reference forms	1.5	1	0
Rating of 2 or better; plus similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)			
Three (3) Supplier Reference Letters (BA161)	1.5	1.5	1
Claims, judgments, arbitration proceedings or suits (BA68)	1	1	1
Three (3) current or past K-12 projects (BA 70-87)	12	8	10
Similar scope and size (2 pts for scope; 2 pts for size per reference)			
Current or past Non K-12 projects (BA 89-106)	2	2	1
Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)			
Quality of the offeror's goods or services	2	2	2
Repeat business for similar scope/size (BA107)	2	2	2
The impact on the ability of the district to comply with rules relating to historically underutilized businesses - HUB (BA18)	1	0	1
Offeror's safety record	7	7	7
"OSHA Form 300 Log (BA163)	1.5	1.5	1.5
Safety program manual and/or procedures. (BA164)	2	2	2
Drug/alcohol prevention policy and/or procedures. (BA165)	1	1	1
"Workers Compensation Experience Rating" (BA162)	1.5	1.5	1.5
Frequency of safety inspections (BA108)	1	1	1
Offeror's Proposed Personnel	6	6	6
Staff experience (industry) (BA113-132)	3	3	3
Staff experience (firm) (BA113-132)	3	3	3
Whether the offeror's financial capability is appropriate to the size and scope of the project	2	2	2
Financial Statement (BAI68)	1	1	1
Surety Letter (BAI66)	1	1	1
Any other relevant factors specifically listed in the CSP	2	2	2
On-time project completion (BA50-67; BA70-87; BA 89-106)	1	1	1
Projects currently in progress. (BA134-157)	1	1	1

AIA® Document A101® – 2017

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

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

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

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

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

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

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

_____
_____
_____

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

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

The Owner and Contractor agree as follows.

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

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

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

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TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4 CONTRACT SUM

5 PAYMENTS

6 DISPUTE RESOLUTION

7 TERMINATION OR SUSPENSION

8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

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

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

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ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contract Documents consist of this Agreement, General Conditions of the Contract, Supplementary Conditions, other Conditions, and Project Manual to the extent they are consistent with other portions of the Contract Documents, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. The order of precedence of the Contract Documents shall be as set out in Section 1.2.4 of the AIA Document A201-2017.

§ 1.2 The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or construction Change Directive modifying the Contract Sum, or to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorities to sign documents on behalf of the Board of Trustees, following appropriate Board action: Superintendent or other Board designee.

§ 1.3 The Board designates the authorized representatives identified in Paragraph 8.2 to act on its behalf in other respects.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

[ ] The date of this Agreement.

[ ] A date set forth in a notice to proceed issued by the Owner.

[X] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

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

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

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

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[ ] By the following date:

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Final Completion shall be thirty (30) calendar days after the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Contract Documents.

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

Portion of Work	Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be _____AND __/100 DOLLARS ($_____), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price

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

Item	Units and Limitations	Price per Unit ($0.00)

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

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

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§ 4.6 Other:
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

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

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 The Contractor shall submit monthly Applications for Payment to the Architect not later than the last day of each month, on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. The Architect will have seven business days to approve the Contractor's Application and submit its Certificate for Payment to the Owner. The Architect may require from the Contractor any additional information required by the Contract Documents and deemed necessary to substantiate the Application for Payment. The Owner shall pay to the Contractor, the certified undisputed amounts in the Payment Application to the Contractor not later than 30 days from the Owner's receipt of the Certificate of Payment from the Architect if the Owner's Board meets twice a month or more, and 45 days from the Owner's receipt of the Certificate of Payment from the Architect if the Owner's Board meets only once per month.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

.1 That portion of the Contract Sum properly allocable to completed Work, as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;

.2 If approved in advance by the Owner, that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, suitably stored off the site at a location agreed upon in writing; and

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

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.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017, or amounts certified by the Architect and disputed by the Owner; and

.5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five Percent (5%) if the amount set forth in Section 4.1 above for the Contract Sum is at least Four Hundred Thousand Dollars ($400,000) and Ten Percent (10%) if the amount is less than Four Hundred Thousand Dollars ($400,000)

§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)
N/A

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon approval of its Board of Trustees and acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 5.1.7.3
(Paragraphs deleted)
Retainage is not due to the Contractor until thirty-one (31) days after Final Payment for the Work as set out in Section 9.10 of AIA Document A201-2017.

§ 5.1.8 [Paragraph Deleted.]

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§5.10 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts, and fees at any time.

§5.11 If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any payment to Contractor shall be subject to deduction for such amounts as the Architect if applicable, shall determine as the cost of completing incomplete Work and the value of unsettled claim.

§ 5.2 Final Payment

§ 5.2.1 Final payment, shall not be made by the Owner to the Contractor until:

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 all conditions precedent to final payment have been fulfilled including those listed in Section 9.10.2 of the AIA Document A201–2017;

.3 Contractor has submitted a signed document indicating consent of its Surety to Final Payment;

.4 Contractor has provided the following documents:

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.1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state, or local standards, laws, codes, rules, and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;

.2 Final list of Subcontractors (AIA Document G705);

.3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, if required;

.4 Contractor's warranties;

.5 Maintenance and Instruction Manuals;

.6 Owner's Final Completion Certificate;

.5 a final Certificate for Payment has been issued by the Architect; and

.6 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than thirty-one (31) days after the issuance of the Architect's final Certificate for Payment.

§ 5.3 Interest

(Paragraphs deleted)

Undisputed payments remaining unpaid under the Contract on the 31st day after the date the Owner receives a properly documented Certificate of Payment from the Architect are considered overdue and in accordance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251, shall bear interest from that date until the date that the Owner mails or electronically transmits payment, including accrued interest to that date.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document

(Paragraphs deleted)

A201–2017.

§ 6.2 Binding Dispute Resolution

For any Claim not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[**X**] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

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

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

§ 6.3 When Owner has an applicable claim for construction defects, Owner shall comply with the provisions of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Contractor's or Architect's opportunity to cure.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

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§ 7.1.1
(Paragraphs deleted)
[Paragraph Deleted.]

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:
(Name, address, email address, and other information)

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

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

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

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

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A201™–2017, General Conditions of the Contract for Construction, and elsewhere in the Contract Documents. The Contractor's insurance certificates are attached hereto as Exhibit D.

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

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or
(Paragraphs deleted)
in any other format agreed to by the Owner, Contractor and Architect in writing.

§ 8.7 Other provisions:

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

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

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

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

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

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

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

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

.2 [Subsection Deleted.]

.3 AIA Document A201™–2017, General Conditions of the Contract for Construction

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

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

Number	Title	Date

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

Section	Title	Date	Pages

.7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

[ ] The Sustainability Plan:

Title	Date	Pages

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Not Applicable			

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

.9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

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

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

MCALLEN INDEPENDENT SCHOOL DISTRICT		_____
OWNER *(Signature)*		**CONTRACTOR** *(Signature)*
Tony Forina, Board President, Board of Trustees, McAllen Independent School District		
(Printed name and title)		*(Printed name and title)*

DRAFT

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Additions and Deletions Report for

AIA® Document A101® – 2017

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

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PAGE 1

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

...

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

...

(Name, legal status, address and other information)

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

...

_____
_____
_____

...

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

PAGE 2

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EXHIBIT A	~~INSURANCE AND BONDS~~MODIFIED AIA DOCUMENT A201-2017, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
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EXHIBIT E	DRAWINGS
EXHIBIT F	SPECIFICATIONS

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PAGE 3

~~The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.~~**§ 1.1** The Contract Documents consist of this Agreement, General Conditions of the Contract, Supplementary Conditions, other Conditions, and Project Manual to the extent they are consistent with other portions of the Contract Documents, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. The order of precedence of the Contract Documents shall be as set out in Section 1.2.4 of the AIA Document A201-2017.

§ 1.2 The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or construction Change Directive modifying the Contract Sum, or to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorities to sign documents on behalf of the Board of Trustees, following appropriate Board action: Superintendent or other Board designee.

§ 1.3 The Board designates the authorized representatives identified in Paragraph 8.2 to act on its behalf in other respects.

...

[**X**] Established as follows:

...

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

...

[ ] By the following date:

Final Completion shall be thirty (30) calendar days after the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Contract Documents.

PAGE 4

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be ~~($)~~, _____ AND __/100 DOLLARS ($_____), subject to additions and deductions as provided in the Contract Documents.

...

If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a

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penalty, the following per diem amounts commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work: FIVE HUNDRED AND 00/100 DOLLARS ($500.00).

PAGE 5

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

...

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

month.

§ 5.1.3 ~~Provided that an Application for Payment is received by~~ The Contractor shall submit monthly Applications for Payment to the Architect not later than the ~~day of a month, the Owner shall make payment of the amount certified~~ last day of each month, on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. The Architect will have seven business days to approve the Contractor's Application and submit its Certificate for Payment to the Owner. The Architect may require from the Contractor any additional information required by the Contract Documents and deemed necessary to substantiate the Application for Payment. The Owner shall pay to the Contractor, the certified undisputed amounts in the Payment Application to the Contractor not later than ~~the ( ) day of the ( ) month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~30 days from the Owner's receipt of the Certificate of Payment from the Architect if the Owner's Board meets twice a month or more, and 45 days from the Owner's receipt of the Certificate of Payment from the Architect if the Owner's Board meets only once per month.

...

.1 That portion of the Contract Sum properly allocable to completed ~~Work;~~Work, as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;

.2 ~~That~~ If approved in advance by the Owner, that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, ~~if approved in advance by the Owner,~~ suitably stored off the site at a location agreed upon in writing; and

PAGE 6

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document ~~A201–2017;~~ A201–2017, or amounts certified by the Architect and disputed by the Owner; and

...

Five Percent (5%) if the amount set forth in Section 4.1 above for the Contract Sum is at least Four Hundred Thousand Dollars ($400,000) and Ten Percent (10%) if the amount is less than Four Hundred Thousand Dollars ($400,000)

...

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N/A

...

After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon approval of its Board of Trustees and acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 5.1.7.3 ~~Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:~~
~~*(Insert any other conditions for release of retainage upon Substantial Completion.)*~~

Retainage is not due to the Contractor until thirty-one (31) days after Final Payment for the Work as set out in Section 9.10 of AIA Document A201-2017.

§ 5.1.8 ~~If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.~~[Paragraph Deleted.]

...

§5.10 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts, and fees at any time.

§5.11 If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any payment to Contractor shall be subject to deduction for such amounts as the Architect if applicable, shall determine as the cost of completing incomplete Work and the value of unsettled claim.

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 all conditions precedent to final payment have been fulfilled including those listed in Section 9.10.2 of the AIA Document A201–2017;

.3 Contractor has submitted a signed document indicating consent of its Surety to Final Payment;

.4 Contractor has provided the following documents:

.1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state, or local standards, laws, codes, rules, and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;

.2 Final list of Subcontractors (AIA Document G705);

.3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, if required;

.4 Contractor's warranties;

.5 Maintenance and Instruction Manuals;

.6 Owner's Final Completion Certificate;

.5 a final Certificate for Payment has been issued by ~~the Architect.~~the Architect; and

.6 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

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

Payment.

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

~~%~~ Undisputed payments remaining unpaid under the Contract on the 31st day after the date the Owner receives a properly documented Certificate of Payment from the Architect are considered overdue and in accordance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251, shall bear interest from that date until the date that the Owner mails or electronically transmits payment, including accrued interest to that date.

...

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document ~~A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.~~
~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

A201–2017.

...

For any Claim ~~subject to, but~~ not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

...

[X] Litigation in a court of competent jurisdiction

...

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

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

§ 6.3 When Owner has an applicable claim for construction defects, Owner shall comply with the provisions of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Contractor's or Architect's opportunity to cure.

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§ 7.1.1 ~~If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:~~
~~*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*~~

[Paragraph Deleted.]

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...

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

...

[Name]
[Title]

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

...

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

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

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

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

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

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

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

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

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

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

...

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

...

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

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

...

Not Applicable

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

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

MCALLEN INDEPENDENT SCHOOL DISTRICT		_____

...

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

DRAFT

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

THE OWNER:
(Name, legal status and address)

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

THE ARCHITECT:
(Name, legal status and address)

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

THE CONTRACTOR/CONSTRUCTION MANAGER

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

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

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, Project Manual and the Bid or Proposal Documents prepared and submitted by the Owner and the Contractor's Bid or Proposal submitted by the Contractor, to the extent they do not conflict with the terms of this Agreement, and other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

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

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

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§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Miscellaneous Other Words

§ 1.1.10.1 Business Day

The term "business day" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner's Superintendent of Schools for inclement weather or other reason. Days on which the Administration Building is normally closed are Thanksgiving Break, Winter Break, Spring Break, and Summer Break, as well as other federal, state or local days specified in the calendar approved by the Owner's Board of Trustees on an annual basis. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or special events.

§ 1.1.10.2 Calendar Day

A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

§ 1.1.10.3 Holidays

Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

§ 1.1.10.4 Work Day

Work days include all calendar days except Holidays, Saturdays and Sundays.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 Precedence Of The Contract Documents

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

.1 Contract Modifications signed by Contractor and Owner.
.2 Addenda, with those of later date having precedence over those of earlier date.
.3 General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.

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.4 Agreement – AIA Document A101-2017 or A133-2019, as modified by the Owner for the Project.
.5 Specifications and Drawings.
.6 Bid/Proposal Documents including the Project Manual, Contractor's Bid or Proposal Documents (to the extent such Bid or Proposal submitted by the Contractor is part of the Contract Documents and is not inconsistent with other portions of the Contract Documents)

§ 1.2.5 Relation Of Specifications And Drawings
Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above-mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.5.1 Drawings and Specifications are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above-mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.5.2 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

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

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

§ 1.3 Capitalization
Terms capitalized in these General Conditions include those that are: (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation
In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice
§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given in person, by

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mail, by courier, or by electronic transmission if a method for electronic transmission (e-mail or facsimile) or other commercially reasonable means and will under any of these circumstances, be effective when actually received. Any address for notice may be changed by written notice delivered as provided in this Section 1.6.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance [Paragraph Deleted.]

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the Board of Trustees of the McAllen Independent School District and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Except as otherwise provided in Section 4.2.1, the Architect does not have the authority to bind the Owner. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

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

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work.

§ 2.2.2 [Paragraph Deleted.]

§ 2.2.3 [Paragraph Deleted.]

§ 2.2.4 [Paragraph Deleted.]

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site, but shall have no duty to do so. Notwithstanding the foregoing, if the Owner provides such survey, the Contractor shall remain responsible to independently investigate the physical characteristics, legal limitations, and utility locations for the Project site. In the event that the Contractor

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damages any utilities during construction, the Contractor shall immediately repair the same at its sole cost and expense.

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

§ 2.3.6 The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

§ 2.3.7 Owner's personnel or consultant may, but are not required to be present at the construction site during progress of the Work to assist the Architect in the performance of his duties, and to verify the Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and the equipment used in the performance of the Work for purpose of verification of Contractor's Applications for Payment.

§ 2.3.8 The Owner (either directly or by contract with the Architect) may furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 2.3.9 The Owner, (directly or by contract with the Architect), when such services are required, in the professional opinion of the Architect, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 2.3.10 The Owner will contract for, independently of the Contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for the acceptance of the Work by the Owner as required by the Texas Government Code, Section 2269.058.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is defective or not in accordance with the requirements of the Contract Documents as required by Section 12.2, fails to timely carry out Work in accordance with the Contract Documents or is in default of any of its material obligations hereunder, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If the Contractor is in default in any of its material obligations hereunder, neglects to timely carry out the Work in accordance with the Contract Documents, or fails to correct nonconforming or defective Work as required by Section 12.2, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or such non-conforming or defective Work with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or such non-conforming or defective Work at the sole cost of the Contractor. The Architect may, pursuant to Section 9.5.1, withhold or nullify the Contractor's Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such default or such non-conforming or defective Work, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure to correct such non-conforming or defective Work. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5.2 Nothing contained in this Section 2.5 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

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ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be authorized to do business in the state of Texas and lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative, or in the case of a Construction Manager-at-Risk, the Construction Manager-at-Risk, or its authorized representative.

§ 3.1.2 The Contractor shall perform the Work in a good and workmanlike manner and accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Owner's consultants, if applicable, conducted in accordance with the Contract Documents or activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, or for price escalations in the marketplace. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor shall not perform any Work it knows involves an error, inconsistency, or omission without further instructions to Contractor or revised Construction Documents from the Architect. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the Work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or honor its warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner, in writing providing substantiation for its position.

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§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15; however, nothing in this section shall provide the Contractor with an affirmative claim for damages for delay by Owner or Architect, as such a claim is prohibited under this Contract. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor.

§ 3.2.6 The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays or disruptions to the Work. This limitation on damages is further subject to the limitations set forth in Section 15.1.7.

§ 3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall assign a Superintendent who shall make decisions on behalf of the Contractor and its subcontractors. The Superintendent shall be on the Project, in this capacity, at all times while Work on the Project is in progress. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, *et seq.*, and shall require any applicable subcontractor to comply all such procedures. Trench

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excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

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

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

§ 3.3.7 Contractor acknowledges that the Work may be performed in connection with an educational facility which is currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury.

§ 3.3.8 Representatives of the Owner, Contractor, and Architect shall meet periodically at mutually agreed upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

§ 3.3.9 The Contractor shall pay fees for public or private water, gas, electrical and other utility service at the site until Substantial Completion of the Work. In the event that the Work will be conducted at an Owner site, where utility services are existing on site and reasonably accessible to the Contractor, the Owner may elect, in writing, to provide and pay for utility service for the Project site. Agreement to pay for such utility service shall not absolve the Contractor from using utilities judiciously in connection with its performance of the Work. In all cases, the Contractor shall secure and arrange for all necessary utility connections.

§ 3.3.10 The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient workers and labor, eligible to work in accordance with state and federal law. Contractor shall

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appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Before ordering any material or doing any Work, Contractor shall verify all dimensions and check all conditions in order to assure Contractor that they are the same as those in the Drawings, Specifications, and other Construction Documents. Any inconsistency shall be brought to the attention of the Architect. In the event that discrepancies occur between ordered material and actual conditions and Architect was not notified beforehand, then costs to correct such discrepancies shall be borne by Contractor. In accordance with Texas Government Code §2269.054, these Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization. In accordance with Texas Government Code §2269.0541, these Contract Documents shall also not prohibit, require, discourage or encourage a person, or discriminate against a person bidding on this contract from entering into or declining to enter into, or adhering to, an agreement with a collective bargaining organization relating to this Project.

(Paragraph deleted)

§ 3.4.2 Prevailing Wages

§ 3.4.2.1 The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.2.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications and attached to the AIA Document A101-2017, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction.

§ 3.4.2.3 A Contractor or Subcontractor who violates the provisions of Sections 3.4.2.1 or 3.4.2.2 shall pay to Owner the sum of Sixty Dollars and No/100 ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 3.4.3 Substitutions

§ 3.4.3.1 If the Contract Documents (including the Instructions to Proposers and /or Offerors) specifically permit the submission by Contractor of requests for substitutions, Contractor may, within thirty (30) days after the Contract has been executed, make written request for the substitution of products in place of those specified in the Contract Documents to the Owner and the Architect. Any request for substitution shall be submitted to the Architect in writing, with appropriate shop drawings, product data, and certified test results substantiating the proposed product equivalence as required by this Section 3.4.3.1 and Section 3.4.3.2 and will be rejected if not so submitted.

§ 3.4.3.2 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and any modifications to the construction schedule; and (v) an affidavit stating that (a) the proposed substitution confirms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect; (c) the cost breakdown presented with Contractor's request is complete and includes all related costs, except for the Architect's redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent;(d) that the Contractor will coordinate and supervise the installation of the proposed substitute, making such changes as may be required for the Work to be complete in all respects; and (e) the Contractor will reimburse the Owner and for review or redesign services associated with any re-approval by applicable governmental authorities related to the substitution.

§ 3.4.3.3 By making requests for substitutions pursuant to Section 3.4.3 (and all subsections), the Contractor represents and certifies that: (1) Contractor has personally investigated the proposed substitute product and determined that it is

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equal or superior in all respects to the product specified; (2) Contractor will provide the same warranty for the substitution product that the Contractor would have provided for the product specified; (3) the cost breakdown presented with the request is complete and includes all related costs, except for the Architect's redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent; (4) Contractor will coordinate and supervise the installation of the proposed substitute, making such changes as may be required for the Work to be complete in all respects; and (5) will reimburse Owner and Architect for review or redesign services associated with any re-approval by applicable governmental authorities related to the substitution.

§ 3.4.3.4 Owner and the Architect may accept or reject any such request for substitution in their sole discretion, based on cost, time, or other considerations. Requests for substitutions submitted after such thirty (30) day period will not be considered unless a product becomes impossible to obtain due to circumstances beyond the Contractor's control.

§ 3.4.3.5 Regardless of acceptance or rejection of substitution, the Contractor shall be responsible for amounts paid by the Owner to the Architect, to evaluate the Contractor's proposed substitutions and any amounts paid to the Architect to make agreed upon changes in the Specifications and Drawings made necessary by the Owner's acceptance of such substitutions. The Owner shall be entitled to deduct such amounts from the Contract Sum.

§ 3.4.4 Responsibility for Subcontractors

§ 3.4.4.1 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor, its subcontractors and vendors shall bear responsibility for compliance with all federal, state and local laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of his own conduct. THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES; NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES; CONTRACTOR'S FORCES NON-COMPLIANCE WITH CRIMINAL LAW; OR CONTRACTOR'S OR CONTRACTOR'S FORCES NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.4.4.2 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Work may be performed in connection with an operational educational facility or the Project site may be adjacent to a public-school campus. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb or disrupt Owner's normal operations or facilities. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working at or near an operational campus and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum.

§ 3.4.5 Criminal History Records Checks

§ 3.4.5.1 For purposes of this Section 3.4.5 (and all subsections), the following definitions shall be applicable:

.1 "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.

.2 "Covered Employees", shall mean, all employees of Contractor, as well as employees of Contractor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

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§ 3.4.5.2 Unless otherwise exempt from providing such information by any provision in Texas Education Code, Section 22.08341 (the "Statute"), the Contractor agrees, that prior to commencement of work under this Agreement, using the form promulgated by the Owner or such other form approved by the Owner, Contractor will arrange with the Owner to obtain any national criminal history record information ("CHRI") required pursuant to the Statute on all of Contractor's employees, independent contractors, agents, or Subcontractors, Contractor's Subcontractors of every tier ("Subcontractors"), Subcontractors' employees, independent contractors, agents, or sub-subcontractors, if any of these persons is a "Covered Employee" as defined in Section § 3.4.5.1 and shall reimburse the Owner for the costs and expenses associated with obtaining the required CHRI.

§ 3.4.5.3 For purposes of this Section 3.4.5 a person does **not** have the opportunity for direct contact with students if:

.1 the public work does not involve the construction, alteration, or repair of an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code ("Instructional Facility);

.2 for a public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first date the facility will be used for instructional purposes; or

.3 for a public work that involves an existing Instructional Facility:

(a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and

(b) the Contractor adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

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

§ 3.4.5.5 Prior to commencement of its work on the Project the Contractor will provide written certification to the Owner that either: (1) Contractor and its Subcontractors of every tier, do not have any Covered Employees, as defined; (2) are otherwise exempt from compliance with the Statute; or (3) has complied with the statutory and contractual requirements stated in Section 3.4.5 of this Agreement (including all subparts), as of that date, and that it:

.1 has requested a Criminal History Records Check through the District on all Covered Employees, if any, of every tier, has provided the required information to the District to do so and reimbursed the District for same;

.2 has obtained written certification from its independent contractors, and Subconsultants (of any tier) that they have provided the required information to the Contractor, necessary to secure the information from the District and reimbursed the Contractor for same; and

.3 have excluded any Covered Employee reported by the District to have a Disqualifying Criminal History from assignment to the Project.

Further, Contractor agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses, during the performance of the Work, Contractor will immediately remove the Covered Employee from District's property or other location where students are regularly present, and notify the District of said removal within three (3) days of doing so. Contractor understands that any failure to comply with the requirements of this section may be grounds for termination of this Agreement, in accordance with Article 14, Termination.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further

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warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with all applicable codes, generally accepted standards of construction practice for construction of projects similar to the Project. All materials shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. No acceptance or payment by the Owner shall constitute a waiver of the foregoing and nothing herein shall exclude or limit any warranties implied by law. The warranties provided in this Section 3.5.1 are in addition to, and not in limitation of, any other warranties, remedies and/or guaranties set out in the Contract Documents or under applicable law.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. In such case, each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion (or, for Work to be completed or corrected after the date of Substantial Completion, the Warranty Commencement Date). Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the warranties under granted in the Contract Documents will expire, on each phase or building and will provide a copy of such Schedule to the Owner, as required in Subsection 3.5.6, as a condition precedent to Final Payment.

§ 3.5.4 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or such further reasonable proof as is required by the Architect.

§ 3.5.5 The Contractor agrees to assign to the Owner at the time of Final Completion of the Work any and all manufacturer's warranties relating to equipment, machinery, materials, equipment or components and labor incorporated into the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations. The warranties provided in this Section 3.5 or otherwise provided in the Contract Documents or by law, shall in no way limit or abridge the warranties provided by the suppliers of equipment and systems which are to comprise a portion of the Work. A complete set of all warranties required from contractors, manufacturers, or suppliers as appropriate, on the manufacturer's or supplier's approved forms, executed by Contractor as required, with a Warranty Commencement Date noted as required, and in the form required by Subparagraph 3.5.6 shall be submitted to the Architect for delivery to the Owner, as a condition precedent to Final Payment.

§ 3.5.6 Prior to receipt of Final Payment, Contractor shall: (1) obtain duplicate original warranties, executed by all subcontractors, and the warranties of suppliers and manufacturers, noting the Warranty Commencement Date on the face of each; (2) verify that the documents are in proper form and contain full information; (3) Co-sign warranties when required; (4) bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers; (5) label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the Title of the Project; name, address and telephone number of Contractor; and name of its responsible principal; (6) include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified; (7) include the Schedule of Warranty Commencement Dates required by Subparagraph 3.5.3; (8) separate each warranty with index tab sheets keyed to the Table of Contents listing; and (9)

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deliver warranties in the form described in this Subparagraph 3.5.6, to the Architect for review same prior to submission to the Owner.

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time proposals are received or negotiations concluded. The Owner shall be responsible for payment of TDLR Texas Accessibility submissions and inspection costs.

§ 3.7.2 In performing its obligations hereunder, the Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work and upon request by the Owner or Architect shall furnish evidence, satisfactory to the Owner, of such compliance.

§ 3.7.3 If the Contractor performs Work when Contractor knows or reasonably should have known it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, the Contract Documents, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. **THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ITS TRUSTEES, OFFICERS, REPRESENTATIVES, AGENTS AND EMPLOYEES FROM AND AGAINST ALL THIRD-PARTY CLAIMS, FINES, PENALTIES, OR LIABILITIES FROM, ARISING OUT OF, OR BASED UPON CONTRACTOR'S VIOLATION OF ANY LAWS, ORDINANCES, RULES, REGULATIONS, ORDERS OR DECREES**.

(Paragraphs deleted)

§ 3.7.4 Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract Sum, or both. The Contract Time and the Contract Sum contained herein (as proposed by Contractor), or GMP as applicable, shall be deemed to include all costs of and sufficient time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if the Contractor encounters conditions at the site that are subsurface or otherwise concealed physical conditions which were not known to the Contractor, and that differ materially from those indicated in the Contract Documents the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed, and in no event later than three (3) days after first observance of the conditions and report its findings to the Owner and Architect.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

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continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Time arising from the existence of such remains or features may be made as provided in Article 15. In accordance with the terms of this Agreement, there will be no adjustment to the Contract Sum for delay arising out or related to the circumstances described in this Section 3.7.5.

§ 3.7.6 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which require the issuance of a permit shall be at Contractor's sole cost.

§ 3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

§ 3.8.4 When performing Work under Allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work on the basis of the best value for the Owner, as directed by the Architect following Owner's written approval of the cost proposal.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish a list to the Architect a list of all engineers, consultants, job-site superintendents, subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner. The Owner shall have the right, at any time, to require a change in any engineer, consultant, job-site superintendent, subcontractor or supplier if their performance is deemed unsatisfactory in its sole discretion.

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§ 3.9.3 The Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

§ 3.9.4 Owner shall be notified as soon as Contractor becomes aware, but in no event fewer than twenty-four (24) hours before the time of that the Superintendent is required to be present at the site, that the Superintendent will not be present at the site for any reason, except illness. If the reason is due to illness, then Owner shall be notified as soon as the Contractor obtains the information, but in no event later than the beginning of the day that the Superintendent will be absent from the site. In such event of such absence, the Contractor will designate a person as acting superintendent and Contractor promptly notify the Owner of the identity and contact information for the designated acting superintendent.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work, utilizing critical path method scheduling techniques. The Schedule shall not exceed the time limits set forth in the Contract Documents. The Schedule shall thereafter be updated on a monthly basis and submitted with each Application For Payment. The receipt of an updated schedule with each Application For Payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6. The schedule shall not interfere with the operation of Owner's existing facilities and operations without Owner's prior written approval.

§ 3.10.1.1 Each Schedule shall: (1) break the work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect and shall assign each scheduled activity a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project cash flow for the Project; (2) include activates representing manufacturing, fabrication, or ordering lead time for materials, equipment or other items for which the Architect is required to review submittals, shop drawings, product data, or samples; (3) with the exception of the initial schedule, shall indicate the activities, or portions thereof, which have been completed; (4) shall reflect the actual time for completion of such activities, and shall reflect any changes to the sequence or planned duration of all activities.

§ 3.10.1.2 If any updated Schedule exceeds the time limits set forth in the Contract Documents for completion of the Work, the Contractor shall include with the updated Schedule, a statement of the reasons for the anticipated delay in completion of the Work and the Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Architect to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Architect and documentation of the date such information was requested.

§ 3.10.1.3 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

§ 3.10.1.4 Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining Work in the sequence and time indicated.

§ 3.10.1.5 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal or Guaranteed Maximum Price, as applicable, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept

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responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

§ 3.10.1.6 The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect and shall attend progress meetings at the Project Site, in such frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule.

§ 3.10.4 The Contractor shall submit to the Architect with each monthly application for payment a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein.

§ 3.10.5 Correction of Delay.

§ 3.10.5.1 In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, or any Milestone Date unless any such adjustment is submitted by the Contractor as a Claim in compliance with Article 15 or the adjustment is otherwise agreed to in a written confirmation from the Owner and documented by written Change Order.

§ 3.10.5.2 If at any time the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5. The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.5.3 In the event Contractor determines that the Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain and make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, field test records (including environmental inspection and test records), inspection certificates or records, manufacturers' certificates. The Documents to be maintained shall be kept in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner or their respective representatives, and

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delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Construction Documents and the Contract Documents remain the Contractor's responsibility.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect, in writing, of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawings are prepared and, if required by the Architect or applicable law, by a licensed engineer The Owner and the Architect shall be entitled to rely upon the adequacy, completeness and accuracy of the services, certifications, and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10.1, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this paragraph, Contractor shall require that the licensed design professional carry commercial general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

§ 3.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§ 3.13.3 Without prior approval of the Owner, the Contractor shall not permit any workers to use any of Owner's existing facilities at or adjacent to the Project site, including, without limitation, lavatories, toilets, entrance and parking areas other than those designated by the Owner. The Contractor shall comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and District's Buildings.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly, provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Contract Documents. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by

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excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall, on a daily basis, keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning and replace any damaged or broken glass.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor. Such reimbursement amounts may be deducted from Contractor's Final Payment Application.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Architect and their designated representatives, with access to the Work in preparation and progress wherever located. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work. Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on an inspection of the Work.

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

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RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18.

§ 3.18.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 3.18.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

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

§ 3.18.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1.

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

§ 3.18.6 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum

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extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

§ 3.18.7 Contractor shall promptly advise the Owner, in writing, of any claim or demand against the Owner or Contractor, known to the Contractor related to or arising out of Contractor's activities under this Contract.

§ 3.18.8 The provisions in this Section 3.18 in its entirety shall survive the completion, termination or expiration of this contract and are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

§ 3.19 Representations And Warranties

§ 3.19.1 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

- **.1** that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- **.2** that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- **.3** that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;
- **.4** that the execution of the Contract and its performance thereof is within its duly authorized powers; and
- **.5** that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 Business Standards

§ 3.20.1 Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, Subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and contracts.

§ 3.21 Antitrust Violation

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

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner,

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date of the Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, or as they may be amended in the future.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with

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

§ 4.2.3 On the basis of the site observations, the Architect will keep the Owner informed about the progress and quality of the Work. The Architect shall promptly report to the Owner and Contractor orally regarding: (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. An oral notification of defects and deficiencies observed in the Work shall be followed by a notice in writing to the Owner and Contractor specifying the defect(s), non-conforming Work, deviations from the Contract Documents and corrective actions taken or recommended. The Architect shall not have control over or responsibility for the Contractor's construction means, methods, techniques, sequences, procedures, or safety programs and will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents, nor shall the Architect have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work**.** This does not, however, relieve Architect of Architect's responsibilities under this Agreement. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed by the Contractor at no additional cost to Owner. In addition, the Contractor shall reimburse the Owner for compensation paid to the Architect (whether performed by the Architect or its Consultants) or the Owner's Consultants, for additional site visits made necessary by the fault, neglect, the request of the Contractor or made necessary by the Contractor's construction defect or nonconforming Work. Any amount subject to reimbursement under this Section may be required by Owner to be deducted from the next Payment Application submitted by the Contractor and any subsequent Payment Application until paid, and if any amount remains unpaid, the balance shall be paid by the Contractor as a condition to Final Payment.

§ 4.2.4 Communications

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters relating to the Contract and the Project. However, the Owner reserves the right to communicate directly with the Contractor and Subcontractors. Communication by and with the Architect's consultants shall be through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner.

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

§ 4.2.6 The Architect or the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work may be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall prevent action to require conformance, if at any subsequent time the Work or any portion thereof is found not to conform to the requirements of the Contract Documents. Architect and/or Contractor shall promptly notify, the other party orally and in writing, and Owner of any perceived fault or defect in the design or nonconformance of the Work with the Construction Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the

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other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no duty to notify Owner of discoveries made or actions taken by Architect.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or Separate Contractors, and allow sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If any submittal does not comply with the requirements of the Contract Documents, the Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.

§ 4.2.8 The Architect will prepare, and make written recommendations to Owner regarding all Change Orders (including changes in the Work to be paid from contingency funds) and Construction Change Directives, for the Owner's approval and execution in accordance with the Contract Documents. The Architect's recommendation shall be accompanied by all supporting documentation necessary for the Owner to make an informed decision, including but not limited to an itemized turn-key proposal from the Contractor which includes quantities and unit costs of labor and materials extended and totaled and, if permitted, overhead and profit proposed. Prior to submission of such documentation to the Owner, the Architect shall review such proposals for reasonableness of pricing and compliance with Section 7.1.4 regarding markup. The Architect may order minor changes in the Work not involving an adjustment in Contract Sum or Guaranteed Maximum Price, or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. The Architect is specifically **not** authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner's prior written consent.

§ 4.2.9 The Architect and the Owner's representative will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. Upon completion of such inspection and agreement by Owner and Architect as to Substantial Completion, the Architect may issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10 for approval by the Owner.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

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§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information at no additional expense to the Owner.

§ 4.2.15 The Architect may appoint an employee or other person to assist the Architect during the construction. These representatives will be instructed to assist the Contractor in interpreting the Contract Documents; however, such assistance shall not relieve the Contractor from any responsibility as set forth by the Contract Documents. The fact that the Architect's Representative may have allowed Work not in accordance with the Contract Documents shall not prevent the Architect from insisting that the faulty Work be corrected to conform to the Contract Documents and the Contractor shall correct same.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, in writing, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect shall notify the Contractor in writing, whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. When the parties agree on a proposed substitute Subcontractor reasonably capable of performing the Work, the Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected without providing reasonable written notice to the Owner and Architect. If neither the Owner nor Architect submits a reasonable objection to such proposed substitution within ten (10) days following their receipt of written notice the Contractor may proceed with the substitution. If either Owner or Architect submit an objection, the Subcontractor shall proceed in accordance with Section 5.2.3 above.

§ 5.2.5 Each Contractor or subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in Contract Sum shall be allowed for failure to so inspect or investigate.

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§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, included as provided below. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in an amount commensurate with the Work to be performed by the Subcontractor.

§ 5.3.2 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.3 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

§ 5.4 Contingent Assignment of Subcontracts

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

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may, in the Owner's sole discretion, be equitably adjusted for increases in cost resulting from the suspension. Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. Owner shall only be responsible for compensating subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

§ 5.5 Notice Of Subcontractor Default

Contractor shall promptly notify Owner and Architect of any material defaults by any Subcontractor or Sub-subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor, Sub-subcontractor or other materialman or worker employed by Contractor the right to obtain a

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personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

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

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement by the Owner and Contractor. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 [Paragraph Deleted.]

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work.

§ 6.2.3 All costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate, or failure to follow the Construction Documents or Contract Documents, will be borne by the Contractor. The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor, the Architect or any Consultant because of the Contractor's delays, improperly timed activities or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the

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limitations stated in this Article 7 and elsewhere in the Contract Documents. Changes may be funded out of a contingency fund, if any, or other allowance established herein, or may require a change in the Contract Sum. The authority to approve a change to the Work, the Contract Sum, approve payment from a Contingency or Allowance, or a change in the Project Time, rests solely with the Owner. A Change Order funded from the Contingency or other Allowance shall be referred to herein for clarity as a "Contingency Authorization Order".

§ 7.1.2 A Contingency Authorization Order or Change Order shall be based upon agreement among the Owner, Contractor, and Architect executed prior to commencement of any Work covered by the Order. A Construction Change Directive (whether funded from contingency, if any, or by an increase in the Contract Sum) requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor prior to the commencement of the Work. An order for a minor change in the Work may be issued by the Architect alone, except as otherwise provided herein.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 Change Order Mark-Up. On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead, profit permitted to be charged to the Owner shall be based on the following schedule:

.1 for work performed by the Contractor's own forces, Contractor's mark-up for overhead and profit shall not exceed 10% of the cost of the change in the Work (0% for change orders to be paid out of any contingency allowance).

.2 for the Contractor, for supervision of work performed by the Contractor's Subcontractors, the total Contractor mark-up for overhead and profit shall not exceed 4% of the amount due to the Subcontractors (0% for change orders to be paid out of any contingency allowance).

.3 for each Subcontractor or Sub-subcontractor involved, in Work performed by that Subcontractor's or Sub-subcontractor's own forces, the total mark-up for overhead and profit ten percent (10%) of the cost of the change in the Work.

.4 In no event shall total mark-up for overhead, profit or fee in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the work, exceed 14% of the total cost of the change in the Work. The Contractor will not be allowed an overhead, profit, or fee mark-up when changes in the Work are funded by Contingency or other Allowances provided for in the Contract Documents.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

.1 The change in the Work;

.2 The amount of the adjustment, if any, in the Contract Sum; and

.3 The extent of the adjustment, if any, in the Contract Time.

Methods used to determine adjustments to the Contract Sum or Guaranteed Maximum Price may include those listed in Section 7.3.3.

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum (the Guaranteed Maximum Price, as applicable) or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum (the Guaranteed Maximum Price, as applicable) and Contract Time being adjusted as provided in Section 7.3.3.

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§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum (or the Guaranteed Maximum Price, as applicable), the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon(additional mark-ups for overhead and profit will not be allowed);

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, subject to the limitations of subparagraph 7.1.4; or

.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum (or the Guaranteed Maximum Price, as applicable), the Architect shall determine the adjustment on the basis of the amount by which the Contractor's direct costs have actually been increased over the direct cost of performing the Work without the Change in the Work. Direct costs shall be limited to the following:

.1 Actual documented costs of labor, including applicable payroll taxes and other employee costs approved by the Owner prior to the approval of the Change Order or Contingency Authorization Order (a labor burden factor will not be accepted as documentation);

.2 Actual documented costs of materials, supplies, and equipment, including cost of transportation, whether such materials, supplies, and equipment are incorporated or consumed;

.3 Actual documented rental costs of machinery and equipment, if rented from unaffiliated third-parties, exclusive of hand tools;

.4 Actual documented costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the change, if any; and

.5 Actual documented costs of supervision and field office personnel directly attributable to the change and only if the adjustment causes an extension of the Contract Time.

The Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting of the items listed above, together with appropriate supporting documentation.

§ 7.3.5 If the Work is performed without an agreement as to the final price, the Contractor shall, at a minimum, retain and provide to the Owner, the following documentation to adequately document its actual costs of performing the scope of work set out in a Construction Change Directive. Adequate Documentation shall include at a minimum, but not limited to, payroll records for employees of Contractor providing the Work included in the Change Directive, as well as written documentation of time spent **solely** on the scope of the Change Directive Work, prepared concurrent with the performance of the Work, including (for example) sign-in and sign-out sheets or time cards, executed by the employee(s) documenting attendance and receipts for all materials delivered to the Project site for incorporation in the Work of the Change Directive and paid for by the Contractor. If any of the Work of the Change Directive is performed by subcontractors, the Contractor shall provide a copy of the subcontract, an itemized invoice or payment application which includes, in either case, a detailed itemization of costs showing quantities and unit costs of labor and materials extended and totaled and, if permitted, overhead and profit (in accordance with Section 7.1.4) labor and materials provided by the subcontractor, with receipted invoices for all materials incorporated in the Work and evidence of payment by the subcontractor attached. If the Contractor disagrees with the adjustment in the Contract Time, the Contract Sum (or the Guaranteed Maximum Price, as applicable), allowed in any Change Directive, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement (by executing and returning the Change Directive) or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time, not later than ten (10) calendar days following the Contractor's receipt of the Construction Change Directive. A copy of a notice of disagreement shall also be provided to the Owner concurrent with the notice to the Architect. A Notice of Disagreement must contain the number of the Change Directive, the date the Change Directive was issued and the words **"Notice of Disagreement With Change Directive"** in the Subject line. It is imperative that Owner receive timely specific notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly.

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§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and/or the Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost plus the permitted overhead and profit as set forth in Section 7.1.4. When both additions and credits covering related Work or substitutions are involved in a change, both changes shall be shown on the same Change Order and the permitted allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change. Returned materials shall be credited at actual cost and no penalty or restocking fee shall be permitted to be charged to the Owner.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will require as a condition precedent to certification of payment for Work completed under the Construction Change Directive that the Contractor provide the documentation required by Section 7.3.4, and based on such documentation, shall make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect is specifically authorized by this Section 7.3.9 to require submission of such documentation and any other documentation required to evaluate the requested payment, and shall withhold payment certification until such documentation is received and an interim determination is made in accordance with this Section. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order reflecting the Agreement of the Owner and Contractor. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

With prior written notice to the Owner's representative, the Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 Commencement. The date of commencement of the Work shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement (or Guaranteed Maximum Price Amendment, as applicable) has been signed by the Contractor and the Owner, and the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

§ 8.1.3 Substantial and Final Completion

§ 8.1.3.1 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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§ 8.1.3.2 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) days after the date of Substantial Completion.

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

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 Liquidated Damages

§ 8.2.4.1 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set out in the AIA Document A101 (2017) or the AIA Document A133 (2019) into which these General Conditions are incorporated and executed concurrently with these General Conditions, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.4.2 In the event Substantial Completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor all liquidated damages, if any, due Owner in accordance with the Contract Documents.

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by war, civil commotion, pandemic, epidemic, federal, state or local declared disaster or public emergency, act of God, governmental restrictions, regulations, orders, or interference, fire or other unavoidable casualty, material changes ordered in the Work; adverse weather conditions documented in accordance with Section 15.1.6 by delay authorized in writing by the Owner prior to the happening of the delay event; or (5) by other causes that the Contractor asserts, and the Architect and Owner determine, justify delay, then the Contract Time may be extended for such reasonable time as the Architect and Owner may determine based upon documentation by the Contractor.

§ 8.3.1.1 The adjustment of the Contract Time for delay, disruption, and interference described in this Section 8.3.1 is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time and Contractor's timely delivery of the notice and claim as set out in this Section 8.3.1. An adjustment to the Contract Time shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Section 8.3.1, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for Owner-caused delays.

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§ 8.3.1.2 Notice and Claim for Extension. In the event of a delay in the commencement or progress of the Work as a result of any of the circumstances in this Section 8.3.1, the Contractor may receive an extension of time for completion of the Work equal to the delay, if the Contractor delivers a written notice and claim to the Owner and Architect delivered in any manner provided in Section 1.6.1 of this Agreement. The Notice shall identify and provide a reasonably detailed description of the circumstances causing the delay, disruption, or interference to the Contractor's performance or progress of the Work on or before the due date of Contractor's Application for Payment covering the period in which the delay began. Claims for an extension of time shall be stated in whole or half calendar days, as applicable. The actual date on which the delay(s) began and/or the date the delay ended, if applicable, must be stated in the Claim Notices as applicable.

§ 8.3.2 In the case of claims for extension of time because of unusually inclement weather, such extension of time may be granted only if the Contractor files a claim in accordance with the requirements set out in Section 15.1.6.

§ 8.3.3 Contractor shall not be entitled to an adjustment in the Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

§ 8.3.4 Any adjustment of the Contract Time authorized under Section 8.3 shall be conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time and Contractor's submission of a timely and properly documented Notice and Claim for additional time in accordance with Section 8.3.

§ 8.3.5 Adjustments to the Contract Time addressed in this Section 8.3 shall apply only to requests for extensions of time based upon delay, disruption, or interference to the Contractor's performance or progress of the Work and shall have no applicability to requests for adjustment of the Contract Time due to other changes in circumstance, including but not limited to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services or materials required, beyond those specified by the Contract Documents. Claims for an adjustment of the Contract Time resulting from these kinds of changes shall be authorized only pursuant to a written order or directive from Owner authorizing Contractor to proceed with a change in the Work in accordance with the Contract Documents.

§ 8.4 No Damages or Other Compensation for Delay or Acceleration

This Agreement does not permit recovery by the Contractor of damages or additional compensation for delay, acceleration, disruption, or interference to the Contractor's performance or progress of the Work Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time including but not limited to delay, disruption, or interference caused by the Owner the Architect, of an employee of either, or of a Separate Contractor, any of the circumstances set out in Section 8.3.1 or acceleration of the Work required by the Owner in accordance with the terms of this Agreement. Contractor's sole remedy for delay disruption, or interference in its performance or progress of the Work or any required acceleration of the Work shall be the grant of an extension of time for completion equal to a delay or such reasonable time as the Owner and Architect may determine in their sole discretion.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement or the Guaranteed Maximum Price Amendment in the case of a Construction Manager at Risk Contract and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract. The Contract Sum shall not be increased because the Contractor experiences an unexpected or unforeseeable increase in the price of labor or materials required to complete the Project.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices may be equitably adjusted by written agreement between the Owner and Contractor, executed prior to an order being placed based on the unit prices.

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§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, as applicable, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment or, in the case of a Guaranteed Maximum Price, concurrent with the Guaranteed Maximum Price Proposal, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702-1992 and G703-1992, Application and Certificate for Payment and Continuation Sheet.

§ 9.3 Applications for Payment

§ 9.3.1 In accordance with the requirements of Section 5.1 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage withheld. The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document G702-1992, Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703-1992, Continuation Sheet.

§ 9.3.1.1 Such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor has not been invoiced by a Subcontractor or supplier, unless such Work was self-performed; in such case, only portions of Work actually performed shall be included on the Contractor's request for payment.

§ 9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 9.3.1.4 The Owner shall withhold retainage as provided in the Agreement, except that Owner shall not pay amounts for which the Architect refuses to certify payment, or the Owner refuses to pay, as provided herein. The retainage shall be paid to the Contractor with the Final Payment, subject to the requirements of the Contract Documents.

§ 9.3.2 Unless otherwise provided in a separate written agreement executed between the Owner and Contractor prior to delivery, payments shall not be made on account of materials and equipment delivered and stored at the site or off-site for subsequent incorporation in the Work. The Owner may, in Owner's sole discretion, require Contractor's compliance with such reasonable procedures and requirements as it may establish, as a condition precedent to the grant of Owner's consent and agreement to payment, including but not limited to the following:

- **.1** provision of any additional insurance required to protect the materials and equipment while stored;
- **.2** payment of the costs to store the materials and equipment and any additional transportation costs for multiple deliveries;
- **.3** provision of written consent of Contractor's surety to such storage;
- **.4** submission of an affidavit identifying materials and equipment stored off-site for later incorporation into the Work, and acknowledging responsibility for such materials and equipment;
- **.5** provision of documentation that the facility where the materials and/or equipment will be stored is an adequately insured commercial warehouse, where the materials and equipment stored will be sheltered from the weather and outside elements and are stored in accordance with the manufacturer's instructions, including proper temperature and humidity controls and that the materials and equipment have been physically separated and marked for the Project;

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.6. its agreement to bear the cost of Owner and/or Architect's visits to the off-site storage facility to confirm compliance with these requirements and review the stored contents, and Contractor shall agree to allow such costs to be offset from Progress Payments;

.7 agreement that payment of any costs related to compliance with the procedures and requirements for storage of materials and equipment on or off-site, shall not be subject to charges for overhead or profit;

.8 submission of bills of sale or other documentation acceptable to the Owner, showing proof of delivery and establishing the Owner's title to the materials or equipment and/or otherwise protecting the Owner's interest, including naming the Owner as additional insured on the required insurance policy (naming the specific materials or equipment stored and their location) and providing proof of delivery for those materials and equipment;

.9 agreeing that, in the event of termination of the Contract or default by the Contractor, the material and equipment stored on or off-site shall be immediately turned over to the Owner by delivery to the location designated by the Owner and that the operator of the storage facility is aware of this agreement and willing to honor it; and

.10 agreeing that all such stored materials and equipment, to the extent they include mechanical components, will be maintained by the Contractor kept in good working condition and ready for immediate installation, to the same extent they would have been, had they been delivered "just in time" for installation, that Contractor will be solely responsible for assuring any manufacturer's warranty will commence on date of completion of installation and/or start-up of the material or equipment and for repairs required prior to installation to assure performance in accordance with the Contract Documents.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY A SUPPLIER, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS PREVIOUSLY MADE BY THE OWNER TO CONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.**

§ 9.3.4 In each Application for Payment, Contractor shall certify that: the information contained in the Application presented is true, correct, accurate and complete; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for, and, unless an agreement described in Paragraph 9.3.2 has been signed, incorporated into the Work; that the subcontractors whose work is identified in the Applications for Payment have been paid, or Contractor has been invoiced for same and intends to pay such subcontractors; there are no known mechanics' or materialmens' liens outstanding at the date of the Application, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application and that except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, carefully evaluate and review the Application for Payment and, when appropriate, return the Application for Payment to the Contractor as provided in Section 9.4.2. If the Application for Payment is complete, then the Architect shall sign and, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner in writing, of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner in writing, of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. Architect's written reasons for withholding certification shall be construed as the notice required by Texas Government Code Section 2251.042 *et seq.*

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

§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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

§ 9.5.2 If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1.

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§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment. Notwithstanding any provision contained within this Article, if the Contractor has not achieved Substantial Completion by the required date, subject to extensions of time allowed under the Contract Documents, then Architect may withhold any further Certificate for Payment to the extent necessary to preserve sufficient funds to complete construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1, or this Section 9.5.4.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment of disputed amounts in the manner and within the time provided in the Contract Documents, and in accordance with the Texas Government Code section 2251.042 *et. seq*., Owner shall within twenty-one (21) days notify the Architect and Contractor if Owner disputes the Architect's Certificate for Payment, listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

§ 9.6.2 In compliance with Texas Government Code Section 2251.022, the Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253. Notwithstanding the foregoing, payments received by the Contractor from the Owner for Work properly performed by Subcontractors, or materials properly provided by suppliers, shall be held in trust by the Contractor for the benefit of those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor.

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

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§ 9.7 Failure of Payment

§ 9.7.1 Pursuant to Texas Government Code Section 2251.051,if the Owner does not pay the Contractor any payment certified by the Architect, which is undisputed, due and owing after the date the payment is due under the Contract Documents, then the Contractor may, upon ten (10) days' written notice to the Owner and Architect, that payment has not been made and the Contractor intends to suspend performance for nonpayment, may stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that: 1) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect to either: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

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

§ 9.8.3 Upon receipt of the Contractor's list, the Architect accompanied by the Owner or Owner's representative, at the Owner's option, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, then the Architect shall so notify the Contractor and Owner in writing, and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.3.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

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§ 9.8.3.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

§ 9.8.4 When the Work or designated portion thereof is Substantially Complete, as defined by the Contract Documents, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion. If Work is to be completed or corrected after the date of Substantial Completion and prior to final payment, Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Architect, or the date of Final Payment. ("Warranty Commencement Date").

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

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to in writing by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work resulting from such occupancy, use or installation, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties on the partially completed portion of the Work, as required by the Contract Documents. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work or installation of furnishings and equipment shall not constitute acceptance of Work not complying with the requirements of the Contract Documents, nor shall it constitute evidence of Substantial Completion or Final Completion.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner (at Owner's option) will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Work has been completed in accordance with the Contract Documents and that remainder of the Contract Sum, including all retainage, less any amount withheld pursuant to the Contract and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final

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Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) its affidavit that payrolls, bills for materials and equipment, and other liabilities connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) except for amounts previously withheld by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability; (7) In addition, the following items must be completed and received by the Owner before Final Payment will be due:

- **.1** Written certifications required by Sections 10.5, 10.6, and 10.7 herein;
- **.2** Final list of subcontractors (AIA Document G705-2001);
- **.3** Contractor's Certification of Project Compliance required by 16 Texas Administrative Code, Section 61.1036, located at: https://tea.texas.gov;
- **.4** Contractor's warranties, organized as required elsewhere in the Contract Documents;
- **.5** Maintenance and Instruction Manuals;
- **.6** Owner's Certificate of Final Completion; and
- **.7** "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above.

§ 9.10.3 The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. Final Payment shall not constitute a waiver of any Claims by the Owner.

§ 9.10.4
(Paragraphs deleted)
[Paragraph Deleted.]

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously asserted pursuant to Article 15 and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 The Contractor shall not permit any actual or purported lien, charge or claim to attach or attempt to attach to the Work, the site or any amounts due or to become due to the Contractor under the Contract Documents. If any such lien, charge or claim is so asserted, the Contractor shall promptly procure its release and indemnify the Owner against all damage and expense incident thereto. Upon completion of the Work and before any final payment and settlement, the Contractor shall provide evidence satisfactory to the Owner of payment and release of all debts, taxes, liens, charges, obligations and claims for or relating to labor, materials, Subcontractors and Sub-subcontractors; provided, however, that if the Contractor has not paid for any of the aforesaid as a result of a bona fide dispute, and payment of

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such is guaranteed and covered by the payment bond provided by the Contractor, then the Contractor shall not be required to pay such claim as a condition to final payment and settlement, but instead shall be required to provide Owner with written consent to final payment executed by such surety, expressly acknowledging the existence of such unpaid claim, and agreeing that full and final payment to the Contractor shall not impair any of the Owner's rights or the surety's obligations under the bond.

§ 9.11 Audit

Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., latest edition, and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 et seq., and all amendments thereto. However, the Contractor's duties herein shall not relieve any Subcontractor or any other person or entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, from the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.1.1 Contractor shall ensure that the Project site is alcohol-free, drug-free, nicotine/ tobacco-free, e-cigarette free, weapon-free, and sexual-harassment free, and shall require strict compliance on the Project Site with the Owner's Board Policies, including but not limited to GKA(Legal) and GKA(Local). Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

10.1.2 Dress Code, Fraternization and Sexual Harassment. Contractor shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Contractor shall prohibit fraternization between all persons working under Contractor or any of its subcontractors, students and Owner's employees while on Owner's property. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 10.1.3 Weapons. Owner has also banned use, possession, or display of any firearm, handgun, location-restricted knife, club, or "prohibited weapon", as defined by the Texas Penal Code and Owner's Board Policy FNCG(Legal), except when the Contractor, its representatives, employees, agents, and subcontractors, or anyone else over which the Contractor has control or authority holds a Texas handgun license, stores the handgun or other firearm in a locked vehicle in the Owners parking lot, garage, or other parking area provided by the Owner AND the firearm is not loaded and not in plain view. A copy of such policy is available through a link on the Owner's website. The Contractor further

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agrees that Contractor's representatives, employees, agents, and subcontractors will abide by these requirements as well as the Federal Gun-Free School Zones Act.

§ 10.1.4 Tobacco and E-Cigarettes. Contractor's employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not use e-cigarettes or tobacco products while on the Project Site.

§ 10.1.5 Small Unmanned Aircraft (Drones). The Contractor shall operate any Small Unmanned Aircraft as required by 14 C.F.R. Part 107. as applicable, and any other applicable federal or state laws and regulations.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall maintain good order among its employees and its Subcontractors, shall confine its employees and Subcontractors to such work areas, roads and gates as directed by the Owner, take reasonable and necessary precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility, and taking reasonable precautions to secure any abusable glue, aerosol paint, or any other chemical substance for inhalation being used on the project site;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

.3 other property at the site or adjacent thereto, such as fences, trees, shrubs, lawns, walks, athletic fields and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. Contractor's obligations under this Section shall continue to apply during any time period when all or a portion of the Work is suspended for any reason. Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes possession of and occupies that portion of the Project.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.2.4 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 [Paragraph Deleted.]

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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§ 10.2.8 Injury or Damage to Person or Property

§ 10.2.8.1 If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding three (3) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

§ 10.2.8.2 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, then the accident shall be reported immediately by any means necessary to give actual notice to the Owner's representative and the Architect.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. If such notice is provided orally, written confirmation of such notice by Contractor shall be provided not later than one (1) business day following such notification. Owner shall not be responsible for materials or substances brought to the site by the Contractor.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall, as soon as reasonably possible, obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. Contractor may be entitled to an extension of the Contract Time in accordance with Article 8.3.

§ 10.3.3 To the extent permitted by the laws and Constitution of the State of Texas, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

§ 10.3.5 Except to the extent that the cost and expense are due to the Owner's fault or negligence, if Contractor imports hazardous materials onto the Project site, the Contractor shall indemnify and hold harmless the Owner for the cost and

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expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, (2) where the Contractor fails to perform its obligations under Section 10.3.1; and (3) any fines or penalties of government agencies directly resulting from the Contractor's importation of the hazardous materials onto the Project site.

§ 10.3.6 [Paragraph Deleted.]

§ 10.4 Emergencies

§ 10.4 .1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.4.2 The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibility for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.

§ 10.5 Asbestos Or Asbestos-Containing Materials. Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, then Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor. Final Payment shall not be made until this written certification has been received.

§ 10.6 Lead-Free Material In Potable Water System

§ 10.6.1 Prior to payment of retainage and final payment, the Contractor and each subcontractor involved with the potable water system shall furnish a written certification that the potable water system is "lead-free".

§ 10.6.2 The written certification shall further state that should lead be found in the potable water system built under this Project, then Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

§ 10.7 Hazardous Materials Certification

The Contractor shall provide written certification that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance

§ 11.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain in force, insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the table below the Agreement or elsewhere in the Contract Documents. No Work will be commenced, and no equipment or materials may be shipped, until all requirements of Article 11 have been satisfied, satisfactory evidence of insurance has been provided, and all required insurance is in full force and effect. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Texas.

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Workmen's Compensation: (Including Waiver of Subrogation Endorsement)	All liability arising out of Contractor's employment of workers and anyone for whom Contractor shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.
Employer's Liability:	Bodily Injury by Accident - $500,000 Each Accident. Bodily Injury by Disease - $500,000 Each Employee. Bodily Injury by Disease - $500,000 Policy Limit.
Commercial General Liability: (Premises Operations, Independent Contractors, Products/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage)	$1,000,000.00 – combined single limit for bodily injury and property damage $2,000,000.00 - aggregate
Property Damage Independent Contractors Contractual Liability	$1,000,000.00 each occurrence $2,000,000.00 aggregate per project (Same limits as above) (Same limits as above)
Automobile Liability: Bodily Injury/Property Damage	$1,000,000.00 combined single limit $1,000,000.00 each occurrence
Umbrella or Excess Liability	$2,000,000.00 - each occurrence $2,000,000 - aggregate
Owner's Protective Liability Insurance: Contractor must obtain an owner's liability insurance policy, at Contractor's expense, naming the District and its employees.	Bodily Injury - $1,000,000 Each Occurrence Aggregate - $1,000,000.
All Risk Builders Risk against the perils of fire, lightening, windstorm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, vandalism, malicious mischief, and all other perils in the amount one hundred percent (100%) of the value of the improvements including transit and materials stored off site. Additionally, this coverage shall provide protection to the full replacement value for boiler and machinery equipment up to installation, during testing, and until acceptance by Owner.	
Professional Liability for Construction Manager-At-Risk. In addition to the coverage and limits provided above, if these General Conditions are incorporated into the AIA Document A133™–2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor *where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*, the Construction Manager shall also provide Professional Liability Insurance covering negligent acts, errors and omissions in the performance of professional services during the pre-construction phase, with policy limits of not less than One Million Dollars ($1,000,000.00) per claim and Two Million Dollars ($2,000,000.00) in the aggregate.	

§ 11.1.2 The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner.

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§ 11.1.3 The General Liability and Automobile policies so issued in the name of Contractor shall also name the Owner as additional insured. The coverage afforded to the additional insured under the policy or policies shall be primary insurance. It is the intent of the parties to this Agreement that the General Liability coverage (and associated Umbrella Coverage) required herein shall be primary to and shall seek no contribution from all insurance available to Owner, with Owner's insurance being excess, secondary and non-contributing. The Commercial General Liability coverage provided by Contractor shall be endorsed to provide such primary and non-contributing liability. If the additional insured has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis.

§ 11.1.4 If the insurance is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner then the Contractor shall bear all reasonable costs properly attributable thereto.

§ 11.1.5 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.1.6 Contractor shall have its insurance carrier(s) furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, and a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar day's prior written notice to Owner. Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 11.1.1. If Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance and the provisions of Section 11.1.8 hereof shall apply.

§ 11.1.7 Contractor and its Subcontractors shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of Contractor and its Subcontractors are in force and the necessary certificates and statements pursuant to Section 11.1.6 hereof have been received by Owner and the Architect has issued a written notice to proceed.

§ 11.1.8 As an alternative and at Owner's option and expense, Owner may elect to furnish or to arrange for any part or all of the insurance required by Section 11.1 hereof. If Owner so elects, it shall notify, in writing, Contractor and issue a Change Order therefor, but no adjustment to the scheduled completion date or the Contract Sum shall be allowed.

§ 11.1.9 Workers' Compensation Insurance Coverage.

.1 Definitions:

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

.1.2 Duration of the Project. Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code §406.096). Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracts directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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.2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.

.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

.4 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

.5 The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:

.5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.5.2 no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

.7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

.8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

.9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:

.9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;

.9.2 provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

.9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.9.4 obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the Project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

.9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.

.10 By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Department of Insurance, Division of Self-Insurance Regulation. Providing false or

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misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

.11 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [28 TAC §110.110(c)(7)]

§ 11.1.10 [Paragraph Deleted.]

§ 11.2 Owner's Insurance [Paragraph Deleted.]

(Paragraphs deleted)

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

(Paragraphs deleted)

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

§ 11.4.3 The Payment and Performance Bond shall meet requirements of Chapter 2253 of the Texas Governmental Code. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

§ 11.4.4 The Sureties shall promptly file a signed copy of the Contract, Performance Bond, and Payment Bond with the Owner in full compliance with Chapter 2253 of the Texas Governmental Code or, in the case of a Construction Manager, as required by Section 14.3.3 of the AIA Document A133-2019.

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

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

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

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

§ 11.4.9 By inclusion of this Section 11.4.9 in the Contract Documents, the surety which issues the bonds is hereby notified that the Owner, the Architect, and their agents and employees do not represent and will not be responsible for the surety's interests during the course of the Work. To protect its interests, the surety shall have the right to attend pay estimate meetings, review Applications for Payment when requested in writing by them, comment upon and make recommendations regarding payments, and inspect the Work in the presence of the Contractor and the Architect. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner, the Architect, their agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Contractor, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.

§11.5 Adjustment and Settlement of Insured Loss [Paragraph Deleted.]

(Paragraphs deleted)

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered prior to inspection, contrary to the Architect's request or to requirements specifically expressed in the Contract Documents or if any known deficiencies exist, it must, if requested by the Architect, be uncovered by the Contractor for the Architect's examination and be replaced at the Contractor's sole expense without change in the Contract Time. If the uncovered work is determined by the Architect upon inspection to be deficient or not in accordance with the Contract Documents, the uncovered Work which is deficient or not in accordance with the Contract Documents shall be corrected and covered at the Contractor's sole expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense. If the a request inspection of the Work prior to covering or including a requirement for inspection in the Contract Documents is within the Architect's standard of care and the Architect has failed to timely make such request or include the requirement in the Contract Documents, the Architect shall reimburse the Owner for the actual costs of uncovering and recovering such Work and additional costs of correction, if any, caused by covering the Work prior to inspection.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established

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under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Owner shall give such notice of the condition to the Contractor with reasonable promptness after discovery of the condition. The Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition in its non-conforming state. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor based on a breach of the warranty contained in this Section 12.2.2.1 providing for correction of Work during the one-year period. If the Contractor fails to correct nonconforming Work within a reasonable time during the period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fails to conform with the requirements of this Agreement that appear during the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work or by the negligent act of the Contractor or its employees, agents or subcontractors. The cost to Contractor of performing any of its obligations under this Section 12.2.6 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2.7 shall not apply to corrective Work attributable solely to the acts or omissions of any separate Contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

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

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§ 12.2.9 Contractor's express warranties set out in this Article 12 shall be in addition to, and not in lieu of, any other warranties or remedies Owner may have under the Contract Documents, at law, or in equity for defective Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract in whole or in part without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.2.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability, or effect of the remainder of the Contact Documents.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. The Contractor shall give timely notice to the persons or entities selected by the Owner of the need for such services. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

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§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including but not limited to those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth (46th) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

§ 13.6 Equal Opportunity In Employment

§ 13.6.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

§ 13.6.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law.

§ 13.7 Contractors Records

§ 13.7.1 Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office or the principal offices of the Contractor, at the sole option of the Owner.

§ 13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

§ 13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.7.1.

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§ 13.7.5 Contractor shall keep all Construction Documents related to the Project, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

§ 13.7.6 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 No Third-Party Beneficiaries

There are no third-party beneficiaries to this agreement.

§ 13.9 Proprietary Interests And Confidential Information

§ 13.9.1 Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

§ 13.9.2 Neither Architect nor Contractor shall disclose any confidential information of Owner which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to: pending real estate purchases, exchange, lease, or value; information related to litigation; detailed layouts of the Owner's Facilities; the location and deployment of security devices; security access codes; student likenesses; student record information; employee information; or any other information deemed confidential by law.

§ 13.9.3 The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Section 552.001, *et seq*., and the Texas Open Meetings Act, Texas Government Code, Section 551.001, *et seq*.

§ 13.10 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 If the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

.3 Because the Owner has not made payment of undisputed sums due on an approved Certificate for Payment within the time stated in the Contract Documents; or

.4 [Subsection Deleted.]

§ 14.1.2 If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment in an amount which would have been recoverable had the termination been for the Owner's convenience.

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§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon ten (10) additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- **.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- **.4** fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents;
- **.5** fails to furnish the Owner, upon written request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- **.6** engages in or permits serious or repeated worker misconduct in violation of Article 3.3;
- **.7** engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- **.8** otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, subject to any prior rights of the surety, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- **.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- **.2** Accept assignment of subcontracts pursuant to Section 5.4; and
- **.3** Finish the Work by whatever reasonable method the Owner may deem expedient.

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Any further payment shall be limited to amounts actually earned to the date of termination.

§ 14.2.4 If the costs of finishing the Work, including compensation for the Architects' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, exceed the unpaid balance of the Contract Sum or Guaranteed Maximum Price (if the Project is a Construction Manager at Risk project), then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such

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request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

§ 14.2.6 As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a Contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time may be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. No adjustment shall be made to the extent

- **.1** that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Trustees has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

§ 14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in this Section 14.4.3.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims [Paragraph Deleted.]

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§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor, shall be initiated by notice to the Owner and to the Architect, Claims under this Section 15.1.3.1 shall be initiated within 21 calendar days after the occurrence of the event giving rise to such Claim or within 21 calendar days after the claimant first knew or should have known of the condition giving rise to the Claim, whichever is earlier. If the full impact cannot be assessed as of the date of the Notice, then Notice shall be provided and amended by a second notice at the earliest date that is reasonably possible, but in no event later than the date of Contractor's Application for Payment covering the period in which the impact can be assessed and quantified.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required. If Texas Government Code, Chapter 2272 is applicable to the Claim, the Owner shall comply with the requirements set out therein as a condition precedent to any initiation of any litigation.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments for Work performed in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum (or Guaranteed Maximum Price, as applicable), if permitted, and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of the Contractor to proceed in accordance with this Article 15.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum (provided such a claim is specifically permitted by the Contract Documents), notice as provided in Section 15.1.3 shall be given to the Owner and Architect. before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions occurred at the locality of the Work which were abnormal for the period of time, were in excess of that normally experienced at the job site, could not have been reasonably anticipated, and prevented the execution of Work on scheduled Working Days. The term "Adverse Weather Conditions" as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the Local Climatological Data maintained by NOAA's National Centers for Environmental Information [formerly the National Climatic Data Center (NCDC)] from the station closest to the location of the Work. No day will be counted as a rain-day when substantial Contractor forces are able to perform Work on the Project for more than fifty percent (50%) of the usual workday or when the stage of the Work on the Project is not adversely impacted. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of the Contract Time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, but shall be applied only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. As provided herein, Contractor shall only be entitled an extension of the Contract Time per the terms of the Contract Documents and no damages shall be paid for delays.

(Paragraphs deleted)

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§ 15.1.7 Calculating Claims For Damages

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

.1 No indirect or consequential damages will be allowed.

.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

.4 No damages will be allowed for home office overhead or other home office changes or any Eichleay formula calculation.

Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, nor will this Section 15.1.7 be deemed to apply to delay damages, which are prohibited entirely.

§ 15.2 Initial Decision

§ 15.2.1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any Claim, after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The Architect will review Claims and within ten (10) days of receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 15.2.3 Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished.

§ 15.2.5 [Paragraph Deleted.]

§ 15.2.6 [Paragraph Deleted.]

§ 15.2.6.1 [Paragraph Deleted.]

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 Waiver Of Lien

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

§ 15.3 Mediation

§ 15.3.1 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator qualified as an impartial third party for purposes of Section 154.052 of the Texas Civil Practice & Remedies Code.

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

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

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.3.5 Nothing herein shall preclude the Owner or the Contractor or as applicable, the Construction Manager from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

§ 15.3.6 Any claim not resolved in mediation pursuant to Section 15.3 shall be subject to litigation as the sole method of dispute resolution.

§ 15.3.7 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

§ 15.4 Arbitration. This Section 15.4 and all subparts are intentionally deleted. No dispute arising under the Contract Documents, these General Conditions or the underlying Contract shall be subject under any circumstances to Arbitration as the method of binding dispute resolution and Owner rejects any selection otherwise made by the parties.

§ 15.5 Immunity

Contractor stipulates that Owner is a political subdivision of the State of Texas and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically provided by law.

Executed on this the ____ day of _____, 20__.

MCALLEN INDEPENDENT SCHOOL DISTRICT		_____
OWNER *(Signature)*		**CONSTRUCTION MANAGER** *(Signature)*
Tony Forina, Board President, Board of Trustees, McAllen Independent School District		
(Printed name and title)		*(Printed name and title)*

(Paragraphs deleted)

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PAGE 1

(Name, legal status and address)

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

...

(Name, legal status and address)

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

THE CONTRACTOR/CONSTRUCTION MANAGER

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

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15 CLAIMS AND DISPUTES

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, Project Manual and the Bid or Proposal Documents prepared and submitted by the Owner and the Contractor's Bid or Proposal submitted by the Contractor, to the extent they do not conflict with the terms of this Agreement, and other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. ~~The Contract may~~ After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

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§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Miscellaneous Other Words

§ 1.1.10.1 Business Day

The term "business day" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner's Superintendent of Schools for inclement weather or other reason. Days on which the Administration Building is normally closed are Thanksgiving Break, Winter Break, Spring Break, and Summer Break, as well as other federal, state or local days specified in the calendar approved by the Owner's Board of Trustees on an annual basis. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or special events.

§ 1.1.10.2 Calendar Day

A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

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§ 1.1.10.3 Holidays
Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

§ 1.1.10.4 Work Day
Work days include all calendar days except Holidays, Saturdays and Sundays.

...

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

...

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

.1 Contract Modifications signed by Contractor and Owner.
.2 Addenda, with those of later date having precedence over those of earlier date.
.3 General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.
.4 Agreement – AIA Document A101-2017 or A133-2019, as modified by the Owner for the Project.
.5 Specifications and Drawings.
.6 Bid/Proposal Documents including the Project Manual, Contractor's Bid or Proposal Documents (to the extent such Bid or Proposal submitted by the Contractor is part of the Contract Documents and is not inconsistent with other portions of the Contract Documents)

§ 1.2.5 Relation Of Specifications And Drawings
Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above-mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.5.1 Drawings and Specifications are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above-mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.5.2 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

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

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

Terms capitalized in these General Conditions include those that ~~are~~ are: (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

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In the interest of ~~brevity~~ brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

...

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given in person, by mail, by courier, or by electronic transmission if a method for electronic transmission ~~is set forth in the Agreement.~~(e-mail or facsimile) or other commercially reasonable means and will under any of these circumstances, be effective when actually received. Any address for notice may be changed by written notice delivered as provided in this Section 1.6.

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

§ 1.8 Building Information Models Use and Reliance

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

...

§ 2.1.1 The Owner is the ~~person or entity identified as such in the Agreement~~ Board of Trustees of the McAllen Independent School District and is referred to throughout the Contract Documents as if singular in number. The Owner ~~shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization.~~ may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Except as otherwise provided in Section 4.2.1, the Architect does not have ~~such authority.~~ the authority to bind the Owner. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner ~~shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

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

...

§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended~~

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~~appropriately.~~Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work.

§ 2.2.2 ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~[Paragraph Deleted.]

§ 2.2.3 ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~[Paragraph Deleted.]

§ 2.2.4 ~~Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~[Paragraph Deleted.]

...

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor ~~to whom the Contractor has no reasonable objection and~~ whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner ~~shall~~ may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the ~~site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.~~site, but shall have no duty to do so. Notwithstanding the foregoing, if the Owner provides such survey, the Contractor shall remain responsible to independently investigate the physical characteristics, legal limitations, and utility locations for the Project site. In the event that the Contractor damages any utilities during construction, the Contractor shall immediately repair the same at its sole cost and expense.

§ 2.3.5 ~~The Owner shall furnish information~~ Information or services required of the Owner by the Contract Documents ~~with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.~~shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 2.3.6 ~~Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.~~The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

§ 2.3.7 Owner's personnel or consultant may, but are not required to be present at the construction site during progress of the Work to assist the Architect in the performance of his duties, and to verify the Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and the equipment used in the performance of the Work for purpose of verification of Contractor's Applications for Payment.

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§ 2.3.8 The Owner (either directly or by contract with the Architect) may furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 2.3.9 The Owner, (directly or by contract with the Architect), when such services are required, in the professional opinion of the Architect, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 2.3.10 The Owner will contract for, independently of the Contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for the acceptance of the Work by the Owner as required by the Texas Government Code, Section 2269.058.

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If the Contractor fails to correct Work that is defective or not in accordance with the requirements of the Contract Documents as required by ~~Section 12.2 or repeatedly~~ Section 12.2, fails to timely carry out Work in accordance with the Contract ~~Documents,~~ Documents or is in default of any of its material obligations hereunder, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or ~~entity, except to the extent required by Section 6.1.3.~~entity.. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

...

~~If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~**§ 2.5.1** If the Contractor is in default in any of its material obligations hereunder, neglects to timely carry out the Work in accordance with the Contract Documents, or fails to correct nonconforming or defective Work as required by Section 12.2, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or such non-conforming or defective Work with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or such non-conforming or defective Work at the sole cost of the Contractor. The Architect may, pursuant to Section 9.5.1, withhold or nullify the Contractor's Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such default or such non-conforming or defective Work, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure to correct such non-conforming or defective Work. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5.2 Nothing contained in this Section 2.5 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

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§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be authorized to do business in the state of Texas and lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this

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Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative, or in the case of a Construction Manager-at-Risk, the Construction Manager-at-Risk, or its authorized representative.

§ 3.1.2 The Contractor shall perform the Work in a good and workmanlike manner and accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Owner's consultants, if applicable, conducted in accordance with the Contract Documents or activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

...

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, or for price escalations in the marketplace. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor shall not perform any Work it knows involves an error, inconsistency, or omission without further instructions to Contractor or revised Construction Documents from the Architect. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the Work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or honor its warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner, in writing providing substantiation for its position.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article ~~15.~~ 15; however, nothing in this section shall provide the Contractor with an affirmative claim for damages for delay by Owner or Architect, as such a claim is prohibited under this Contract. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had

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performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor.

§ 3.2.6 The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays or disruptions to the Work. This limitation on damages is further subject to the limitations set forth in Section 15.1.7.

§ 3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall assign a Superintendent who shall make decisions on behalf of the Contractor and its subcontractors. The Superintendent shall be on the Project, in this capacity, at all times while Work on the Project is in progress. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall propose ~~alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its~~ alternative means, methods, techniques, sequences, or procedures.

...

§ 3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, *et seq.*, and shall require any applicable subcontractor to comply all such procedures. Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

§ 3.3.5 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent Contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the

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Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

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

§ 3.3.7 Contractor acknowledges that the Work may be performed in connection with an educational facility which is currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury.

§ 3.3.8 Representatives of the Owner, Contractor, and Architect shall meet periodically at mutually agreed upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

§ 3.3.9 The Contractor shall pay fees for public or private water, gas, electrical and other utility service at the site until Substantial Completion of the Work. In the event that the Work will be conducted at an Owner site, where utility services are existing on site and reasonably accessible to the Contractor, the Owner may elect, in writing, to provide and pay for utility service for the Project site. Agreement to pay for such utility service shall not absolve the Contractor from using utilities judiciously in connection with its performance of the Work. In all cases, the Contractor shall secure and arrange for all necessary utility connections.

§ 3.3.10 The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient workers and labor, eligible to work in accordance with state and federal law. Contractor shall appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Before ordering any material or doing any Work, Contractor shall verify all dimensions and check all conditions in order to assure Contractor that they are the same as those in the Drawings, Specifications, and other Construction Documents. Any inconsistency shall be brought to the attention of the Architect. In the event that discrepancies occur between ordered

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material and actual conditions and Architect was not notified beforehand, then costs to correct such discrepancies shall be borne by Contractor. In accordance with Texas Government Code §2269.054, these Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization. In accordance with Texas Government Code §2269.0541, these Contract Documents shall also not prohibit, require, discourage or encourage a person, or discriminate against a person bidding on this contract from entering into or declining to enter into, or adhering to, an agreement with a collective bargaining organization relating to this Project.

~~**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.~~

§ 3.4.2 Prevailing Wages

§ 3.4.2.1 The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.2.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications and attached to the AIA Document A101-2017, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction.

§ 3.4.2.3 A Contractor or Subcontractor who violates the provisions of Sections 3.4.2.1 or 3.4.2.2 shall pay to Owner the sum of Sixty Dollars and No/100 ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

~~**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.~~**Substitutions**

§ 3.4.3.1 If the Contract Documents (including the Instructions to Proposers and /or Offerors) specifically permit the submission by Contractor of requests for substitutions, Contractor may, within thirty (30) days after the Contract has been executed, make written request for the substitution of products in place of those specified in the Contract Documents to the Owner and the Architect. Any request for substitution shall be submitted to the Architect in writing, with appropriate shop drawings, product data, and certified test results substantiating the proposed product equivalence as required by this Section 3.4.3.1 and Section 3.4.3.2 and will be rejected if not so submitted.

§ 3.4.3.2 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and any modifications to the construction schedule; and (v) an affidavit stating that (a) the proposed substitution confirms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect; (c) the cost breakdown presented with Contractor's request is complete and includes all related costs, except for the Architect's redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent;(d) that the Contractor will coordinate and supervise the installation of the proposed substitute, making such changes as may be required for the Work to be complete in all respects; and (e) the Contractor will reimburse the Owner and for review or redesign services associated with any re-approval by applicable governmental authorities related to the substitution.

§ 3.4.3.3 By making requests for substitutions pursuant to Section 3.4.3 (and all subsections), the Contractor represents and certifies that: (1) Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to the product specified; (2) Contractor will provide the same warranty for the substitution product that the Contractor would have provided for the product specified; (3) the cost breakdown

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presented with the request is complete and includes all related costs, except for the Architect's redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent; (4) Contractor will coordinate and supervise the installation of the proposed substitute, making such changes as may be required for the Work to be complete in all respects; and (5) will reimburse Owner and Architect for review or redesign services associated with any re-approval by applicable governmental authorities related to the substitution.

§ 3.4.3.4 Owner and the Architect may accept or reject any such request for substitution in their sole discretion, based on cost, time, or other considerations. Requests for substitutions submitted after such thirty (30) day period will not be considered unless a product becomes impossible to obtain due to circumstances beyond the Contractor's control.

§ 3.4.3.5 Regardless of acceptance or rejection of substitution, the Contractor shall be responsible for amounts paid by the Owner to the Architect, to evaluate the Contractor's proposed substitutions and any amounts paid to the Architect to make agreed upon changes in the Specifications and Drawings made necessary by the Owner's acceptance of such substitutions. The Owner shall be entitled to deduct such amounts from the Contract Sum.

§ 3.4.4 Responsibility for Subcontractors

§ 3.4.4.1 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor, its subcontractors and vendors shall bear responsibility for compliance with all federal, state and local laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of his own conduct. THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES; NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES; CONTRACTOR'S FORCES NON-COMPLIANCE WITH CRIMINAL LAW; OR CONTRACTOR'S OR CONTRACTOR'S FORCES NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.4.4.2 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Work may be performed in connection with an operational educational facility or the Project site may be adjacent to a public-school campus. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb or disrupt Owner's normal operations or facilities. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working at or near an operational campus and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum.

§ 3.4.5 Criminal History Records Checks

§ 3.4.5.1 For purposes of this Section 3.4.5 (and all subsections), the following definitions shall be applicable:

.1 "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.

.2 "Covered Employees", shall mean, all employees of Contractor, as well as employees of Contractor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

§ 3.4.5.2 Unless otherwise exempt from providing such information by any provision in Texas Education Code, Section 22.08341 (the "Statute"), the Contractor agrees, that prior to commencement of work under this Agreement, using the form promulgated by the Owner or such other form approved by the Owner, Contractor will arrange with the

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Owner to obtain any national criminal history record information ("CHRI") required pursuant to the Statute on all of Contractor's employees, independent contractors, agents, or Subcontractors, Contractor's Subcontractors of every tier ("Subcontractors"), Subcontractors' employees, independent contractors, agents, or sub-subcontractors, if any of these persons is a "Covered Employee" as defined in Section § 3.4.5.1 and shall reimburse the Owner for the costs and expenses associated with obtaining the required CHRI.

§ 3.4.5.3 For purposes of this Section 3.4.5 a person does **not** have the opportunity for direct contact with students if:

.1 the public work does not involve the construction, alteration, or repair of an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code ("Instructional Facility);

.2 for a public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first date the facility will be used for instructional purposes; or

.3 for a public work that involves an existing Instructional Facility:

(a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and

(b) the Contractor adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

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

§ 3.4.5.5 Prior to commencement of its work on the Project the Contractor will provide written certification to the Owner that either: (1) Contractor and its Subcontractors of every tier, do not have any Covered Employees, as defined; (2) are otherwise exempt from compliance with the Statute; or (3) has complied with the statutory and contractual requirements stated in Section 3.4.5 of this Agreement (including all subparts), as of that date, and that it:

.1 has requested a Criminal History Records Check through the District on all Covered Employees, if any, of every tier, has provided the required information to the District to do so and reimbursed the District for same;

.2 has obtained written certification from its independent contractors, and Subconsultants (of any tier) that they have provided the required information to the Contractor, necessary to secure the information from the District and reimbursed the Contractor for same; and

.3 have excluded any Covered Employee reported by the District to have a Disqualifying Criminal History from assignment to the Project.

Further, Contractor agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses, during the performance of the Work, Contractor will immediately remove the Covered Employee from District's property or other location where students are regularly present, and notify the District of said removal within three (3) days of doing so. Contractor understands that any failure to comply with the requirements of this section may be grounds for termination of this Agreement, in accordance with Article 14, Termination.

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

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accordance with all applicable codes, generally accepted standards of construction practice for construction of projects similar to the Project. All materials shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. No acceptance or payment by the Owner shall constitute a waiver of the foregoing and nothing herein shall exclude or limit any warranties implied by law. The warranties provided in this Section 3.5.1 are in addition to, and not in limitation of, any other warranties, remedies and/or guaranties set out in the Contract Documents or under applicable law.

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§ 3.5.3 Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. In such case, each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion (or, for Work to be completed or corrected after the date of Substantial Completion, the Warranty Commencement Date). Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the warranties under granted in the Contract Documents will expire, on each phase or building and will provide a copy of such Schedule to the Owner, as required in Subsection 3.5.6, as a condition precedent to Final Payment.

§ 3.5.4 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or such further reasonable proof as is required by the Architect.

§ 3.5.5 The Contractor agrees to assign to the Owner at the time of Final Completion of the Work any and all manufacturer's warranties relating to equipment, machinery, materials, equipment or components and labor incorporated into the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations. The warranties provided in this Section 3.5 or otherwise provided in the Contract Documents or by law, shall in no way limit or abridge the warranties provided by the suppliers of equipment and systems which are to comprise a portion of the Work. A complete set of all warranties required from contractors, manufacturers, or suppliers as appropriate, on the manufacturer's or supplier's approved forms, executed by Contractor as required, with a Warranty Commencement Date noted as required, and in the form required by Subparagraph 3.5.6 shall be submitted to the Architect for delivery to the Owner, as a condition precedent to Final Payment.

§ 3.5.6 Prior to receipt of Final Payment, Contractor shall: (1) obtain duplicate original warranties, executed by all subcontractors, and the warranties of suppliers and manufacturers, noting the Warranty Commencement Date on the face of each; (2) verify that the documents are in proper form and contain full information; (3) Co-sign warranties when required; (4) bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers; (5) label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the Title of the Project; name, address and telephone number of Contractor; and name of its responsible principal; (6) include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified; (7) include the Schedule of Warranty Commencement Dates required by Subparagraph 3.5.3; (8) separate each warranty with index tab sheets keyed to the Table of Contents listing; and (9) deliver warranties in the form described in this Subparagraph 3.5.6, to the Architect for review same prior to submission to the Owner.

The Contractor shall ~~pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to~~

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~~go into effect.~~not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes. **CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.** **PAGE 22**

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time ~~bids are received or negotiations concluded.~~proposals are received or negotiations concluded. The Owner shall be responsible for payment of TDLR Texas Accessibility submissions and inspection costs.

§ 3.7.2 ~~The~~ In performing its obligations hereunder, the Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the ~~Work.~~Work and upon request by the Owner or Architect shall furnish evidence, satisfactory to the Owner, of such compliance.

§ 3.7.3 If the Contractor performs Work ~~knowing~~ when Contractor knows or reasonably should have known it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, the Contract Documents, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. **THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ITS TRUSTEES, OFFICERS, REPRESENTATIVES, AGENTS AND EMPLOYEES FROM AND AGAINST ALL THIRD-PARTY CLAIMS, FINES, PENALTIES, OR LIABILITIES FROM, ARISING OUT OF, OR BASED UPON CONTRACTOR'S VIOLATION OF ANY LAWS, ORDINANCES, RULES, REGULATIONS, ORDERS OR DECREES.**

~~§ 3.7.4 Concealed or Unknown Conditions~~

~~If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.~~

§ 3.7.4 Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract Sum, or both. The Contract Time and the Contract Sum contained herein (as proposed by Contractor), or GMP as applicable, shall be deemed to include all costs of and sufficient time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if the Contractor encounters conditions

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at the site that are subsurface or otherwise concealed physical conditions which were not known to the Contractor, and that differ materially from those indicated in the Contract Documents the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed, and in no event later than three (3) days after first observance of the conditions and report its findings to the Owner and Architect.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract ~~Sum and Contract~~ Time arising from the existence of such remains or features may be made as provided in Article 15. In accordance with the terms of this Agreement, there will be no adjustment to the Contract Sum for delay arising out or related to the circumstances described in this Section 3.7.5.

§ 3.7.6 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which require the issuance of a permit shall be at Contractor's sole cost.

§ 3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

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.3 ~~whenever~~ Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner ~~with reasonable promptness.~~within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

§ 3.8.4 When performing Work under Allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work on the basis of the best value for the Owner, as directed by the Architect following Owner's written approval of the cost proposal.

...

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall ~~notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day~~

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~~period shall constitute notice of no reasonable objection.~~furnish a list to the Architect a list of all engineers, consultants, job-site superintendents, subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner. The Owner shall have the right, at any time, to require a change in any engineer, consultant, job-site superintendent, subcontractor or supplier if their performance is deemed unsatisfactory in its sole discretion.

§ 3.9.3 The Contractor shall ~~not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

§ 3.9.4 Owner shall be notified as soon as Contractor becomes aware, but in no event fewer than twenty-four (24) hours before the time of that the Superintendent is required to be present at the site, that the Superintendent will not be present at the site for any reason, except illness. If the reason is due to illness, then Owner shall be notified as soon as the Contractor obtains the information, but in no event later than the beginning of the day that the Superintendent will be absent from the site. In such event of such absence, the Contractor will designate a person as acting superintendent and Contractor promptly notify the Owner of the identity and contact information for the designated acting superintendent.

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§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the ~~Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.~~Work, utilizing critical path method scheduling techniques. The Schedule shall not exceed the time limits set forth in the Contract Documents. The Schedule shall thereafter be updated on a monthly basis and submitted with each Application For Payment. The receipt of an updated schedule with each Application For Payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6. The schedule shall not interfere with the operation of Owner's existing facilities and operations without Owner's prior written approval.

§ 3.10.1.1 Each Schedule shall: (1) break the work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect and shall assign each scheduled activity a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project cash flow for the Project; (2) include activates representing manufacturing, fabrication, or ordering lead time for materials, equipment or other items for which the Architect is required to review submittals, shop drawings, product data, or samples; (3) with the exception of the initial schedule, shall indicate the activities, or portions thereof, which have been completed; (4) shall reflect the actual time for completion of such activities, and shall reflect any changes to the sequence or planned duration of all activities.

§ 3.10.1.2 If any updated Schedule exceeds the time limits set forth in the Contract Documents for completion of the Work, the Contractor shall include with the updated Schedule, a statement of the reasons for the anticipated delay in completion of the Work and the Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Architect to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Architect and documentation of the date such information was requested.

§ 3.10.1.3 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

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§ 3.10.1.4 Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining Work in the sequence and time indicated.

§ 3.10.1.5 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal or Guaranteed Maximum Price, as applicable, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

§ 3.10.1.6 The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions.

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§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and ~~Architect.~~Architect and shall attend progress meetings at the Project Site, in such frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule.

§ 3.10.4 The Contractor shall submit to the Architect with each monthly application for payment a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein.

§ 3.10.5 Correction of Delay.

§ 3.10.5.1 In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, or any Milestone Date unless any such adjustment is submitted by the Contractor as a Claim in compliance with Article 15 or the adjustment is otherwise agreed to in a written confirmation from the Owner and documented by written Change Order.

§ 3.10.5.2 If at any time the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5. The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.5.3 In the event Contractor determines that the Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

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...

The Contractor shall maintain and make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, field test records (including environmental inspection and test records), inspection certificates or records, manufacturers' certificates. The Documents to be maintained shall be kept in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and ~~Owner,~~ Owner or their respective representatives, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the ~~information given and the design concept expressed in the~~ Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

...

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Construction Documents and the Contract Documents remain the Contractor's responsibility.

...

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the ~~Architect~~ Architect, in writing, of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall ~~be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall~~ cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawings are prepared and, if required by the Architect or applicable law, by a licensed engineer The Owner and the Architect shall be entitled to rely upon the ~~adequacy~~ adequacy, completeness and accuracy of the services, certifications, and approvals performed or provided by such design ~~professionals, provided the Owner and Architect have specified to the Contractor the performance and~~

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~~design criteria that such services must satisfy. Pursuant to this Section 3.12.10,~~ professionals. Pursuant to this Section 3.12.10.1, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this paragraph, Contractor shall require that the licensed design professional carry commercial general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

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§ 3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ **§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

§ 3.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§ 3.13.3 Without prior approval of the Owner, the Contractor shall not permit any workers to use any of Owner's existing facilities at or adjacent to the Project site, including, without limitation, lavatories, toilets, entrance and parking areas other than those designated by the Owner. The Contractor shall comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and District's Buildings.

...

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together ~~properly.~~ properly, provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Contract Documents. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

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§ 3.15.1 The Contractor ~~shall~~ shall, on a daily basis, keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains,

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putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning and replace any damaged or broken glass.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor. Such reimbursement amounts may be deducted from Contractor's Final Payment Application.

...

The Contractor shall provide the ~~Owner and Architect~~ Owner, Architect and their designated representatives, with access to the Work in preparation and progress wherever located. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work. Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on an inspection of the Work.

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~~The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.~~THE CONTRACTOR SHALL PAY ALL ROYALTIES AND LICENSE FEES. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES DEFEND AGAINST ANY AND ALL SUITS, CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS ALLEGED TO HAVE RESULTED FROM CONTRACTOR'S INFRINGEMENT, AND SHALL INDEMNIFY AND HOLD THE OWNER THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM LOSS ON ACCOUNT THEREOF, INCLUDING ATTORNEY'S FEES (AS PERMITTED BY STATUTE), BUT SHALL NOT BE RESPONSIBLE FOR DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS, OR PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS, OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS, OR OTHER DOCUMENTS PROVIDED BY THE OWNER OR PREPARED BY THE ARCHITECT. HOWEVER, IF AN INFRINGEMENT OF A COPYRIGHT OR PATENT ATTRIBUTABLE TO THE OWNER OR ARCHITECT, IS DISCOVERED BY, OR MADE KNOWN TO, THE CONTRACTOR, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOSS UNLESS THE INFORMATION IS PROMPTLY FURNISHED TO THE OWNER AND THE ARCHITECT.

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§ 3.18.1 ~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND (EXCEPT AS LIMITED BELOW) AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS,

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AGENTS AND EMPLOYEES (HEREINAFTER IN THIS SECTION 3.18 "OWNER"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18.

§ 3.18.2 ~~In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.~~IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 3.18.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

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

§ 3.18.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1.

§ 3.18.5 The indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and

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rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner under said statutes are secondary to that of the Contractor.

§ 3.18.6 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

§ 3.18.7 Contractor shall promptly advise the Owner, in writing, of any claim or demand against the Owner or Contractor, known to the Contractor related to or arising out of Contractor's activities under this Contract.

§ 3.18.8 The provisions in this Section 3.18 in its entirety shall survive the completion, termination or expiration of this contract and are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

§ 3.19 Representations And Warranties

§ 3.19.1 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

.2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 Business Standards

§ 3.20.1 Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, Subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and contracts.

§ 3.21 Antitrust Violation

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

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

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§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date ~~the Architect issues the final Certificate for Payment.~~ of the Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract ~~Documents.~~Documents, or as they may be amended in the future.

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

§ 4.2.3 On the basis of the site ~~**visits,**~~ observations, the Architect will keep the Owner ~~**reasonably**~~ informed about the progress and quality of the ~~**portion of the Work completed, and**~~ Work. The Architect shall promptly report to the Owner and Contractor orally regarding: (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. An oral notification of defects and deficiencies observed in the Work shall be followed by a notice in writing to the Owner and Contractor specifying the defect(s), non-conforming Work, deviations from the Contract Documents and corrective actions taken or recommended. The Architect shall not have control over or responsibility for the Contractor's construction means, methods, techniques, sequences, procedures, or safety programs and will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract ~~**Documents. The Architect will not**~~ Documents, nor shall the Architect have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions ~~**of the Work.**~~of the Work. This does not, however, relieve Architect of Architect's responsibilities under this Agreement. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed by the Contractor at no additional cost to Owner. In addition, the Contractor shall reimburse the Owner for compensation paid to the Architect (whether performed by the Architect or its Consultants) or the Owner's Consultants, for additional site visits made necessary by the fault, neglect, the request of the Contractor or made necessary by the Contractor's construction defect or nonconforming Work. Any amount subject to reimbursement under this Section may be required by Owner to be deducted from the next Payment Application submitted by the Contractor and any subsequent Payment Application until paid, and if any amount remains unpaid, the balance shall be paid by the Contractor as a condition to Final Payment.

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~~The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications~~ Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters relating to the Contract and the Project. However, the Owner reserves the right to communicate directly with the Contractor and Subcontractors. Communication by and with the Architect's consultants shall be through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. ~~The Contract Documents may specify other communication protocols.~~

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

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§ 4.2.6 The Architect or the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work may be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall prevent action to require conformance, if at any subsequent time the Work or any portion thereof is found not to conform to the requirements of the Contract Documents. Architect and/or Contractor shall promptly notify, the other party orally and in writing, and Owner of any perceived fault or defect in the design or nonconformance of the Work with the Construction Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no duty to notify Owner of discoveries made or actions taken by Architect.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness ~~while allowing~~ as to cause no delay in the Work or in the activities of the Owner, Contractor or Separate Contractors, and allow sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If any submittal does not comply with the requirements of the Contract Documents, the Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.

§ 4.2.8 The Architect will ~~prepare Change Orders and Construction Change Directives, and~~ prepare, and make written recommendations to Owner regarding all Change Orders (including changes in the Work to be paid from contingency funds) and Construction Change Directives, for the Owner's approval and execution in accordance with the Contract Documents. The Architect's recommendation shall be accompanied by all supporting documentation necessary for the Owner to make an informed decision, including but not limited to an itemized turn-key proposal from the Contractor which includes quantities and unit costs of labor and materials extended and totaled and, if permitted, overhead and profit proposed. Prior to submission of such documentation to the Owner, the Architect shall review such proposals for reasonableness of pricing and compliance with Section 7.1.4 regarding markup. The Architect may order minor changes in the Work not involving an adjustment in Contract Sum or Guaranteed Maximum Price, or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. The Architect is specifically **not** authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner's prior written consent.

§ 4.2.9 The Architect and the Owner's representative will conduct inspections to determine the date or dates of Substantial Completion and the date of final ~~completion;~~ completion. Upon completion of such inspection and agreement by Owner and Architect as to Substantial Completion, the Architect may issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to ~~Section 9.10.~~Section 9.10 for approval by the Owner.

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§ 4.2.11 ~~The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor.~~ Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. ~~When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.~~

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract ~~Documents.~~Documents and not expressly overruled in writing by the Owner.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for ~~information.~~information at no additional expense to the Owner.

§ 4.2.15 The Architect may appoint an employee or other person to assist the Architect during the construction. These representatives will be instructed to assist the Contractor in interpreting the Contract Documents; however, such assistance shall not relieve the Contractor from any responsibility as set forth by the Contract Documents. The fact that the Architect's Representative may have allowed Work not in accordance with the Contract Documents shall not prevent the Architect from insisting that the faulty Work be corrected to conform to the Contract Documents and the Contractor shall correct same.

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§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and ~~Architect~~ Architect, in writing, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect ~~may~~ shall notify the Contractor in writing, whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.

...

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was~~ When the parties agree on a proposed substitute Subcontractor reasonably capable of performing the Work, the ~~Contract Sum and~~ Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in ~~the Contract Sum or~~ Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected ~~if the Owner or Architect makes reasonable objection to such substitution.~~without providing reasonable written notice to the Owner and Architect. If neither the Owner nor Architect submits a reasonable objection to such proposed substitution within ten (10) days following their receipt of written notice the Contractor may proceed with the substitution. If either Owner or Architect submit an objection, the Subcontractor shall proceed in accordance with Section 5.2.3 above.

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§ 5.2.5 Each Contractor or subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in Contract Sum shall be allowed for failure to so inspect or investigate.

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~~By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, included as provided below. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in an amount commensurate with the Work to be performed by the Subcontractor.

§ 5.3.2 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.3 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

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§ 5.4.1 Each subcontract agreement for ~~a~~ any unperformed portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner ~~for cause pursuant to Section 14.2~~ or abandonment of the Project by the Contractor and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and ~~Contractor; and~~Contractor in writing;

.2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond relating to the ~~Contract.~~Contract; and

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

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§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation ~~shall~~ may, in the Owner's sole discretion, be equitably adjusted for increases in cost resulting from the suspension. Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. ~~If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~Owner shall only be responsible for compensating subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

§ 5.5 Notice Of Subcontractor Default

Contractor shall promptly notify Owner and Architect of any material defaults by any Subcontractor or Sub-subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor, Sub-subcontractor or other materialman or worker employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor.

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

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§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual ~~agreement.~~ agreement by the Owner and Contractor. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 ~~Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.~~[Paragraph Deleted.]

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the

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Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. ~~The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.~~

§ 6.2.3 All costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate, or failure to follow the Construction Documents or Contract Documents, will be borne by the Contractor. The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate ~~Contractor~~ Contractor, the Architect or any Consultant because of the Contractor's delays, improperly timed activities ~~or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work~~ or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate ~~Contractor as provided in Section 10.2.5.~~Contractor.

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If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the ~~Architect~~ Owner will allocate the cost among those responsible.

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§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. Changes may be funded out of a contingency fund, if any, or other allowance established herein, or may require a change in the Contract Sum. The authority to approve a change to the Work, the Contract Sum, approve payment from a Contingency or Allowance, or a change in the Project Time, rests solely with the Owner. A Change Order funded from the Contingency or other Allowance shall be referred to herein for clarity as a "Contingency Authorization Order".

§ 7.1.2 A Contingency Authorization Order or Change Order shall be based upon agreement among the Owner, Contractor, and ~~Architect. A Construction Change Directive~~ Architect executed prior to commencement of any Work covered by the Order. A Construction Change Directive (whether funded from contingency, if any, or by an increase in the Contract Sum) requires agreement by the Owner and Architect and may or may not be agreed to by ~~the Contractor.~~ the Contractor prior to the commencement of the Work. An order for a minor change in the Work may be issued by the Architect ~~alone.~~alone, except as otherwise provided herein.

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§ 7.1.4 Change Order Mark-Up. On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead, profit permitted to be charged to the Owner shall be based on the following schedule:

.1 for work performed by the Contractor's own forces, Contractor's mark-up for overhead and profit shall not exceed 10% of the cost of the change in the Work (0% for change orders to be paid out of any contingency allowance).

.2 for the Contractor, for supervision of work performed by the Contractor's Subcontractors, the total Contractor mark-up for overhead and profit shall not exceed 4% of the amount due to the Subcontractors (0% for change orders to be paid out of any contingency allowance).

.3 for each Subcontractor or Sub-subcontractor involved, in Work performed by that Subcontractor's or Sub-subcontractor's own forces, the total mark-up for overhead and profit ten percent (10%) of the cost of the change in the Work.

.4 In no event shall total mark-up for overhead, profit or fee in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the work, exceed 14% of the total cost of the change in the Work. The Contractor will not be allowed an overhead, profit, or fee mark-up when changes in the Work are funded by Contingency or other Allowances provided for in the Contract Documents.

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...

Methods used to determine adjustments to the Contract Sum or Guaranteed Maximum Price may include those listed in Section 7.3.3.

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum (the Guaranteed Maximum Price, as applicable) or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum ~~and Contract Time being adjusted accordingly.~~(the Guaranteed Maximum Price, as applicable) and Contract Time being adjusted as provided in Section 7.3.3.

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§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract ~~Sum,~~ Sum (or the Guaranteed Maximum Price, as applicable), the adjustment shall be based on one of the following methods:

...

.2 Unit prices stated in the Contract Documents or subsequently agreed ~~upon;~~upon(additional mark-ups for overhead and profit will not be allowed);

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage ~~fee;~~ fee, subject to the limitations of subparagraph 7.1.4; or

...

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract ~~Sum,~~ Sum (or the Guaranteed Maximum Price, as applicable), the Architect shall determine the adjustment on the basis ~~of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4~~ of the amount by which the Contractor's direct costs have actually been increased over the direct cost of performing the Work without the Change in the Work. Direct costs shall be limited to the following:

.1 ~~Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance,~~ Actual documented costs of labor, including applicable payroll taxes and other employee costs approved by ~~the Architect;~~the Owner prior to the approval of the Change Order or Contingency Authorization Order (a labor burden factor will not be accepted as documentation);

.2 ~~Costs~~ Actual documented costs of materials, supplies, and equipment, including cost of transportation, whether such materials, supplies, and equipment are incorporated or consumed;

.3 ~~Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;~~Actual documented rental costs of machinery and equipment, if rented from unaffiliated third-parties, exclusive of hand tools;

.4 ~~Costs~~ Actual documented costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the ~~change;~~ change, if any; and

.5 ~~Costs~~ Actual documented costs of supervision and field office personnel directly attributable to ~~the change.~~the change and only if the adjustment causes an extension of the Contract Time.

The Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting of the items listed above, together with appropriate supporting documentation.

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§ 7.3.5 If the Work is performed without an agreement as to the final price, the Contractor shall, at a minimum, retain and provide to the Owner, the following documentation to adequately document its actual costs of performing the scope of work set out in a Construction Change Directive. Adequate Documentation shall include at a minimum, but not limited to, payroll records for employees of Contractor providing the Work included in the Change Directive, as well as written documentation of time spent **solely** on the scope of the Change Directive Work, prepared concurrent with the performance of the Work, including (for example) sign-in and sign-out sheets or time cards, executed by the employee(s) documenting attendance and receipts for all materials delivered to the Project site for incorporation in the Work of the Change Directive and paid for by the Contractor. If any of the Work of the Change Directive is performed by subcontractors, the Contractor shall provide a copy of the subcontract, an itemized invoice or payment application which includes, in either case, a detailed itemization of costs showing quantities and unit costs of labor and materials extended and totaled and, if permitted, overhead and profit (in accordance with Section 7.1.4) labor and materials provided by the subcontractor, with receipted invoices for all materials incorporated in the Work and evidence of payment by the subcontractor attached. If the Contractor disagrees with the adjustment in the Contract Time, the Contract Sum (or the Guaranteed Maximum Price, as applicable), allowed in any Change Directive, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement (by executing and returning the Change Directive) or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract ~~Time.~~Time, not later than ten (10) calendar days following the Contractor's receipt of the Construction Change Directive. A copy of a notice of disagreement shall also be provided to the Owner concurrent with the notice to the Architect. A Notice of Disagreement must contain the number of the Change Directive, the date the Change Directive was issued and the words **"Notice of Disagreement With Change Directive"** in the Subject line. It is imperative that Owner receive timely specific notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum ~~and~~ and/or the Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost ~~as confirmed by the Architect.~~ plus the permitted overhead and profit as set forth in Section 7.1.4. When both additions and credits covering related Work or substitutions are involved in a change, both changes shall be shown on the same Change Order and the permitted allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change. Returned materials shall be credited at actual cost and no penalty or restocking fee shall be permitted to be charged to the Owner.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will require as a condition precedent to certification of payment for Work completed under the Construction Change Directive that the Contractor provide the documentation required by Section 7.3.4, and based on such documentation, shall make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect is specifically authorized by this Section 7.3.9 to require submission of such documentation and any other documentation required to evaluate the requested payment, and shall withhold payment certification until such documentation is received and an interim determination is made in accordance with this Section. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change ~~Order.~~ Order reflecting the Agreement of the Owner and Contractor. Change Orders may be issued for all or any part of a Construction Change Directive.

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~~The~~ With prior written notice to the Owner's representative, the Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

...

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

§ 8.1.2 Commencement. The date of commencement of the Work ~~is the date established in the Agreement.~~shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement (or Guaranteed Maximum Price Amendment, as applicable) has been signed by the Contractor and the Owner, and the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

§ 8.1.3 ~~The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.~~**Substantial and Final Completion**

§ 8.1.3.1 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.3.2 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) days after the date of Substantial Completion.

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

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the ~~Contractor and Owner.~~Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

...

§ 8.2.4 Liquidated Damages

§ 8.2.4.1 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set out in the AIA Document A101 (2017) or the AIA Document A133 (2019) into which these General Conditions are incorporated and executed concurrently with these General Conditions, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.4.2 In the event Substantial Completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor all liquidated damages, if any, due Owner in accordance with the Contract Documents.

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

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

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by ~~(1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties,~~ war, civil commotion, pandemic, epidemic, federal, state or local declared disaster or public emergency, act of God, governmental restrictions, regulations, orders, or interference, fire or other unavoidable casualty, material changes ordered in the Work; adverse weather conditions documented in accordance with Section ~~15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution;~~ 15.1.6 by delay authorized in writing by the Owner prior to the happening of the delay event; or (5) by other causes that the Contractor asserts, and the Architect ~~determines,~~ and Owner determine, justify delay, then the Contract Time ~~shall~~ may be extended for such reasonable time as the Architect ~~may determine.~~and Owner may determine based upon documentation by the Contractor.

§ 8.3.1.1 The adjustment of the Contract Time for delay, disruption, and interference described in this Section 8.3.1 is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time and Contractor's timely delivery of the notice and claim as set out in this Section 8.3.1. An adjustment to the Contract Time shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Section 8.3.1, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for Owner-caused delays.

§ 8.3.1.2 Notice and Claim for Extension. In the event of a delay in the commencement or progress of the Work as a result of any of the circumstances in this Section 8.3.1, the Contractor may receive an extension of time for completion of the Work equal to the delay, if the Contractor delivers a written notice and claim to the Owner and Architect delivered in any manner provided in Section 1.6.1 of this Agreement. The Notice shall identify and provide a reasonably detailed description of the circumstances causing the delay, disruption, or interference to the Contractor's performance or progress of the Work on or before the due date of Contractor's Application for Payment covering the period in which the delay began. Claims for an extension of time shall be stated in whole or half calendar days, as applicable. The actual date on which the delay(s) began and/or the date the delay ended, if applicable, must be stated in the Claim Notices as applicable.

§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Article 15.~~In the case of claims for extension of time because of unusually inclement weather, such extension of time may be granted only if the Contractor files a claim in accordance with the requirements set out in Section 15.1.6.

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~Contractor shall not be entitled to an adjustment in the Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

§ 8.3.4 Any adjustment of the Contract Time authorized under Section 8.3 shall be conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time and Contractor's submission of a timely and properly documented Notice and Claim for additional time in accordance with Section 8.3.

§ 8.3.5 Adjustments to the Contract Time addressed in this Section 8.3 shall apply only to requests for extensions of time based upon delay, disruption, or interference to the Contractor's performance or progress of the Work and shall have no applicability to requests for adjustment of the Contract Time due to other changes in circumstance, including but not limited to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services or materials required, beyond those specified by the Contract Documents. Claims for an adjustment of the Contract Time resulting from these kinds of changes shall be authorized only pursuant to a

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written order or directive from Owner authorizing Contractor to proceed with a change in the Work in accordance with the Contract Documents.

§ 8.4 No Damages or Other Compensation for Delay or Acceleration

This Agreement does not permit recovery by the Contractor of damages or additional compensation for delay, acceleration, disruption, or interference to the Contractor's performance or progress of the Work Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time including but not limited to delay, disruption, or interference caused by the Owner the Architect, of an employee of either, or of a Separate Contractor, any of the circumstances set out in Section 8.3.1 or acceleration of the Work required by the Owner in accordance with the terms of this Agreement. Contractor's sole remedy for delay disruption, or interference in its performance or progress of the Work or any required acceleration of the Work shall be the grant of an extension of time for completion equal to a delay or such reasonable time as the Owner and Architect may determine in their sole discretion.

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§ 9.1.1 The Contract Sum is stated in the Agreement or the Guaranteed Maximum Price Amendment in the case of a Construction Manager at Risk Contract and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract. The Contract Sum shall not be increased because the Contractor experiences an unexpected or unforeseeable increase in the price of labor or materials required to complete the Project.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices ~~shall be equitably adjusted.~~may be equitably adjusted by written agreement between the Owner and Contractor, executed prior to an order being placed based on the unit prices.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, as applicable, the Contractor shall submit a schedule of values to the Architect before the first Application for ~~Payment,~~ Payment or, in the case of a Guaranteed Maximum Price, concurrent with the Guaranteed Maximum Price Proposal, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702-1992 and G703-1992, Application and Certificate for Payment and Continuation Sheet.

...

§ 9.3.1 ~~At least ten days before the date established for each progress payment,~~ In accordance with the requirements of Section 5.1 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage ~~if provided for in the Contract Documents.~~withheld. The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document G702-1992, Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703-1992, Continuation Sheet.

§ 9.3.1.1 ~~As provided in Section 7.3.9, such~~ Such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor ~~does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.~~has not been invoiced by a Subcontractor or supplier, unless such Work was self-performed; in such case, only portions of Work actually performed shall be included on the Contractor's request for payment.

§ 9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 9.3.1.4 The Owner shall withhold retainage as provided in the Agreement, except that Owner shall not pay amounts for which the Architect refuses to certify payment, or the Owner refuses to pay, as provided herein. The retainage shall be paid to the Contractor with the Final Payment, subject to the requirements of the Contract Documents.

§ 9.3.2 Unless otherwise provided in ~~the Contract Documents, payments shall~~ a separate written agreement executed between the Owner and Contractor prior to delivery, payments shall not be made on account of materials and equipment delivered and ~~suitably~~ stored at the site or off-site for subsequent incorporation in the Work. ~~If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.~~The Owner may, in Owner's sole discretion, require Contractor's compliance with such reasonable procedures and requirements as it may establish, as a condition precedent to the grant of Owner's consent and agreement to payment, including but not limited to the following:

.1 provision of any additional insurance required to protect the materials and equipment while stored;

.2 payment of the costs to store the materials and equipment and any additional transportation costs for multiple deliveries;

.3 provision of written consent of Contractor's surety to such storage;

.4 submission of an affidavit identifying materials and equipment stored off-site for later incorporation into the Work, and acknowledging responsibility for such materials and equipment;

.5 provision of documentation that the facility where the materials and/or equipment will be stored is an adequately insured commercial warehouse, where the materials and equipment stored will be sheltered from the weather and outside elements and are stored in accordance with the manufacturer's instructions, including proper temperature and humidity controls and that the materials and equipment have been physically separated and marked for the Project;

.6. its agreement to bear the cost of Owner and/or Architect's visits to the off-site storage facility to confirm compliance with these requirements and review the stored contents, and Contractor shall agree to allow such costs to be offset from Progress Payments;

.7 agreement that payment of any costs related to compliance with the procedures and requirements for storage of materials and equipment on or off-site, shall not be subject to charges for overhead or profit;

.8 submission of bills of sale or other documentation acceptable to the Owner, showing proof of delivery and establishing the Owner's title to the materials or equipment and/or otherwise protecting the Owner's interest, including naming the Owner as additional insured on the required insurance policy (naming the specific materials or equipment stored and their location) and providing proof of delivery for those materials and equipment;

.9 agreeing that, in the event of termination of the Contract or default by the Contractor, the material and equipment stored on or off-site shall be immediately turned over to the Owner by delivery to the location designated by the Owner and that the operator of the storage facility is aware of this agreement and willing to honor it; and

.10 agreeing that all such stored materials and equipment, to the extent they include mechanical components, will be maintained by the Contractor kept in good working condition and ready for immediate installation, to the same extent they would have been, had they been delivered "just in time" for installation, that Contractor will be solely responsible for assuring any manufacturer's warranty will commence on date of completion of installation and/or start-up of the material or equipment and

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for repairs required prior to installation to assure performance in accordance with the Contract Documents.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY A SUPPLIER, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS PREVIOUSLY MADE BY THE OWNER TO CONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.**

§ 9.3.4 In each Application for Payment, Contractor shall certify that: the information contained in the Application presented is true, correct, accurate and complete; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for, and, unless an agreement described in Paragraph 9.3.2 has been signed, incorporated into the Work; that the subcontractors whose work is identified in the Applications for Payment have been paid, or Contractor has been invoiced for same and intends to pay such subcontractors; there are no known mechanics' or materialmens' liens outstanding at the date of the Application, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application and that except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

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§ 9.4.1 The Architect will, ~~within seven days after receipt of the Contractor's Application for Payment,~~ carefully evaluate and review the Application for Payment and, when appropriate, return the Application for Payment to the Contractor as provided in Section 9.4.2. If the Application for Payment is complete, then the Architect shall sign and, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner in writing, of the Architect's reasons for withholding certification in part as provided in ~~Section 9.5.1;~~ Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner in writing, of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. Architect's written reasons for withholding certification shall be construed as the notice required by Texas Government Code Section 2251.042 *et seq.*

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

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§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

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.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~

.7 repeated failure to carry out the Work in accordance with ~~the Contract Documents.~~ the Contract Documents;

.8 delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;

.9 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract Time;

.10 evidence of financial inability to perform the Contract fully;

.11 failure to submit record documents required by the Contract; or

.12 failure of the Contractor to perform any other obligations of the Contract.

§ 9.5.2 ~~When either party disputes the Architect's~~ If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, ~~that party~~ the Contractor may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment. Notwithstanding any provision contained within this Article, if the Contractor has not achieved Substantial Completion by the required date, subject to extensions of time allowed under the Contract Documents, then Architect may withhold any further Certificate for Payment to the extent necessary to preserve sufficient funds to complete construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1, or this Section 9.5.4.

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§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment of disputed amounts in the manner and within the time provided in the Contract Documents, and ~~shall so notify the Architect.~~ in accordance with the Texas Government Code section 2251.042 *et. seq*., Owner shall within twenty-one (21) days notify the Architect and Contractor if Owner disputes the Architect's Certificate for Payment, listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

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

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§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for~~ The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253. Notwithstanding the foregoing, payments received by the Contractor from the Owner for Work properly performed by Subcontractors, or materials properly provided by suppliers, shall be held in trust by the Contractor for the benefit of those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the ~~Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~Contractor.

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~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.~~**§ 9.7.1** Pursuant to Texas Government Code Section 2251.051,if the Owner does not pay the Contractor any payment certified by the Architect, which is undisputed, due and owing after the date the payment is due under the Contract Documents, then the Contractor may, upon ten (10) days' written notice to the Owner and Architect, that payment has not been made and the Contractor intends to suspend performance for nonpayment, may stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that: 1) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect to either: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended ~~use.~~use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in

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nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

...

§ 9.8.3 Upon receipt of the Contractor's list, the Architect accompanied by the Owner or Owner's representative, at the Owner's option, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, then the Architect shall so notify the Contractor and Owner in writing, and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.3.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

§ 9.8.3.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

§ 9.8.4 When the Work or designated portion thereof is ~~substantially complete,~~ Substantially Complete, as defined by the Contract Documents, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion ~~thereof~~ thereof, unless otherwise provided in the Certificate of Substantial Completion. If Work is to be completed or corrected after the date of Substantial Completion and prior to final payment, Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Architect, or the date of Final Payment. ("Warranty Commencement Date").

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

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

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§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to in writing by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work resulting from such occupancy, use or installation, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties ~~required by the Contract Documents. When the Contractor considers a portion substantially complete, the~~

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~~Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2.~~ on the partially completed portion of the Work, as required by the Contract Documents. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

...

§ 9.9.3 Unless ~~otherwise agreed upon,~~ expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work or installation of furnishings and equipment shall not constitute acceptance of Work not complying with the requirements of the Contract ~~Documents.~~Documents, nor shall it constitute evidence of Substantial Completion or Final Completion.

...

§ 9.10.1 ~~Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract~~ When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner (at Owner's option) will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment ~~stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the~~ certifying to the Owner that the Work has been completed in accordance with the Contract Documents and that ~~the entire balance found to be due the Contractor~~ remainder of the Contract Sum, including all retainage, less any amount withheld pursuant to the Contract and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) ~~an~~ its affidavit that payrolls, bills for materials and equipment, and other ~~indebtedness~~ liabilities connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) ~~if required~~ except for amounts previously withheld by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to ~~indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.~~discharge any such lien or indemnify the Owner from liability; (7) In addition, the following items must be completed and received by the Owner before Final Payment will be due:

.1 Written certifications required by Sections 10.5, 10.6, and 10.7 herein;

.2 Final list of subcontractors (AIA Document G705-2001);

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.3 Contractor's Certification of Project Compliance required by 16 Texas Administrative Code, Section 61.1036, located at: https://tea.texas.gov;

.4 Contractor's warranties, organized as required elsewhere in the Contract Documents;

.5 Maintenance and Instruction Manuals;

.6 Owner's Certificate of Final Completion; and

.7 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above.

§ 9.10.3 ~~If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it~~ The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. Final Payment shall not constitute a waiver of ~~Claims.~~any Claims by the Owner.

§ 9.10.4 ~~The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~

~~.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~

~~.2 failure of the Work to comply with the requirements of the Contract Documents;~~

~~.3 terms of special warranties required by the Contract Documents; or~~

~~.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~[Paragraph Deleted.]

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously ~~made in writing~~ asserted pursuant to Article 15 and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 The Contractor shall not permit any actual or purported lien, charge or claim to attach or attempt to attach to the Work, the site or any amounts due or to become due to the Contractor under the Contract Documents. If any such lien, charge or claim is so asserted, the Contractor shall promptly procure its release and indemnify the Owner against all damage and expense incident thereto. Upon completion of the Work and before any final payment and settlement, the Contractor shall provide evidence satisfactory to the Owner of payment and release of all debts, taxes, liens, charges, obligations and claims for or relating to labor, materials, Subcontractors and Sub-subcontractors; provided, however, that if the Contractor has not paid for any of the aforesaid as a result of a bona fide dispute, and payment of such is guaranteed and covered by the payment bond provided by the Contractor, then the Contractor shall not be required to pay such claim as a condition to final payment and settlement, but instead shall be required to provide Owner with written consent to final payment executed by such surety, expressly acknowledging the existence of such unpaid claim, and agreeing that full and final payment to the Contractor shall not impair any of the Owner's rights or the surety's obligations under the bond.

§ 9.11 Audit

Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times,

Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.
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The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the ~~Contract.~~Contract and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., latest edition, and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 et seq., and all amendments thereto. However, the Contractor's duties herein shall not relieve any Subcontractor or any other person or entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, from the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.1.1 Contractor shall ensure that the Project site is alcohol-free, drug-free, nicotine/ tobacco-free, e-cigarette free, weapon-free, and sexual-harassment free, and shall require strict compliance on the Project Site with the Owner's Board Policies, including but not limited to GKA(Legal) and GKA(Local). Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

10.1.2 Dress Code, Fraternization and Sexual Harassment. Contractor shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Contractor shall prohibit fraternization between all persons working under Contractor or any of its subcontractors, students and Owner's employees while on Owner's property. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 10.1.3 Weapons. Owner has also banned use, possession, or display of any firearm, handgun, location-restricted knife, club, or "prohibited weapon", as defined by the Texas Penal Code and Owner's Board Policy FNCG(Legal), except when the Contractor, its representatives, employees, agents, and subcontractors, or anyone else over which the Contractor has control or authority holds a Texas handgun license, stores the handgun or other firearm in a locked vehicle in the Owners parking lot, garage, or other parking area provided by the Owner AND the firearm is not loaded and not in plain view. A copy of such policy is available through a link on the Owner's website. The Contractor further agrees that Contractor's representatives, employees, agents, and subcontractors will abide by these requirements as well as the Federal Gun-Free School Zones Act.

§ 10.1.4 Tobacco and E-Cigarettes. Contractor's employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not use e-cigarettes or tobacco products while on the Project Site.

§ 10.1.5 Small Unmanned Aircraft (Drones). The Contractor shall operate any Small Unmanned Aircraft as required by 14 C.F.R. Part 107. as applicable, and any other applicable federal or state laws and regulations.
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§ 10.2.1 The Contractor shall maintain good order among its employees and its Subcontractors, shall confine its employees and Subcontractors to such work areas, roads and gates as directed by the Owner, take reasonable and necessary precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees ~~on the Work~~ on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected ~~thereby;~~thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility, and taking reasonable precautions to secure any abusable glue, aerosol paint, or any other chemical substance for inhalation being used on the project site;

...

.3 other property at the site or adjacent thereto, such as fences, trees, shrubs, lawns, walks, athletic fields and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. Contractor's obligations under this Section shall continue to apply during any time period when all or a portion of the Work is suspended for any reason. Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes possession of and occupies that portion of the Project.

...

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.2.4 When use or storage of ~~explosives or other~~ hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel.~~personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 ~~The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.~~[Paragraph Deleted.]

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~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~**§ 10.2.8.1** If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding three (3) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

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§ 10.2.8.2 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, then the accident shall be reported immediately by any means necessary to give actual notice to the Owner's representative and the Architect.

...

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. If such notice is provided orally, written confirmation of such notice by Contractor shall be provided not later than one (1) business day following such notification. Owner shall not be responsible for materials or substances brought to the site by the Contractor.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner ~~shall~~ shall, as soon as reasonably possible, obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. ~~By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.~~Contractor may be entitled to an extension of the Contract Time in accordance with Article 8.3.

§ 10.3.3 To the ~~fullest extent permitted by law,~~ extent permitted by the laws and Constitution of the State of Texas, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. ~~The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

§ 10.3.5 ~~The Contractor shall reimburse~~ Except to the extent that the cost and expense are due to the Owner's fault or negligence, if Contractor imports hazardous materials onto the Project site, the Contractor shall indemnify and hold harmless the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, ~~or~~ (2) where the Contractor fails to perform its obligations under ~~Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or~~

~~negligence.~~Section 10.3.1; and (3) any fines or penalties of government agencies directly resulting from the Contractor's importation of the hazardous materials onto the Project site.

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

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~~In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.~~**§ 10.4 .1** In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.4.2 The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibility for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.

§ 10.5 Asbestos Or Asbestos-Containing Materials. Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, then Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor. Final Payment shall not be made until this written certification has been received.

§ 10.6 Lead-Free Material In Potable Water System

§ 10.6.1 Prior to payment of retainage and final payment, the Contractor and each subcontractor involved with the potable water system shall furnish a written certification that the potable water system is "lead-free".

§ 10.6.2 The written certification shall further state that should lead be found in the potable water system built under this Project, then Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

§ 10.7 Hazardous Materials Certification

The Contractor shall provide written certification that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

...

§ 11.1 Contractor's Insurance ~~and Bonds~~

§ 11.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain in force, insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the table below the Agreement or elsewhere in the Contract Documents. No Work will be commenced, and no equipment or materials may be shipped, until all requirements of Article 11 have been satisfied, satisfactory evidence of insurance has been provided, and all required insurance is in full force and effect. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the ~~jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as~~

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

Workmen's Compensation: (Including Waiver of Subrogation Endorsement)	All liability arising out of Contractor's employment of workers and anyone for whom Contractor shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.
Employer's Liability:	Bodily Injury by Accident - $500,000 ~~Each Accident.~~ Bodily Injury by Disease - $500,000 Each Employee. Bodily Injury by Disease - $500,000 Policy Limit.
Commercial General Liability: (Premises Operations, Independent Contractors, Products/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage)	$1,000,000.00 – combined single limit for bodily injury and property damage $2,000,000.00 - aggregate
Property Damage Independent Contractors Contractual Liability	$1,000,000.00 each occurrence $2,000,000.00 aggregate per project (Same limits as above) (Same limits as above)
Automobile Liability: Bodily Injury/Property Damage	$1,000,000.00 combined single limit $1,000,000.00 each occurrence
Umbrella or Excess Liability	$2,000,000.00 - each occurrence $2,000,000 - aggregate
Owner's Protective Liability Insurance: Contractor must obtain an owner's liability insurance policy, at Contractor's expense, naming the District and its employees.	Bodily Injury - $1,000,000 Each Occurrence Aggregate - $1,000,000.
All Risk Builders Risk against the perils of fire, lightening, windstorm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, vandalism, malicious mischief, and all other perils in the amount one hundred percent (100%) of the value of the improvements including transit and materials stored off site. Additionally, this coverage shall provide protection to the full replacement value for boiler and machinery equipment up to installation, during testing, and until acceptance by Owner.	
Professional Liability for Construction Manager-At-Risk. In addition to the coverage and limits provided above, if these General Conditions are incorporated into the AIA Document A133™–2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor *where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*, the Construction Manager shall also provide Professional Liability Insurance covering negligent acts, errors and omissions in the performance of professional services during the pre-construction phase, with policy limits of not less than One Million Dollars ($1,000,000.00) per claim and Two Million Dollars ($2,000,000.00) in the aggregate.	

§ 11.1.2 The ~~Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is~~

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~~located.~~required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner.

§ 11.1.3 ~~Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~The General Liability and Automobile policies so issued in the name of Contractor shall also name the Owner as additional insured. The coverage afforded to the additional insured under the policy or policies shall be primary insurance. It is the intent of the parties to this Agreement that the General Liability coverage (and associated Umbrella Coverage) required herein shall be primary to and shall seek no contribution from all insurance available to Owner, with Owner's insurance being excess, secondary and non-contributing. The Commercial General Liability coverage provided by Contractor shall be endorsed to provide such primary and non-contributing liability. If the additional insured has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis.

§ 11.1.4 ~~Notice of Cancellation or Expiration of Contractor's Required Insurance.~~ ~~Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~
If the insurance is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner then the Contractor shall bear all reasonable costs properly attributable thereto.
§ 11.1.5 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.1.6 Contractor shall have its insurance carrier(s) furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, and a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar day's prior written notice to Owner. Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 11.1.1. If Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance and the provisions of Section 11.1.8 hereof shall apply.

§ 11.1.7 Contractor and its Subcontractors shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of Contractor and its Subcontractors are in force and the necessary certificates and statements pursuant to Section 11.1.6 hereof have been received by Owner and the Architect has issued a written notice to proceed.

§ 11.1.8 As an alternative and at Owner's option and expense, Owner may elect to furnish or to arrange for any part or all of the insurance required by Section 11.1 hereof. If Owner so elects, it shall notify, in writing, Contractor and issue a Change Order therefor, but no adjustment to the scheduled completion date or the Contract Sum shall be allowed.

§ 11.1.9 Workers' Compensation Insurance Coverage.

.1 Definitions:

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

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.1.2 **Duration of the Project.** Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

.1.3 **Persons providing services on the Project ("subcontractor" in Texas Labor Code §406.096).** Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracts directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

.2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.

.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

.4 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

.5 The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:

.5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.5.2 no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

.7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

.8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

.9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:

.9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;

.9.2 provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

.9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.9.4 obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the Project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

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.9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.

.10 By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Department of Insurance, Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

.11 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [28 TAC §110.110(c)(7)]

§ 11.1.10 [Paragraph Deleted.]

§ 11.2 Owner's Insurance [Paragraph Deleted.]

~~**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~

~~**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~

~~**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~

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~~**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the~~

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~~Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

~~**§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**~~

~~The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

§ 11.4.3 The Payment and Performance Bond shall meet requirements of Chapter 2253 of the Texas Governmental Code. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

§ 11.4.4 The Sureties shall promptly file a signed copy of the Contract, Performance Bond, and Payment Bond with the Owner in full compliance with Chapter 2253 of the Texas Governmental Code or, in the case of a Construction Manager, as required by Section 14.3.3 of the AIA Document A133-2019.

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

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

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

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

§ 11.4.9 By inclusion of this Section 11.4.9 in the Contract Documents, the surety which issues the bonds is hereby notified that the Owner, the Architect, and their agents and employees do not represent and will not be responsible for the surety's interests during the course of the Work. To protect its interests, the surety shall have the right to attend pay

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estimate meetings, review Applications for Payment when requested in writing by them, comment upon and make recommendations regarding payments, and inspect the Work in the presence of the Contractor and the Architect. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner, the Architect, their agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Contractor, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.

§11.5 Adjustment and Settlement of Insured Loss [Paragraph Deleted.]

~~**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~

~~**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~

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§ 12.1.1 If a portion of the Work is covered prior to inspection, contrary to the Architect's request or to requirements specifically expressed in the Contract ~~Documents,~~ Documents or if any known deficiencies exist, it must, if requested ~~in writing~~ by the Architect, be uncovered by the Contractor for the Architect's examination and be replaced at the Contractor's sole expense without change in the Contract Time. If the uncovered work is determined by the Architect upon inspection to be deficient or not in accordance with the Contract Documents, the uncovered Work which is deficient or not in accordance with the Contract Documents shall be corrected and covered at the Contractor's sole expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense. If the a request inspection of the Work prior to covering or including a requirement for inspection in the Contract Documents is within the Architect's standard of care and the Architect has failed to timely make such request or include the requirement in the Contract Documents, the Architect shall reimburse the Owner for the actual costs of uncovering and recovering such Work and additional costs of correction, if any, caused by covering the Work prior to inspection.

...

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

...

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§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Owner shall give such notice of the condition to the Contractor with reasonable promptness after discovery of the condition. The Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such ~~condition. The Owner shall give such notice promptly after discovery of the condition.~~ condition in its non-conforming state. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor ~~and to make a claim for breach of warranty.~~ based on a breach of the warranty contained in this Section 12.2.2.1 providing for correction of Work during the one-year period. If the Contractor fails to correct nonconforming Work within a reasonable time during ~~that~~ the period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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§ 12.2.2.3 The one-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

...

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fails to conform with the requirements of this Agreement that appear during the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work or by the negligent act of the Contractor or its employees, agents or subcontractors. The cost to Contractor of performing any of its obligations under this Section 12.2.6 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2.7 shall not apply to corrective Work attributable solely to the acts or omissions of any separate Contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

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

§ 12.2.9 Contractor's express warranties set out in this Article 12 shall be in addition to, and not in lieu of, any other warranties or remedies Owner may have under the Contract Documents, at law, or in equity for defective Work.

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The Contract shall be governed by the ~~law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~laws of the State of Texas without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

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...

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. ~~Except as provided in Section 13.2.2, neither~~ Neither party to the Contract shall assign the Contract ~~as a whole~~ in whole or in part without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.2.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability, or effect of the remainder of the Contact Documents.

...

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public ~~authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals.~~ authorities having jurisdiction. The Contractor shall give timely notice to the persons or entities selected by the Owner of the need for such services. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including but not limited to those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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~~Payments~~ Undisputed payments due and unpaid under the Contract Documents shall bear interest ~~from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth (46th) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

§ 13.6 Equal Opportunity In Employment

§ 13.6.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, disability, sex, national origin, or any class otherwise protected by

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District policy or law. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

§ 13.6.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law.

§ 13.7 Contractors Records

§ 13.7.1 Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office or the principal offices of the Contractor, at the sole option of the Owner.

§ 13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

§ 13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.7.1.

§ 13.7.5 Contractor shall keep all Construction Documents related to the Project, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

§ 13.7.6 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 No Third-Party Beneficiaries

There are no third-party beneficiaries to this agreement.

§ 13.9 Proprietary Interests And Confidential Information

§ 13.9.1 Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

§ 13.9.2 Neither Architect nor Contractor shall disclose any confidential information of Owner which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to: pending real estate purchases, exchange, lease, or value; information related to litigation; detailed layouts of the Owner's Facilities; the location and deployment of security devices; security access codes; student likenesses; student record information; employee information; or any other information deemed confidential by law.

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§ 13.9.3 The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Section 552.001, *et seq*., and the Texas Open Meetings Act, Texas Government Code, Section 551.001, *et seq*.

§ 13.10 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

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§ 14.1.1 ~~The Contractor may terminate the Contract if~~ If the Work is stopped for a period of ~~30~~ thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of ~~the Work, for any of the following reasons:~~the Work under direct or indirect contract with the Contractor for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

...

.3 Because ~~the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because~~ the Owner has not made payment ~~on a~~ of undisputed sums due on an approved Certificate for Payment within the time stated in the Contract Documents; or

.4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~[Subsection Deleted.]

§ 14.1.2 ~~The Contractor may terminate the Contract if,~~ If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is ~~less.~~less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment ~~for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~ in an amount which would have been recoverable had the termination been for the Owner's convenience.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon ~~seven~~ ten (10) additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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.2 fails to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

...

.4 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents;

.5 fails to furnish the Owner, upon written request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;

.6 engages in or permits serious or repeated worker misconduct in violation of Article 3.3;

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.7 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or

.8 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ subject to any prior rights of the surety, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Any further payment shall be limited to amounts actually earned to the date of termination.

§ 14.2.4 If the ~~unpaid balance of the Contract Sum exceeds~~ costs of finishing the Work, including compensation for the ~~Architect's~~ Architects' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, ~~such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor~~ exceed the unpaid balance of the Contract Sum or Guaranteed Maximum Price (if the Project is a Construction Manager at Risk project), then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the ~~Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this~~ Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

§ 14.2.6 As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a Contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

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§ 14.3.2 The Contract Sum and Contract Time ~~shall~~ may be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. ~~Adjustment of the Contract Sum shall include profit.~~ No adjustment shall be made to the extent

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Trustees has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly ~~executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

§ 14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in this Section 14.4.3.

...

§ 15.1.2 Time Limits on Claims

~~**The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.**~~[Paragraph Deleted.]

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§ 15.1.3.1 Claims by ~~either~~ the ~~Owner or~~ Contractor, ~~where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2,~~ shall be initiated by notice to the ~~other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party~~ Owner and to the Architect, Claims under this Section 15.1.3.1 shall be initiated within 21 calendar days after the occurrence of the event giving rise to such Claim or within 21 calendar days after the claimant first ~~recognizes~~ knew or should have known of the condition giving rise to the Claim, whichever ~~is later.~~is earlier. If the full impact cannot be assessed as of the date of the Notice, then Notice shall be provided and amended by a second notice at the earliest date that is reasonably possible, but in no event later than the date of Contractor's Application for Payment covering the period in which the impact can be assessed and quantified.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required. If Texas Government Code, Chapter 2272 is applicable to the Claim, the Owner shall comply with the requirements set out therein as a condition precedent to any initiation of any litigation.

...

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments for Work performed in accordance with the Contract Documents.

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§ 15.1.4.2 The Contract Sum (or Guaranteed Maximum Price, as applicable), if permitted, and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of ~~either party~~ the Contractor to proceed in accordance with this Article 15.~~The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.~~

...

If the Contractor wishes to make a Claim for an increase in the Contract ~~Sum,~~ Sum (provided such a claim is specifically permitted by the Contract Documents), notice as provided in Section 15.1.3 shall be given to the Owner and Architect. before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

...

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions occurred at the locality of the Work which were abnormal for the period of time, were in excess of that normally experienced at the job site, could not have been reasonably anticipated, ~~and had an adverse effect on the scheduled construction.~~and prevented the execution of Work on scheduled Working Days. The term "Adverse Weather Conditions" as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the Local Climatological Data maintained by NOAA's National Centers for Environmental Information [formerly the National Climatic Data Center (NCDC)] from the station closest to the location of the Work. No day will be counted as a rain-day when substantial Contractor forces are able to perform Work on the Project for more than fifty percent (50%) of the usual workday or when the stage of the Work on the Project is not adversely impacted. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of the Contract Time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, but shall be applied only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. As provided herein, Contractor shall only be entitled an extension of the Contract Time per the terms of the Contract Documents and no damages shall be paid for delays.

~~**§ 15.1.7 Waiver of Claims for Consequential Damages**~~

~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

~~**.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~

~~**.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

§ 15.1.7 Calculating Claims For Damages

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

.1 No indirect or consequential damages will be allowed.

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.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

.4 No damages will be allowed for home office overhead or other home office changes or any Eichleay formula calculation.

Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, nor will this Section 15.1.7 be deemed to apply to delay damages, which are prohibited entirely.

§ 15.2.1 ~~Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision~~ Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any ~~Claim. If an initial decision has not been rendered within 30 days~~ Claim, after the Claim has been referred to the ~~Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The ~~Initial Decision Maker~~ Architect will review Claims and within ten (10) days of ~~the~~ receipt of ~~a~~ the Claim take one or more of the following actions: (1) request additional supporting data from the ~~claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 15.2.3 ~~In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.~~Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. ~~Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.~~

§ 15.2.5 ~~The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~[Paragraph Deleted.]

§ 15.2.6 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~[Paragraph Deleted.]

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§ 15.2.6.1 ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~[Paragraph Deleted.]

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§ 15.2.8 ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~**Waiver Of Lien**

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

...

§ 15.3.1 ~~Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator qualified as an impartial third party for purposes of Section 154.052 of the Texas Civil Practice & Remedies Code.

§ 15.3.2 ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.

§ 15.3.3 ~~Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

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§ 15.3.5 Nothing herein shall preclude the Owner or the Contractor or as applicable, the Construction Manager from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

§ 15.3.6 Any claim not resolved in mediation pursuant to Section 15.3 shall be subject to litigation as the sole method of dispute resolution.

§ 15.3.7 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

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.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

§ 15.4 Arbitration. This Section 15.4 and all subparts are intentionally deleted. No dispute arising under the Contract Documents, these General Conditions or the underlying Contract shall be subject under any circumstances to Arbitration as the method of binding dispute resolution and Owner rejects any selection otherwise made by the parties.

§ 15.5 Immunity

Contractor stipulates that Owner is a political subdivision of the State of Texas and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically provided by law.

Executed on this the ____ day of _____, 20__.

MCALLEN INDEPENDENT SCHOOL DISTRICT		_____
OWNER *(Signature)*		**CONSTRUCTION MANAGER** *(Signature)*
Tony Forina, Board President, Board of Trustees, McAllen Independent School District		
(Printed name and title)		*(Printed name and title)*

~~**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.4 Consolidation or Joinder**~~

~~**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined~~

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~~consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

DRAFT

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September 30, 2023

McAllen ISD Board of Trustees
200 N. 23rd Street
McAllen, Texas 78501

Re: Executive Summary: McAllen ISD Superintendent Search Community Survey Results

Dear Board Members:

In line with your directive and commitment to community engagement, a survey was undertaken to inform your critical decision-making process in selecting the next Superintendent for McAllen ISD. Our firm has facilitated the execution of this endeavor, and presented in this report are some findings for your review.

The primary aim of this survey is to ascertain the characteristics, qualifications, and priorities that various stakeholders—comprising parents, teachers, students, and the broader community—view as most crucial for our next Superintendent. This methodology not only aligns with best practices but also provides you with an in-depth understanding of public sentiment.

The survey was launched on September 14, 2023, and the results encapsulated in this Executive Summary cover responses through September 29, 2023. While the survey will continue to be open throughout the duration of the Superintendent search, these initial findings offer valuable insights for your immediate considerations.

It's essential to note that the survey was designed to uphold the highest standards of confidentiality and integrity. To this end, it was administered online and responses were collected by a qualified third-party platform, thereby ensuring anonymity and impartiality.

Surveys of this nature serve as a robust barometer for gauging community sentiment. Each response enriches the dataset, enabling the Board to make an informed, transparent, and judicious decision that aligns seamlessly with community expectations and aspirations for McAllen ISD.

I. METHODOLOGY

In alignment with the high standards set forth by the McAllen ISD Board of Trustees, a rigorous methodology was employed to solicit, collect, and analyze data. The objective was to create a

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transparent, equitable, and comprehensive process that would yield actionable insights for selecting the next Superintendent.

a. Survey Design:

A multi-tiered survey instrument was utilized, consisting of multiple-choice, Likert-scale, and open-ended questions. This design afforded respondents the opportunity to provide both quantitative and qualitative feedback. Topics ranged from the importance of specific areas of expertise in Superintendent candidates to the immediate challenges they should address. The questions were carefully crafted to gauge priorities on issues such as technological integration, academic performance, fiscal responsibility, and community engagement, among others.

b. Sampling:

The survey successfully tapped into a broad spectrum of McAllen ISD's stakeholder community, with a distribution as follows:

- Students: 25 responses (2.60%)
- Parents / Guardians: 854 responses (88.77%)
- Family Members: 17 responses (1.77%)
- Community Members: 40 responses (4.16%)
- Others: 26 responses (2.70%)

c. Distribution and Accessibility:

Recognizing the ubiquity and reach of digital platforms, the survey was disseminated through McAllen ISD's official website, as well as its various social media channels, including Facebook, Twitter, and Instagram. To foster a culture of inclusivity and to ensure all community voices were heard, the survey was made available in both English and Spanish. This dual-language approach is in line with best practices for community engagement within diverse linguistic landscapes.

d. Duration:

The survey was made available for a period of two weeks, specifically from September 14, 2023, to September 29, 2023. The timeframe was strategically selected to allow sufficient time for community members to participate while also enabling the Board to move expeditiously in the Superintendent selection process.

e. Response Rate:

During the allotted timeframe, a total of 962 responses were obtained. It's essential to note that while this figure provides a robust sample for analysis, it is not an exhaustive representation of the entire McAllen ISD community.

II. KEY FINDINGS

The purpose of this section is to provide the McAllen ISD Board of Trustees with a comprehensive analysis of the community survey regarding the selection of the next Superintendent. It has been a standard practice for the district to incorporate community voices in such pivotal decisions, and this report aims to shed light on the most valued attributes and qualities that our constituents expect from the next educational leader.

a. Summary of Major Trends Observed in Survey Responses

- **Emphasis on Soft Skills Over Technical Qualifications**: While technical skills such as experience and academic background remain important, a striking trend in the survey data is the higher value placed on soft skills. Abilities like effective communication, collaboration, and stakeholder engagement far outweighed even advanced academic qualifications, such as a doctoral degree, which only had a weighted score of 3.21.
- **Holistic Approach to Education**: Respondents demonstrated a well-rounded view of what education should encompass, including social-emotional learning, wellness, and mental health, which received a substantial weighted score of 4.21. This indicates a community emphasis on holistic student development.
- **Financial and Budgetary Expertise**: Given the economic intricacies of running a school district, the community has shown a strong inclination for a Superintendent who excels in fiscal responsibility. A weighted score of 4.39 in managing school finances and budgets corroborates this preference.
- **Inclusivity and Multilingual Skills**: A combined total of 44.43% respondents emphasized as critically important the cultural competence and awareness of equity and inclusion. Additionally, the weighted average of 3.63 for multilingual skills indicates a preference for candidates who can navigate diverse linguistic landscapes.
- **Local Experience Supersedes Out-of-State Experience**: A strong preference was indicated for candidates with prior experience in Texas public schools, with a weighted average of 3.93, as opposed to a mere 2.34 for experience in school systems outside of Texas. This shows a desire for a Superintendent who understands the unique challenges and opportunities within the Texas education system.

b. Highlight of Priority Traits or Qualities in Next Superintendent

- **Communication and Stakeholder Engagement**: With 56.14% of respondents emphasizing strong communication skills and a weighted score of 4.09 in stakeholder collaboration, these are indisputably critical attributes for the future Superintendent.
- **Financial Management and Fiscal Responsibility**: A firm grasp of budget management, validated by a 33.16% preference in the survey and a weighted score of 4.39, positions this skill as indispensable in the next Superintendent's role.
- **Commitment to Academic Excellence**: The community values high academic standards (37.57%) and a focus on student performance (44.91%), thereby accentuating the need for a leader committed to elevating educational outcomes.
- **Safety and Security**: This was the most highlighted objective for the incoming Superintendent with 66.14% respondents marking it as a top priority, which underscores its non-negotiable status.
- **Adaptive Leadership**: With scores of 51.73% and 28.86% for administrative leadership and innovation, respectively, the future Superintendent should possess both traditional leadership skills and an adaptive, forward-thinking mindset.
- **Cultural Sensitivity and Inclusion**: A weighted average score of 3.97 in the area of cultural competence reveals a strong community desire for a Superintendent dedicated to an inclusive, equitable environment.
- **Technology and Innovation**: Although rated lower compared to other skills, the ability to integrate technology into classroom instruction still has a significant weighted score of 3.55, hinting at its growing relevance in modern education.

In summary, the key findings of the community survey offer valuable insights into the qualities and skills that are most important to the McAllen ISD stakeholders. The data clearly signals a strong preference for a Superintendent who not only excels in administrative and financial management but also embodies strong communication skills and a commitment to holistic education. As the Board of Trustees deliberates on the selection, these insights will serve as an important guide to ensure the appointment aligns with the community's values and aspirations. It is important to note, however, that while this summary aims to provide a thorough analysis, it comes with inherent limitations due to human interpretation. The most accurate interpretation will always be the one conducted by the Board themselves upon reviewing the complete data set. This summary should be considered a starting point for a deeper, more comprehensive evaluation.

III. Community Concerns and Expectations

In the interest of understanding community sentiment toward the incoming leadership, we posed the question, "Please tell us three areas you believe the new Superintendent should immediately address." The volume and sincerity of the responses underscore the community's vested interest in the success of its educational system. It is clear that residents, educators, and other stakeholders have a constructive, hopeful outlook for the future. A recurring theme that emerges from the data is a genuine desire for targeted improvements that can make a lasting impact on the quality of education provided. With specific focus on these areas, the incoming Superintendent has a valuable opportunity to strengthen the educational experience for students, parents, teachers, and staff alike. This thematic analysis aims to synthesize these insights, and in doing so, create a roadmap that may guide the Superintendent's early actions.

a. Financial and Budgetary Concerns

A major concern for the community lies in the financial well-being of the district, with specific attention to staff and teacher salaries. Calls for financial transparency and the development of a comprehensive district finance plan indicate a level of urgency in addressing the district's economic health. The repeated mention of the need for qualified teachers and staff, and for their fair compensation, suggests this issue might be closely tied to talent retention and, therefore, overall educational quality.

b. Educational Quality

Another significant theme that emerges is the call for improvements in educational quality, particularly for special education and bilingual programs. Parents and community members emphasize the need for skilled educators and effective pedagogical methods. The reiteration of issues like "academic progress," "student achievements," and “staffing” suggest a community deeply invested in educational outcomes. Given your extensive knowledge in governance and law, spearheading initiatives to overhaul educational policies could make a lasting impact.

c. Safety and Security

This theme encapsulates concerns ranging from everyday safety and bullying to more severe issues like gun violence and school intruders. Given recent national trends and local concerns, addressing this area may not just be a priority but a mandate.

d. Infrastructure and Facilities

The data reveals widespread dissatisfaction with the physical state of the schools, from crumbling buildings to outdated technology. Implementing a long-term strategy for infrastructure improvement could resolve multiple expressed concerns including safety, educational quality, and staff morale.

e. Mental Health and Social Concerns

Mental health repeatedly came up, pointing towards a need for robust mental health services for both staff and students. This is an area that intersects with safety but stands on its own as a significant concern.

f. Cultural and Social Dynamics

There were calls for more cultural inclusivity and concerns about microaggressions, indicating a potential issue with the social fabric of the school environment. Given your background and understanding of diverse communities, particularly in Texas, your expertise could be valuable in tackling these challenges head-on.

g. Data Limitations

While this summary is based on the first 400 responses, the data suggest these trends are likely to continue in subsequent answers. This quantitative limitation should be considered in the interpretation and application of these findings. While these findings offer a valuable glimpse into community sentiment, it's important to acknowledge the human element in data interpretation. This summary aimed to provide a starting point. However, the most thorough understanding will come from your own review of the raw data.

The thematic analysis of responses to the question, "Please tell us three areas you believe the new Superintendent should immediately address," highlights a community deeply engaged and invested in the quality and direction of its local education system. The range of perspectives gathered offers an invaluable guide for immediate action, underscoring the pivotal areas warranting the new Superintendent's concentrated focus. These findings are intended to inform not only immediate steps to be taken but also to serve as a foundational element for long-term educational strategy planning.

IV. CONCLUSION

This report provides a data-driven analysis of key issues pertinent to McAllen ISD, as requested by the board. It centers on three main areas that consistently emerged from the data: academic enhancement, operational transparency, and community engagement. Additionally, the report sheds light on the major traits or qualities desired in the next Superintendent.

First, there is a strong call for enhanced academic programs within McAllen ISD. The data suggests that respondents are interested in academic strides, whether through curriculum development or extracurricular offerings. In terms of Superintendent traits, the community values a commitment to academic excellence and high standards for student performance. This convergence of data should inform the board’s considerations for academic programming and the qualities sought in a future leader.

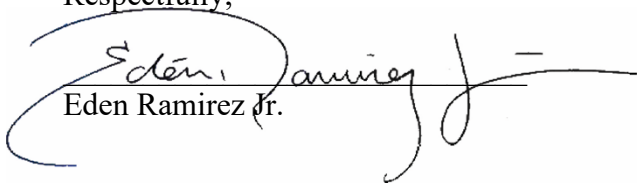
Second, operational transparency is a high priority among respondents. They frequently spoke about governance practices, from budget allocation to decision-making processes. Correspondingly, financial management and fiscal responsibility emerged as indispensable skills for the next Superintendent, underlining the community's desire for transparent and effective fiscal governance.

Third, community engagement features prominently in the data. Open dialogues between the district and community members, as well as inclusive decision-making, were consistently emphasized. In the realm of Superintendent traits, strong communication skills and stakeholder engagement are considered critical, reflecting the community's demand for an open and collaborative leadership approach.

While these thematic analyses aim to offer a broad-stroke picture of the issues and desired leadership traits, we cannot underscore enough the value of delving into the raw data we've provided. This report serves as a tool for understanding—a snapshot, if you will—but the depth and breadth of insights will be most fully realized through a comprehensive review of the raw data. Hence, we strongly encourage the Board to engage directly with the raw data to draw their own conclusions, thereby enriching their understanding and guiding their decisions.

The intention of this executive summary is to serve as an informational tool for the board members of McAllen ISD. It synthesizes the key findings that have arisen from the collected data and acts as a reference for your decision-making processes.

Respectfully,



Eden Ramirez Jr.

O'HANLON, DEMERATH & CASTILLO
ATTORNEYS AND COUNSELORS AT LAW
426 W. CAFFERY AVE
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FAX: (956) 318-1955

September 30, 2023

McAllen ISD Board of Trustees
200 N. 23rd Street
McAllen, Texas 78501

Re: Executive Summary: McAllen ISD Superintendent Search Employee Survey Results

Dear Board Members:

In alignment with the Board's commitment to internal stakeholder engagement within McAllen ISD, a specialized survey targeting the district's employees has been executed. This initiative was designed to gather critical insights from the varied staff who operate within the district's educational and administrative settings. The data collected will serve to inform the Board's decision-making process in the search for the next Superintendent of McAllen ISD.

The purpose of this employee-focused survey is twofold. Firstly, it seeks to identify the qualities, skills, and priorities that the district's employees, including teachers, administrators, and support staff, deem essential in the forthcoming Superintendent. Secondly, it aims to offer the Board a nuanced understanding of internal sentiment, thus providing a comprehensive view that complements the external community feedback previously obtained.

This survey was initiated on September 14, 2023, and this Executive Summary encapsulates responses collected up until September 29, 2023. The survey will continue to remain open to employees for the duration of the Superintendent search, thereby providing an evolving and increasingly rich dataset for consideration.

To ensure the highest standards of data integrity and confidentiality, the survey was disseminated via email to all employees within McAllen ISD. It was administered and managed by our firm, thereby assuring anonymity and impartiality in the collection of these vital perspectives.

Employee-focused surveys like this one serve as a robust mechanism for gauging internal attitudes and sentiments. Each completed survey enriches the data pool, enabling the Board to make an informed, transparent, and judicious selection that aligns with both community and internal staff expectations for the future leadership of McAllen ISD.

SAN ANTONIO: 117 WEST CRAIG PL, SAN ANTONIO, TX 78212 TEL: 210-863-9838; FAX: 512-494-9919
AUSTIN: WEST AVE, AUSTIN, TEXAS 78701, TEL: (512) 494-9949, FAX: (512) 494-9919

I. METHODOLOGY

In keeping with the stringent guidelines established by the McAllen ISD Board of Trustees, meticulous methodology was applied to gather, collate, and analyze responses from the district's employees. The overarching goal was to conduct a process marked by transparency, equity, and comprehensiveness, generating actionable insights to aid in the selection of McAllen ISD's next Superintendent.

a. Survey Design:

An adaptable survey instrument was utilized, incorporating multiple-choice questions, Likert-scale queries, and open-ended opportunities for feedback. This structure allowed employees to provide both quantitative and qualitative evaluations. Topics probed into the essential qualities and challenges the new Superintendent should focus on, with questions designed to touch on issues such as employee engagement, administrative efficiency, educational excellence, and financial accountability.

b. Sampling:

The survey effectively engaged a diverse cross-section of McAllen ISD's employees, as evidenced by the following distribution:

Teachers: 352 responses (50.72%)
Auxiliary Staff: 14 responses (2.02%)
Principals: 10 responses (1.44%)
Department Heads: 12 responses (1.73%)
Central Office Administrators: 35 responses (5.04%)
Clerical/Support Staff: 76 responses (10.95%)
Campus Administrators: 27 responses (3.89%)
Nurses: 19 responses (2.74%)
Other: 149 responses (21.47%)
Total Responses: 694

c. Distribution and Accessibility:

To ensure utmost confidentiality and impartiality, the survey was administered through SurveyMonkey, a qualified third-party platform. The survey was distributed directly via email to all McAllen ISD employees, a method that ensured each respondent could participate only once, thereby preserving the integrity of the data. Furthermore, in the spirit of inclusivity, the survey was provided in both English and Spanish, catering to the diverse linguistic preferences among the district's employees.

d. Duration:

The survey was accessible for a designated two-week period, specifically from September 14, 2023, to September 29, 2023. This timeframe was carefully chosen to allow ample opportunity for staff participation while also enabling the Board to proceed efficiently in the Superintendent selection process.

e. Response Rate:

Out of the 4,373 surveys distributed, a total of 694 responses were received. While this does represent a substantive collection of views, it is crucial to note that the responses garnered are not

a comprehensive representation of all McAllen ISD employees but does serve as a significant dataset for analysis.

II. KEY FINDINGS

The primary objective of this particular section is to provide the McAllen Independent School District Board of Trustees with a comprehensive and in-depth evaluation of the recent employee survey focused on the criteria for selecting the district's next Superintendent. Serving as a pivotal cornerstone within the district's overarching decision-making framework, this report meticulously integrates the diverse perspectives of our esteemed teaching faculty as well as our dedicated administrative personnel. By doing so, this report offers invaluable and nuanced insights into the specific attributes, qualifications, and leadership characteristics that are highly prioritized and deemed essential by our educational and administrative community for the individual who will assume the role of the district's next executive leader.

a. Summary of Significant Trends in Employee Responses

- **Empowerment Through Knowledge:** With a weighted average score of 4.62 in "Knowledge of educating students," employees overwhelmingly prioritize educational prowess in a Superintendent.
- **Transparency and Collaboration:** "Communicates, collaborates, and works cooperatively with stakeholders" saw a robust weighted average of 4.41, illustrating the staff's preference for a Superintendent who operates with transparency and stakeholder engagement.
- **Financial Acumen:** A weighted score of 4.45 in "Knowledge of managing school finances and budgets" reveals a strong inclination towards candidates who can effectively oversee the district's financial health.
- **Cultural Sensitivity:** Scores of 4.24 in "Culturally competent and aware of equity and inclusion" signify the staff's desire for leadership that prioritizes diversity and inclusion.
- **Local Relevance:** A score of 4.26 for "Experience working in Texas public schools" as against a low 2.48 for out-of-state experience shows a definitive preference for someone familiar with the Texas educational landscape.

b. Priority Traits and Qualities in the Next Superintendent

- **Transparent Leadership:** An overwhelming 79.5% of respondents highlighted transparency as a crucial leadership quality.
- **Focus on School and District Administrative Leadership:** 59.82% of the employees emphasized the need for strong administrative capabilities in the next Superintendent.
- **Financial Management:** This was a top choice for employees at 37.39%, underlining its essential nature for the role.
- **Strong Communication Skills:** At 61%, this trait stands out as critical for effective leadership.
- **Student Achievement and Academic Excellence:** These were significantly noted at 55.52% and 28.89%, respectively, emphasizing a focus on educational outcomes.

- **Safety and Security:** At 58.17%, this objective is non-negotiable and should be a top priority for the incoming Superintendent.

c. Leadership Style Preferences:

- **Collaborative Leadership:** At 55.83%, this style was the most favored, indicating a preference for a leader who engages in consensus building.
- **Transformational Leadership:** This was the second-most preferred style at 41.80%, demonstrating a desire for a visionary leader.

d. Top Objectives for New Superintendent:

- **School Funding:** Highlighted by 62.3% of employees, indicating its importance.
- **Safety and Security:** Noted by 58.17% of respondents, confirming its priority status.
- **Student Achievement:** Underlined by 55.52% of employees, emphasizing its critical role.

The key findings of this employee survey provide critical guidelines for the Board of Trustees as they proceed with the selection of the next Superintendent. While these insights are grounded in the collective experiences and aspirations of the district's staff, they serve as a starting point for further nuanced evaluations. The Board's own interpretation of the complete data set will provide the most reliable and comprehensive perspective in the selection process.

III. Community Concerns and Expectations

The following section outlines the collective concerns and expectations of employees within the district. These points were identified through a survey where employees were asked to state three areas that the new Superintendent should immediately address.

Financial Compensation and Benefits

The feedback we've gathered indicates a resounding consensus for increasing financial remuneration for both teaching and non-teaching staff. Contributors argue that a baseline salary increase would not only improve quality of life but also foster greater job satisfaction and performance. Alongside, there is a demand for regular, competitive pay raises, specifically mentioning a 3% annual raise for teachers as a reasonable starting point.

Furthermore, the issue of pay equity was frequently mentioned. Responses indicated frustration with salary disparities between different departments and between seasoned professionals and newcomers. A structured salary scale, which takes into account years of service and performance metrics, is cited as a potential solution.

Facilities and Infrastructure

A significant number of comments suggested sub-par conditions of school facilities. Reports outline deteriorating buildings and outdated infrastructure, affecting both the teaching and learning experience. The state of HVAC systems was cited multiple times, often connected to concerns about health and safety.

The feedback strongly calls for an allocation of budget for urgent upgrades and necessary repairs to not only improve the physical learning environment but also contribute to better health conditions for everyone in the facility.

Education and Curriculum
Academic progress and the need to close learning gaps among students were central themes. Respondents expressed a need for updated, more adaptable curricula that meet the diverse needs of the student body. There were divergent opinions on incorporating technology into the classroom, with some advocating for an integrated approach, while others are wary, suggesting a return to traditional teaching methods.

The debate appears to stem from concerns about technology as a potential distraction versus its role as an essential tool for modern education.

Employee Welfare
The mental health and general welfare of staff were key topics. There is a call for immediate action to improve existing programs aimed at mental health and general well-being. Work-life balance, especially for teaching staff, is a critical issue, as burnout rates appear to be increasing.

The feedback suggests the need for a supportive, inclusive environment where diversity and individual needs are respected, thereby boosting morale and productivity.

Administrative Concerns
Comments in this area often critique the current leadership structures, describing them as 'top-heavy' and lacking transparency. Respondents expressed a desire for a more equitable distribution of resources among schools and criticize what they perceive as inefficiencies in administration, including "useless business models," branding exercises, and podcast initiatives. The consensus is to refocus on educational outcomes as the primary goal.

Community and Stakeholder Engagement
Responses show a demand for improved communication and engagement efforts that reach all community members and not just those in affluent areas. There are also suggestions for partnerships with the city of McAllen to tackle broader issues such as student housing and family support. Moreover, an overwhelming call for more robust parent engagement mechanisms stands out, emphasizing that education is a collective endeavor that extends beyond the classroom.

The overarching themes present an urgent call for reforms in various sectors: financial restructuring, facilities upgrades, educational advancements, improved employee welfare, streamlined administration, and increased community engagement. It is imperative for the new Superintendent to prioritize these areas to meet the expectations and address the concerns of our valued employees.

However, it's crucial to understand the limits of our analysis. While our key findings offer a summary of the data collected, they are essentially human interpretations of complex responses. As such, our objective has been to present the data as neutrally as possible, drawing out the predominant themes and general sentiments. Given the qualitative nature of many responses,

nuances may be lost, and interpretations could vary. Therefore, we strongly encourage the Board to review the raw data themselves for a more comprehensive understanding.

In essence, our role has been to distill a large volume of feedback into actionable insights, but it should not replace individual engagement with the original data. Our summary aims to be a useful starting point for identifying issues and areas for action, yet it should be complemented by a more detailed exploration to capture the full scope and complexity of the responses submitted.

IV. CONCLUSION

In conclusion, this report serves as an analytical summary of the data that has been meticulously sorted to identify three overarching issues that suggest attention: Financial Concerns, Academic Excellence, and Work Environment.

First, Financial Concerns emerge as a significant theme among the staff. The data strongly indicates a collective call for transparent financial governance, underlining the importance of fiscal responsibility in the district's next leader.

Second, Academic Excellence is a recurrent topic in the survey results. Employees consistently express the desire for an administration committed to elevating academic standards. This is an area where a future leader's dedication to academic excellence could have a lasting impact.

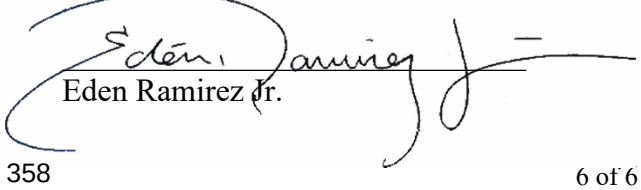
Third, Work Environment and Morale cannot be overlooked. The survey underscores a need for improving the work setting and boosting employee morale, pointing to the necessity for a leader who possesses exceptional interpersonal skills and can foster a positive work environment.

Tying these concerns to leadership traits, it is evident that employees value a Superintendent who can balance fiscal prudence, academic vision, and interpersonal competence. These characteristics align seamlessly with the issues at hand, emphasizing the need for a multifaceted leader capable of meeting various challenges.

While this executive summary provides a focused lens for interpreting the survey data, it should act as a starting point rather than an endpoint. The richness of individual responses should also be explored to ensure that the Board's decision-making is informed by a comprehensive understanding of employee sentiments.

In sum, this report is intended to serve as an instrumental tool for the Board's imminent deliberations on the selection of a new Superintendent. It not only identifies the pressing concerns among McAllen ISD's staff but also outlines the traits most sought-after in a future leader. As the Board moves forward in making this critical decision, this data-driven analysis should serve as a valuable resource to inform and guide your choices.

Respectfully,



Eden Ramirez Jr.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 30, 2023

SUBJECT: Approval of Update to Board Policy BE (LOCAL) - Board Meetings (1st Reading)

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

BACKGROUND INFORMATION / REASON FOR BOARD CONSIDERATION:
Board Policy BE (LOCAL) includes specific information concerning school Board meetings, to include the preparation of the Board meeting agenda.

Trustee Debbie Crane Aliseda has requested the following Board policy revision:
- REQUESTING A BOARD AGENDA ITEM: Current policy states any Board member may request that a subject be included on the agenda for a meeting. Proposal is to change policy to require two (2) Board members to request a subject be added to the agenda for a meeting.

ADMINISTRATIVE CONSIDERATIONS / FACTS AND ANALYSIS:
This policy informs the general public about school Board meetings and standardizes the operation of the school Board.

LEGAL REVIEW:
The above proposed revisions have been reviewed and discussed with TASB HR Policy Services.

BUDGETARY CONSIDERATIONS:
None

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

Attachment: ☑

SUBMITTED BY: _____

SUPERVISOR: Todd Miller
Oct 26, 2023

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

Approved for presentation to the Board of Education:

Rosalba De Hoyos

Interim Superintendent of Schools
Oct 26, 2023

Meeting Place and Time

The notice for a Board meeting shall reflect the date, time, and location of the meeting.

Regular Meetings

Regular meetings of the Board shall normally be held on the second and fourth Mondays of each month at 5:00 p.m. When determined necessary and for the convenience of Board members, the Board President may change the date, time, or location of a regular meeting with proper notice.

Special or Emergency Meetings

The Board President shall call special meetings at the Board President's discretion or on request by two members of the Board.

The Board President shall call an emergency meeting when it is determined by the Board President or two members of the Board that an emergency or urgent public necessity, as defined by law, warrants the meeting.

Agenda

Deadline

The deadline for submitting items for inclusion on the agenda is the fourth calendar day before regular meetings and the third calendar day before special meetings.

Preparation

In consultation with the Board President, the Superintendent shall prepare the agenda for all Board meetings. Any **two** Board member**s** may request that a subject be included on the agenda for a meeting, and the Superintendent shall include on the preliminary agenda of the meeting all topics that have been timely submitted by ~~a~~ **two** Board member**s**.

Before the official agenda is finalized for any meeting, the Superintendent shall consult the Board President to ensure that the agenda and the topics included meet with the Board President's approval. In reviewing the preliminary agenda, the Board President shall ensure that any topics the Board or ~~individual~~ **any two** Board members have requested to be addressed are either on that agenda or scheduled for deliberation at an appropriate time in the near future. The Board President shall not have authority to remove from the agenda a subject requested by a Board member without that Board member's specific authorization.

Notice to Members

Members of the Board shall be given notice of regular and special meetings at least 72 hours prior to the scheduled time of the meeting and at least one hour prior to the time of an emergency meeting.

Closed Meeting

Notice of all meetings shall provide for the possibility of a closed meeting during an open meeting, in accordance with law.

The Board may conduct a closed meeting when the agenda subject is one that may properly be discussed in closed meeting. [See BEC]

Order of Business

The order of business for regular Board meetings shall be as set out in the agenda accompanying the notice of the meeting. At the meeting, the order in which posted agenda items are taken may be changed by consensus of Board members.

Rules of Order

The Board shall observe the parliamentary procedures as found in *Robert's Rules of Order, Newly Revised*, except as otherwise provided in Board procedural rules or by law. Procedural rules may be suspended at any Board meeting by majority vote of the members present.

Voting

Voting shall be by voice vote or show of hands, as directed by the Board President. Any member may abstain from voting, and a member's vote or failure to vote shall be recorded upon that member's request. [See BDAA(LOCAL) for the Board President's voting rights]

Consent Agenda

When the agenda is prepared, the Board President shall determine items, if any, that qualify to be placed on the consent agenda. A consent agenda shall include items of a routine and/or recurring nature grouped together under one action item. For each item listed as part of a consent agenda, the Board shall be furnished with background material. All such items shall be acted upon by one vote without separate discussion, unless a Board member requests that an item be withdrawn for individual consideration. The remaining items shall be adopted under a single motion and vote.

Minutes

Board action shall be carefully recorded by the Board Secretary or clerk; when approved, these minutes shall serve as the legal record of official Board actions. The written minutes of all meetings shall be approved by vote of the Board and signed by the Board President and the Board Secretary.

The official minutes of the Board shall be retained on file in the office of the Superintendent and shall be available for examination during regular office hours.

Discussions and Limitation

Discussions shall be addressed to the Board President and then the entire membership. Discussion shall be directed solely to the business currently under deliberation, and the Board President shall halt discussion that does not apply to the business before the Board.

The Board President shall also halt discussion if the Board has agreed to a time limitation for discussion of an item, and that time limit has expired. Aside from these limitations, the Board President shall not interfere with debate so long as members wish to address themselves to an item under consideration.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 30, 2023

SUBJECT: Discussion and Possible Action to Approve Board of Education Meeting Minutes

REFERENCE:

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The minutes for each meeting of the Board of Education are traditionally brought to the Board for approval. After approval, the minutes become the official record for Board Action.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
The Administration asks that the Board of Education consider approval of the attached minutes.

LEGAL REVIEW: None

BUDGETARY CONSIDERATIONS: None

RECOMMENDED BOARD ACTION:
That the Board approve the minutes of the following meeting(s):

School Safety and Security Meeting October 11, 2023 1:30 PM
Regular Board Meeting October 16, 2023 5:00 PM
Special Board Meeting October 16, 2023 7:00 PM

Attachment: ☑

SUBMITTED BY: Natalia Goza

SUPERVISOR: Debbie C Aliseda (Oct 26, 2023 08:59 CDT)

For further information contact:
Name: Natalia Goza
Office: 956 618-6094
Email: natalie.goza@mcallenisd.net

Approved for presentation to the Board of Education:

Rosalba De Hoyos

Interim Superintendent of Schools

Approval of Board of Ed Meeting Minutes 10 30 23 500 PM

Final Audit Report 2023-10-26

Created:	2023-10-26
By:	Natalia Goza (natalie.goza@mcallenisd.net)
Status:	Signed
Transaction ID:	CBJCHBCAABAA9tMhN6BtiQ9LFGGfwVZEaiaqTSSKFPcM

"Approval of Board of Ed Meeting Minutes 10 30 23 500 PM" History

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Signer debbie.aliseda@mcallenisd.net entered name at signing as Debbie C Aliseda
2023-10-26 - 1:59:23 PM GMT- IP address: 107.127.0.11

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Signature Date: 2023-10-26 - 1:59:25 PM GMT - Time Source: server- IP address: 107.127.0.11

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 30, 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: Todd M Miller
Oct 24, 2023

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

Approved for presentation to the Board of Education:

Rosalba De Hoyos

Interim Superintendent of Schools
Oct 24, 2023

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 30, 2023

SUBJECT: Discussion and Possible Action on Recommendation for Position of Principal at William B. Travis Middle School

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The position was vacant as of October 13, 2023 upon the resignation of Efrain Amaya, principal at William B. Travis Middle School.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
The vacancy notice was posted on October 11, 2023 and interviews held on October 27, 2023. The interview committee will make their recommendation to the Superintendent. Recommendation will be presented under separate cover.

LEGAL REVIEW: Not Applicable

BUDGETARY CONSIDERATIONS: This is a budgeted position.

RECOMMENDED BOARD ACTION:
That the Board of Trustees approve the Superintendent's recommendation on the position of Principal at William B. Travis Middle School.

Attachment: ☑

SUBMITTED BY: _____

SUPERVISOR: Todd M Miller
Oct 24, 2023

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

Approved for presentation to the Board of Education:

Rosalva De Hoyos

Interim Superintendent of Schools
Oct 24, 2023