Agenda of Regular Meeting

The Board of Trustees
McAllen Independent School District

A Regular Meeting of the Board of Trustees of the McAllen Independent School District will be held Tuesday, October 22, 2024, beginning at 5:30 PM Dr. Ricardo Chapa Board Room/Administration Building of the McAllen Independent School District, 2000 North 23rd Street, McAllen, TX 78501.

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

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

1. **CALL MEETING TO ORDER**
2. **MOMENT OF SILENCE**
3. **PLEDGE OF ALLEGIANCE**
4. **PUBLIC COMMENT(S)**
5. **PUBLIC HEARING** for the School Financial Integrity Rating System of Texas (School FIRST) **5**
   Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

   Presenter: Dr. René Gutiérrez, Superintendent
6. **SUPERINTENDENT'S REPORT(S)**

   Presenter: Dr. René Gutiérrez, Superintendent

   A) Entrepreneurship Students Share their Passion

   B) Go Gold Campaign Highlights Awareness

   C) Roosevelt Student with Dyslexia Recognized for Achievement
7. **RECOGNITION(S)**
8. **PROCLAMATION(S)**
9. **DONATION(S)**
10. **CONSENT AGENDA ITEMS**

A) Discussion and Possible Action on the Participation of MISD Students in the Rio Grande Valley Ballet Company "The Nutcracker" 23
Item Submitted: Dr. Rosalba De Hoyos, Associate Superintendent for Instructional Services

Presenter: Dr. René Gutiérrez, Superintendent

B) Discussion and Possible Action on the Participation of MISD Students in the Edinburg Dance Theatre Production of "The Nutcracker" 24
Item Submitted: Dr. Rosalba De Hoyos, Associate Superintendent for Instructional Services

Presenter: Dr. René Gutiérrez, Superintendent

C) Discussion and Possible Action on Ratification of First Amendment to Contract No. 2025-093 Elementary & Middle School Staff Development with DMR Educational Consulting, Inc. 25
Item Submitted: Dr. Rosalba De Hoyos, Associate Superintendent for Instructional Services and Jeanette Nino, Associate Superintendent for Instructional Leadership

Presenter: Dr. René Gutiérrez, Superintendent

D) Discussion and Possible Action on Request for Proposal No. 2024-1021 Apparel, Awards, Incentives, Printing, and Related Products and Services (Round 11) 50
Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

Presenter: Dr. René Gutiérrez, Superintendent

E) Discussion and Possible Action on Request for Proposal No. 2024-1020 Professional Development, Site Licenses, Supplemental Materials, & Other Related Products and Services (Round 12) 52
Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

Presenter: Dr. René Gutiérrez, Superintendent

11. **INSTRUCTIONAL SERVICES, INSTRUCTIONAL LEADERSHIP, HUMAN RESOURCES, BUSINESS AND OPERATIONS, AND BOARD OF TRUSTEES ITEMS**

A) **Instructional Services Item(s)** (Dr. Rosalba De Hoyos)

1. Report Regarding Bilingual, ESL and Foreign Languages Department 54
Item Submitted: Dr. Rosalba De Hoyos, Associate Superintendent for Instructional Services

Presenter: Dr. René Gutiérrez, Superintendent

B) **Instructional Leadership Item(s)** (Jeanette Nino)

C) **Human Resources Item(s)** (Dr. Albert Canales)

1. Report Regarding the McAllen Education Foundation 69
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

D) **Business and Operations Item(s)** (Lorena Garcia)

1. Report Regarding Taxes Collected for July through September 2024 — 70
   Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

   Presenter: Dr. René Gutiérrez, Superintendent

2. Discussion and Possible Action on Request for Proposal No. 2025-1000 Voluntary/Supplemental Insurance Products and Related Services — 74
   Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

   Presenter: Dr. René Gutiérrez, Superintendent

3. Discussion and Possible Action on Request for Proposal No. 2025-1018 Short/Long Term Disability Insurance Re-bid — 108
   Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

   Presenter: Dr. René Gutiérrez, Superintendent

4. Discussion and Possible Action on Interlocal Contract 2025-161 with The Department of Information Resources Relating to the Use of the Department of Information Resources Shared Services Master Service Agreements — 111
   Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

   Presenter: Dr. René Gutiérrez, Superintendent

5. Discussion and Possible Action on Competitive Sealed Proposal No. 2025-1017 Safety/Security Film Application Phase II — 131
   Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

   Presenter: Dr. René Gutiérrez, Superintendent

6. Discussion and Possible Action to Advertise for a Request for Qualifications for Legal Services for Property Damage Claim — 279
   Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations and requested by Trustee Lucia Thompson

   Presenter: Dr. René Gutiérrez, Superintendent

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

1. Discussion and Possible Action to Approve Board of Education Meeting Minutes — 288
   a) Regular Board Meeting October 8, 2024 5:30 PM
2. Discussion and Possible Action for Board of Trustee Travel — 289

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

A) Human Resources Recommendation(s) for School Year 2024-2025

B) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2024-2025

C) Discussion of the Superintendent's Appraisal Instrument

D) Discussion Regarding School Safety and Security

E) Pending and/or Potential Litigation

F) Possible Real Estate Acquisition

13. **RECONVENE IN OPEN SESSION**

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

A) Discussion and Possible Action of Human Resources Recommendation(s) for School Year 2024-2025 290
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

B) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2024-2025 291
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

C) Discussion and Possible Action of the Superintendent's Appraisal Instrument

D) Discussion Regarding School Safety and Security

E) Pending and/or Potential Litigation

F) Possible Real Estate Acquisition

15. **ADJOURNMENT**

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

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

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

The notice for this meeting was posted in compliance with the Texas Open Meeting Act on October 18, 2024 by 3:00 P.M.
Natalia Goza
on behalf of the Board of Trustees

October 22, 2024

Presented by
Lorena Garcia
Deputy Superintendent for
Business and Operations

Iris Luna, RTSBA
Chief Financial Officer

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

2023-2024 Ratings

based on fiscal year 2022-2023

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

SCHOOL FIRST
FINANCIAL INTEGRITY RATING SYSTEM OF TEXAS

District earns State’s highest rating for financial integrity!

FIRST Table of Contents

- FIRST Objectives
- FIRST Goals
- Indicator Updates
- Determination of Rating
- Ceiling Indicators
- School FIRST Indicators
- Public Comments

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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 the management finances
- Facilitate effective and efficient use of resources

Indicators Updates

- Changes in the Commissioner's Rule for School FIRST indicators were implemented by the Texas Education Agency beginning fiscal year 2023. The indicators increased from 20 to 21 and another "Ceiling Indicator" was introduced.
- The District is rated according to 21 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 "F = Substandard Achievement".
- A negative response to any of the six ceiling indicators supersedes any rating earned based on points.
- A negative response to all six ceiling indicators results in the district receiving an " F = Substandard Achievement".

Determination of Rating

A. Did the school district fail any of the critical indicators 1, 2, 3, or 4? If so, The District Rating is "F for Substandard Achievement" regardless of points earned.

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

Determination of Rating (Cont'd)

B.	**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**

Ceiling Indicators

Did the school district meet the criteria for any of the following ceiling indicators 4, 6, 16, 17, 20 or 21? 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
Indicator 21 (FSP Repayment Plan) – Response to Indicator is *Yes.*	70	C = Meets Standard Achievement

School FIRST 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, the district's Annual Financial Report was filed with the Texas Education Agency on November 23, 2023, meeting the critical indicator.***

2. **Was there an unmodified opinion in the AFR on the financial statements as a whole?** ***Yes, the opinion expressed by the district's Independent Auditor on the Annual Financial Report for June 30, 2023, was unmodified, representing the highest level of assurance, meeting the critical indicator.***

3. **Was the school district in compliance with the payment terms of all debt agreements at fiscal year end?** ***Yes, there were no disclosures in the annual financial report or other sources of information regarding defaults on debt agreements, meeting the critical indicator.***

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?** ***Yes, McAllen ISD successfully fulfilled all payroll obligations, meeting both the critical and ceiling indicators.***

School FIRST Indicators

5. **Was the total net position in the governmental activities' column in the Statement of Net Position (net of accretion of interest for capital appreciation bonds, net pension liability, and other post-employment benefits) greater than zero?** ***McAllen ISD's net position in the governmental activities in the Statement of Net Position was $315,559,575, which is greater than zero, meeting the ceiling indicator.***

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?** ***McAllen ISD's average percentage change in fund balance of 0.0475 was less than the 25 percent decrease threshold. The fund balance exceeded the 75 days of operational expenditures, meeting the ceiling indicator.***

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 139.406, which was sufficient to cover its operating expenditures.***

School FIRST Indicators

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 3.7341 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 and the number of days of cash on hand was 139.406, greater than 60 days.***

10. **This indicator is currently not being evaluated. All districts will get** ***10 points.***

11. **Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency?** ***10 points - McAllen ISD's long-term liabilities to total assets ratio of 19.42% was sufficient to support long-term solvency.***

School FIRST Indicators

12. **What is the correlation between future debt requirements and the district's assessed property value?**
    ***10 Points* - The correlation between future debt requirements and the district's assessed property value is that McAllen ISD's debt per $100 assessed property value was adequate to support debt repayments.**

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 7.93% was below the threshold ratio of 8.55%.***

14. **Did the school district not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)?** ***10 Points - McAllen ISD's student-to-staff ratio declined by 6.56% over three years, which is less than the 15% threshold.***

15. **This indicator is currently not being evaluated. All districts will get five points.**

School FIRST Indicators

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?** ***10 points - McAllen ISD reported a 0% variance in data to PEIMS compared to the Annual Financial Report, meeting the ceiling indicator.***

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 school district's ability to continue as a going concern?** ***The external independent auditors reported that the June 30, 2023, Annual Comprehensive Financial Report was free of any instances of material weakness in internal controls over financial reporting and compliance for local, state, or federal funds, 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?** ***10 points - The external independent auditors indicated that the June 30, 2023, Annual Comprehensive Financial Report was free of any instances of material non-compliance for grants, contracts and laws related to local state or federal funds.***

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?** ***10 points - McAllen ISD has posted the required financial information on its website.***

20. **Did the school district's administration and school board members discuss any changes and/or impact to local state and federal funding at a board meeting within 120 days before the district adopted its budget?** ***10 points*** **- McAllen ISD held a board meeting on May 18, 2022, to discuss and consider the impact of changes in property values and on the district's finances, meeting the ceiling indicator.**

21. **Did the school district receive an adjusted repayment schedule for more than one fiscal year for an over-allocation of Foundation School Program (FSP) funds because of financial hardship?** ***10 points - McAllen ISD did not receive an adjusted repayment schedule for an overallocation of FSP funds, meeting the ceiling indicator.***

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

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Public Comments

McAllen ISD thanks you for your continued support!

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

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.

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 10, 12, & 13, 2024 for the RGV Ballet's Production of "The Nutcracker".

SUBMITTED BY: Debra Loya (Oct 16, 2024 09:01 CDT)

SUPERVISOR:

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 16, 2024 09:27 CDT)

Superintendent of Schools Oct 16, 2024

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

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

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 17, 19, & 20, 2024 for the Edinburg Dance Theatre Production of "The Nutcracker".

SUBMITTED BY: Debra Loya (Oct 16, 2024 08:59 CDT)

SUPERVISOR: Rosalba De Hoyos

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 16, 2024 09:26 CDT)

Superintendent of Schools Oct 16, 2024

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Discussion and Possible Action on Ratification of First Amendment to Contract No. 2025-093 Elementary & Middle School Staff Development with DMR Educational Consulting, Inc.

REFERENCE: Goal 1 - Student Achievement/Student Focus: Strategy 3: Engaging Learning Environment; Goal 2 - People Development: Strategy 20: Quality Professional Development Opportunities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On August 17, 2024 the McAllen Independent School District ("District") entered into an agreement with DMR Educational Consulting, Inc ("DMR") for professional development services. DMR provides professional consulting services for professional development for English Language Arts/Reading ("ELAR") best practices.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The Amendment is to expand Exhibit A (Vendor Services/Fees) of the Contract to include DMR's Service Contract.

LEGAL REVIEW:

First Amendment was approved by legal counsel.

BUDGETARY CONSIDERATIONS:

Funds for this service are available through Title II, Fund 255.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees ratify the signed First Amendment to Contract No. 2025-093 Elementary & Middle School Staff Development with DMR Educational Consulting, Inc.

Attachment: ☑

SUBMITTED BY: Dr. Cynthia Olivarez (Oct 15, 2024 13:48 CDT)

SUPERVISOR: Jeanette Nino (Oct 15, 2024 15:52 CDT)

SUPERVISOR:

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 16, 2024 09:11 CDT)

Superintendent of Schools

FIRST AMENDMENT TO

CONTRACT NO. 2025-093 Elementary & MS Staff Development (DMR Educational Consulting, Inc.)

This First Amendment to Contract No. 2025-093 (the "Contract") effective this 26th day of August 2024 by and between McAllen Independent School District ("District") and DMR Educational Consulting, Inc, a Texas Limited Liability Company ("Contractor") as follows:

WHEREAS, the District entered into Contract No. 2025-093 dated August 17, 2024; 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 A of the Contract is expanded to include Exhibit A.1 attached hereto and made part of 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 Aug 26, 2024.
Date

McALLEN INDEPENDENT SCHOOL DISTRICT

By: RENE GUTIERREZ (Aug 26, 2024 16:52 CDT)
Dr. René Gutiérrez, Superintendent

DMR EDUCATIONAL CONSULTING, INC.

By: Diana M. Ramirez
Diana Ramirez, President

Approved as to form:

by: JOHNATHAN BALL (Aug 26, 2024 16:36 CDT)
Johnathan Ball, Staff Attorney

D.M.R. EDUCATIONAL CONSULTING, INC. SERVICE CONTRACT

This contract and agreement is made and entered into by and between the McAllen ISD (hereinafter referred to as "District") and D.M.R. Educational Consulting, Inc. (hereinafter referred to as "Consultant"). The parties have severally and collectively agreed and by the executive hereof are bound to the performance and accomplishment of the tasks hereinafter described.

DESCRIPTION OF SERVICES:
Module 1 Literary Elements of Fiction for Grades Kinder - Eighth

NOW, in consideration of the mutual promises and obligations contained herein, it is agreed as follows:

1. **Session Dates**. Consultant shall conduct one (1) session on each of the following dates: (1) _____; (2) 15 days as per proposal ; (3) _____; and (4) _____.
2. **Compensation for Consultant**. The District shall pay Consultant a sum of Five Thousand Dollars ($5000.00) per session.
3. **Deadline for Payment**. The District shall submit payment for each session on or before the expiration of the fifteenth day (15th day) following a session.
4. **Attendance Limit**. A session has an attendance limit of forty (40) attendees. For any session in which the District has more than forty (40) attendees present, the District shall pay a charge of One Hundred Dollars ($100.00) for each and every additional attendee present at the session other than administrators. These additional charges shall be added to the total cost of that session.
5. **Recording Prohibited**. All attendees are strictly prohibited from using electronic devices of any kind to record or reproduce the session in any way.
6. **Sharing Materials Prohibited.** The District shall not share or cause to be shared any materials it receives from Consultant with any person or entity not a party to this Agreement. No one but a DMR consultant can present with DMR materials.
7. **Headings**. Paragraph headings are for the purposes of convenience and identification only and shall not be used to interpret or construe this Agreement.
8. **Governing Law**. This Agreement shall be governed by and construed under the laws of the State of Texas. The state courts of the State of Texas in Hidalgo County and, if the jurisdictional prerequisites exist at the time, the United States District Court for the Southern District of Texas, shall have sole and exclusive jurisdiction to hear and determine any dispute or controversy arising under or concerning this Agreement.

Approved and accepted by Consultant this 22nd day of August, 20 24.

Signed: Diana M. Ramirez
Diana M. Ramírez, Ed. D.
DMR Educational Consulting, Inc.
Address: 3000 Old Alice Road, Unit 501
Brownsville, Texas 78521

Federal ID Number EIN: 20-1181087

Approved and accepted by District this _____day of _____, 20___.

_____
District Representative/Campus Principal
Dr. Rene Gutierrez, McAllen ISD Superintendent

MCALLEN INDEPENDENT SCHOOL DISTRICT

CONSULTING AGREEMENT No. 2025-093

THIS Agreement, made and entered by and between the **MCALLEN INDEPENDENT SCHOOL DISTRICT** ("District") and **DMR Educational Consulting, Inc.** a Texas Limited Liability Company hereinafter referred to as ("Consultant").

WITNESSETH:

WHEREAS, District recognizes that the Federal and State Programs Department of District (the "Department"); requires certain services rendered by Consultant who has the training, experience, and qualifications necessary to provide the services.

WHEREAS, District requested a professional services quote from the consultant for services more particularly described on Exhibit "A" attached hereto (the "Services").

WHEREAS, District has determined that the proper, orderly and efficient delivery of quality Services for the District can be accomplished best by contracting with Consultant 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 Consultant 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 Agreement;

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

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, and of the mutual covenants and conditions hereinafter expressed, the parties hereto covenant each with the other, as follows:

1. OBLIGATIONS OF THE CONSULTANT

The Consultant agrees to provide the following Services to District during the term of this Agreement:

a. **Performance of Services**. The Consultant will provide the Services described on Exhibit "A" attached hereto and incorporated herein at this point for all purposes and will use proper professional standards in providing the services to District.

b. **Administration**. The Consultant will communicate with the Administrator(s) designated by District regarding the administration of the Services and this Agreement. Notwithstanding anything herein to the contrary, District will not have or exercise control over the manner in which the professional services of the Consultant are performed as would jeopardize the status of the Consultant as an independent contractor.

c. **Quality of Services**. The Consultant will continually work to improve the quality of and maintain a reasonable cost for provision of the Services furnished to District. In furtherance thereof, Consultant agrees to fully cooperate with personnel designated by District.

d. **Records**. Consultant shall, at Consultant's expense, keep or cause to be kept for four (4) years following the provision of the Services accurate and complete records in an adequate filing system. Consultant shall furnish District on written request copies of all such records to the extent such records are not prohibited from disclosure to District by applicable law.

e. **Ethics**. Consultant shall insure that, in performing the Services under this Agreement, Consultant uses his best and most diligent efforts and professional skills, performs professional and supervisory services, and renders the Services in accordance with and in a manner consistent with the highest standards of Consultant's profession and comply with all applicable laws and regulations related thereto.

   No officer, employee, shareholder or associate contracted by Consultant or associate having any business relationship with Consultant, shall receive or solicit any compensation or any other monetary benefit from any entities that contract with or seek to contract with District for products of insurance or services during the term of the contract with District.

f. **Certification**. Consultant shall maintain Consultant's license and all legally required certificates in the State of Texas as is required to perform the Services.

g. **Confidentiality of Records**. The Consultant shall maintain the confidentiality of records in accordance with applicable laws and regulations.

h. **Confidentiality. Health Insurance Portability and Accountability Act (HIPAA) Compliance –** The Consultant shall comply with all requirements set forth by the Health Insurance Portability and Accountability Act (HIPAA) including, but not limited to, the requirements for Electronic Data Interchange (EDI) and Privacy.

i. **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).

j. **CRIMINAL HISTORY INFORMATION**. Pursuant to Texas Education Code Section 22.0834 (Senate Bill 9), Consultant shall obtain criminal history record information that relates to an employee, applicant for employment, agent or subcontractor of the Consultant if the employee, applicant, agent, or subcontractor has or will have continuing duties related to the Services, and the duties are or will be performed on school property or at another location where students are regularly present.

k. **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.

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" – Vendor Services/Fees

C. Exhibit "B" – Vendor Certificate of Insurance

2. 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 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.

3. 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 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.

4. 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.

5. SUSPENSION AND DEBARMENT COMPLIANCE REQUIREMENTS

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

Consultant shall certify to District before beginning work and at no less than on an annual basis thereafter, that this process was followed.

Consultant 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." Consultant's violation of this section shall constitute a material breach of Agreement.

If the Consultant is the person or owner or operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review, and must submit original evidence of compliance acceptable to District, with this Contract.

6. INSURANCE COVERAGE

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

a. Automobile Liability Insurance

b. The Consultant 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 Agreement as Exhibit "B".

7. CONSULTANT'S COVENANTS AND WARRANTIES

Consultant makes the following representations and warranties to District with respect to each Consultant or employee of Consultant providing Services hereunder.

a. Licensure. Consultant is duly licensed to provide the Services in the State of Texas to the extent licensure is required to provide the Services.

b. Suspension of License. Consultant's license to provide the Services in any state has never been suspended or revoked.

c. Discipline. Consultant has never been reprimanded, sanctioned, or disciplined by a licensing board or state or local society or specialty board.

d. Malpractice Judgment. There has never been entered against Consultant a final judgment in a malpractice action having an aggregate award to the plaintiff in excess of $10,000.00.

e. Settlement. No action based on an allegation of malpractice by Consultant has ever been settled by payment to the plaintiff of an aggregate amount in excess of $10,000.00.

f. Debarment and Suspension. Contractor shall comply with all requirements on Part 3.2 – Compliance Requirements.

8. PARTIES' RELATIONSHIP

The Consultant, at all times will act as an independent contractor providing the Services and will not act or hold himself out to third parties as an employee or agent of District in the provision of the Services or materials under this Agreement. The District shall not control how the results or the details of the Services are provided and/or achieved.

9. TAXES AND BENEFITS

District will not withhold income tax or Social Security tax on behalf of the Consultant or any of Consultant's partners, employees, subcontractors, or agents. In addition, none of the foregoing will have any claim under this Agreement or otherwise against District for vacation pay, sick leave, unemployment insurance, worker's compensation, retirement benefits, disability benefits, or employee benefits of any kind. The Consultant will have exclusive responsibility for the payment of all such taxes and arrangement for insurance coverage and will discharge such responsibility fully.

10. INCURRING FINANCIAL OBLIGATION

The Consultant will incur no financial obligation on behalf of District without prior written approval from the Superintendent of District or Superintendent's designee.

11. CONSULTATION

While this Agreement is in effect, the parties understand that the Consultant may not be the exclusive source of providing the Services.

12. PROFESSIONAL ASSOCIATES

The Consultant may, at the Consultant's expense, contract with such other consultants as the Consultant deems necessary or appropriate (hereinafter collectively referred to as "Associates") to assist Consultant in the fulfillment of Consultant's obligations under this Agreement. The Consultant will be fully responsible for performing or assuring that any Associate performs the Services in compliance with the provisions of this Agreement. Furthermore, all Associates must be currently licensed in the State of Texas to provide the Services to the extent licensure is required to provide the Services.

13. FEES TO CONSULTANT

The sole source of compensation to the Consultant under this Agreement will be the compensation paid by District to Consultant in accordance with the terms and provisions of Exhibit "A" attached hereto and incorporated herein at the point for all purposes. The Consultant will not bill or collect fees for Services to District from any third parties. As consideration for performing the services as necessary pursuant to this Agreement, District agrees to pay Consultant for Services as invoiced upon successful and satisfactory delivery of Services to District, as specified in, and in accordance with Exhibit "A", with verification by District's authorized representative of such invoice in compliance with the conditions and information in this Agreement. The invoice provided by the Consultant will include the list of services provided, dates of services, and location(s) where services were provided during the billing period.

14. ACCESS TO BOOKS AND RECORDS

Consultant recognizes that District is a participant in governmental payment programs. In connection with such programs, the Consultant 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

15. NON-DISCRIMINATION

Consultant will not discriminate on the basis of race, color, sex, age, religion, national origin, or handicap in providing services under this Agreement or in the selection of Associates, employees, or independent contractors.

16. HOLD HARMLESS

CONSULTANT WILL INDEMNIFY AND HOLD DISTRICT HARMLESS FROM ANY AND ALL CLAIMS, ACTIONS, LIABILITY, AND EXPENSES (INCLUDING COSTS OF JUDGMENTS, SETTLEMENTS, COURT COSTS, AND ATTORNEY'S FEES, REGARDLESS OF THE OUTCOME OF SUCH CLAIM OR ACTION) CAUSED BY, RESULTING FROM , OR ALLEGING NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OR ANY FAILURE TO PERFORM ANY OBLIGATION UNDERTAKEN OR ANY COVENANT IN THIS AGREEMENT, WHETHER SUCH ACT, OMISSION, OR FAILURE WAS THE CONSULTANT'S OR THAT OF ANY PERSON PROVIDING SERVICES HEREUNDER THROUGH OR FOR THE CONSULTANT. UPON WRITTEN NOTICE FROM DISTRICT, THE CONSULTANT WILL RESIST AND DEFEND AT CONSULTANT'S EXPENSE, AND BY COUNSEL REASONABLY SATISFACTORY TO DISTRICT ANY SUCH CLAIM OR ACTION. CONSULTANT WILL CARRY PROPER INSURANCE WITH DISTRICT AS AN ADDITIONAL NAMED INSURED TO THE EXTENT SUCH IS REASONABLY AVAILABLE.

17. TERM AND TERMINATION OF AGREEMENT

a. Term. The term of this agreement shall commence August 27, 2024 through October 29, 2024. All services must be completed during the term of the Agreement.

b. Termination without Cause. The District reserves the right to cancel/terminate this Agreement in part or in whole without cause within thirty (30) days written notice to the Consultant. If the District so cancels/terminates this Agreement, Consultant shall deliver all data and material developed to date to District. Consultant shall not be entitled to lost profits or any further compensation not earned prior to time of such cancellation/termination.

c. Termination with Cause. If either party fails to observe or perform in a material manner

any term or condition of this Agreement to be performed or observed by such party, the aggrieved party shall send written notice specifying the nature of the alleged default. If the default is not fully cured within ten (10) days after giving the notice, then the aggrieved party may elect to terminate this Agreement or pursuant to applicable law.

d. Non-Interference. Following the expiration of this Agreement or its termination for any reason, Consultant agrees to do nothing that may interfere with the Services already rendered.

18. NOTICES

Any notices or payments permitted or required by this Agreement shall be deemed made on the day personally delivered in writing or mailed by certified mail, postage prepaid, to the other party at the address set forth below or to such other persons and address as either party may designate in writing:

If to the Consultant:
DMR Educational Consulting, Inc.
ATTN: Diana M. Ramirez, Ed. D.
3000 Old Alice Road Unit 501
Brownsville, TX 78521

If to DISTRICT:
Dr. Rene Gutierrez, Superintendent
McAllen Independent School District
2000 North 23rd Street
McAllen, Texas 78501-6126

19. LAW

THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT 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.

20. NO IMPLIED WAIVER

Any waiver of enforcement of any provision or waiver of any breach of this Agreement, whether or not recurring, shall not be construed as a waiver of any subsequent enforcement or breach.

21. SEVERABILITY

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

22. 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 Consultant may not assign Consultant's rights or obligations under

this Agreement without District's written consent. Any assignment in violation of this provision shall give District the right to terminate this Agreement immediately, upon written notice to the Consultant.

23. AMENDMENTS

Any amendment to this Agreement will be effective only if in writing and signed by District and the Consultant.

24. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

25. INTERPRETATION

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

26. 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.

27. AUTHORIZATION FOR AGREEMENT

The execution and performance of this Agreement by District and Consultant have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable will incur no financial obligation s of Consultant and District in accordance with its terms.

28. IMMUNITIES

Nothing in this Agreement 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.

29. 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 Agreement, then District shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify Consultant and any assignee of such occurrence. This

Agreement 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 Agreement relating to, accruing or arising prior to such termination. In the event of such termination, District agrees to peaceably request that the Consultant or its assignee stop the services on the date of such termination.

30. ADDITIONAL PROVISIONS

Notwithstanding anything to the contrary contained elsewhere herein, District and Consultant hereby covenant and agree:

The compensation, if any, to be paid to Consultant by District is reasonable considering amounts charged by others in the same or similar geographic area for similar services.

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

IN WITNESS WHEREOF, District has caused its name to be hereunto subscribed by a duly authorized employee thereunto and Consultant has hereunto subscribed his or its name as applicable.

EXECUTED this 17 day of August, 2024.

DISTRICT:
McALLEN INDEPENDENT SCHOOL DISTRICT

By: Sofia Mercedes Pena (Aug 15, 2024 16:12 CDT)
Sofia M. Peña, President

CONSULTANT:
DMR EDUCATIONAL CONSULTING,INC.

By: Diana Ramirez
Diana Ramirez (Aug 17, 2024 20:43 CDT)

Printed Name: Diana Ramirez

Title: President

Approved as to form:

By: JOHNATHAN BALL (Aug 13, 2024 10:04 CDT)
Johnathan Ball, Staff Attorney

ADDENDUM

Federal Terms and Conditions

FEDERAL TERMS AND CONDITIONS

EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS (EDGAR)

Contracts Under Federal Awards
Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (*see* 2 C.F.R. 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management ("SAM"), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

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

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

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

(1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding $100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

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

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

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

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

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

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

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

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

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

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

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

(O) Records Retention Requirements for Contracts Involving Federal Funds. When federal funds are expended by DISTRICT for any contract resulting from this procurement process, Vendor agrees to comply with the record retention requirements detailed in 2 CFR § 200.333. Vendor further certifies that it will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

(P) Equal Employment Statement. It is the policy of DISTRICT not to discriminate on the basis of race, color, national origin, sex, religion, age, (applies to individuals who are 40 years of age or older), disability, or genetic information in its programs. Vendor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Provider will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract.

(Q) Certification of Access to Records – 2 C.F.R. § 200.336. Vendor agrees that the District's Inspector General or any of their duly authorized representatives shall have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

(R) Copyright. All contracts paid from state or federal grants administered by the Texas Education Agency ("TEA") must retain copyright for TEA and for the federal government (if a federally funded contract) unless otherwise negotiated in writing with TEA. Pursuant to the provisions in 2 C.F.R. 200.315, title to intangible property vests in the District as long as such property is used for authorized purposes. However, TEA and the federal awarding agency reserve a royalty-free, nonexclusive and irrevocable right to reproduce, public, or otherwise use the work for federal purposes, and to authorize others to do so.

(S) Certification of Compliance with the Energy Policy and Conservation Act. When DISTRICT expends federal funds for any contract resulting from this procurement process, Vendor certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

(T) Certification of Compliance with Buy America Provisions. DISTRICT has a preference for domestic end products for supplies acquired for use in the United States when spending federal funds (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act.

(U) For all professional services contracts paid with federal funds, the contract contains the following provisions:

1. All services will be completed during the effective dates of the contract.
2. All services will be paid only upon receipt of a proper invoice that coincides with the contract upon verification that the services were satisfactorily performed in accordance with the description in the contract. For ongoing services, payment may be made at the end of every month upon receipt of the invoice. Contractors will not be paid in advance.
3. The invoice provided by the contractor will include the list of services provided, dates of services, and location(s) where services were provided during the billing period.
4. The District complies with the regulations pertaining to procurement in 2 C.F.R. § 200.318 - .323.
5. The District complies with the provisions in 2 C.F.R. § 200.459 pertaining to allowable professional service costs.
6. The contract will identify the funding source(s) that will be charged for the services provided, including the specific amount and/or percentage of the total contract amount to be charged to each funding source.
7. The contract will identify and list only reasonable, necessary, and allocable services to be provided in accordance with the funding sources that will be charged.
8. The administrative costs charged to the grant in the contract must be reasonable and must comply with any statutory limitations for administrative costs specified in the federal program funding source.

(V) Applicability to Subcontractors. Vendor agrees that all contracts it awards pursuant to the contract shall be bound by the foregoing terms and conditions.

(W) The Vendor also represents and warrants compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances, It is further acknowledged that Vendor certifies compliance with all provisions, laws, acts, regulations, etc. as

specifically noted below:

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

EXHIBIT A

Vendor Services/Fees

As per your request, we have:
1. Removed the ECR Module
2. Added Test-Taking Module in the Spring
3. Divided the proposal dates into fall 2024 and spring 2025



McAllen ISD Elementary and Middle School Fall Proposal

DMR Educational Consulting, Inc.
3000 Old Alice Road, Unit 501
Brownsville, Texas 78521
Phone: (956) 792-5658
Website: dmr-edu.com

2024-25 Staff Development Proposal for: McAllen ISD-Elementary Campuses

Purpose: Module 1 Literary Elements to include Comprehension TEKS, Vocabulary TEKS, Genre TEKS, Author's Purpose and Craft, and Response Skills.

District/Campus Responsibilities:

- Districts/campuses are asked to duplicate the teaching handouts and organizers.
- Each on-site session is $5000.00 and there is a $100 fee for any participant over the cap of 40 attendees. **There is no charge for administrators.

Date	Grade Level	Session Title
September 9, 2024 September 10, 2024 September 12, 2024	Third Grade Group 1 Third Grade Group 2 Fourth Grade Group 1	Module 1 Module 1 Module 1
September 24, 2024 September 25, 2024 September 26, 2024	Fourth Grade Group 2 Fifth Grade Group 1 Fifth Grade Group 2	Module 1 Module 1 Module 1
October 2, 2024 October 3, 2024 October 22, 2024	Second Grade Group 1 Second Grade Group 2 First Grade Group 1	Module 1 Module 1 Module 1
October 23, 2024 October 24, 2024 October 29, 2024	First Grade Group 2 Kinder Group 1 Kinder Group 2	Module 1 Module 1 Module 1
Aug. 27, 2024 Aug. 28, 2024 Aug. 29, 2024	Sixth Grade Seventh Grade Eighth Grade	Module 1 Module 1 Module 1
Total: 15 day(s)	x $5000.00	= $75,000.00

Submitted to: Dr. Rene Gutierrez, McAllen ISD Superintendent

On: July 23, 2024

PROPOSAL EXPIRES IN 30 DAYS

EXHIBIT B

Vendor's Certificate of Insurance

✂ Cut along solid lines

Fold along dotted lines

TEXAS LIABILITY INSURANCE CARD

Allstate.

Allstate Fire and Casualty Insurance Company

Diana Ramirez
3000 Old Alice Rd 501
Brownsville TX 78521-1720

AGENT NAME/PHONE
Rafael Larrazolo
(956) 205-1112

POLICY NUMBER
416 027 516

EFFECTIVE DATE
06/19/24

EXPIRATION DATE
12/19/24

YEAR / MAKE / MODEL
2018 BMW X6

VEHICLE ID NUMBER
5UXKU0C56J0G80767

INSURED DRIVERS **Diana, Mario**

IF YOU HAVE QUESTIONS, CALL 1-800-255-7828

This policy provides at least the minimum amounts of liability insurance required by the Texas Motor Vehicle Safety Responsibility Act for the specified vehicles and named insureds and may provide coverage for other persons and other vehicles as provided by the insurance policy.

Allstate.

Please use the printed Insurance Cards below.

Please use the printed Insurance Cards below.

Texas Liability Insurance Card — Keep this card

IMPORTANT: This card or a copy of your insurance policy must be shown when you apply for or renew your:

- motor vehicle registration
- driver's license
- motor vehicle safety inspection sticker.

You also may be asked to show this card or your policy if you have an accident or if a peace officer asks to see it. All drivers in Texas must carry liability insurance on their vehicles or otherwise meet legal requirements for financial responsibility. Failure to do so could result in fines up to $1,000, suspension of your driver's license and motor vehicle registration, and impoundment of your vehicle for up to 180 days (at a cost of $15 per day).

Tarjeta de Seguro de Responsabilidad de Texas — Guarde esta tarjeta

IMPORTANTE: Esta tarjeta o una copia de su póliza de seguro debe ser mostrada cuando usted solicite o renueve su:

- registro de vehículo de motor
- licencia para conducir
- etiqueta de inspección de seguridad para su vehículo

Puede que usted tenga también que mostrar esta tarjeta o su póliza de seguro si tiene un accidente o si un oficial de la paz se la pide. Todos los conductores en Texas deben tener seguro de responsabilidad para sus vehículos, o de otra manera llenar los requisitos legales de pudiera resultar en multas de hasta $1,000, suspensión de su licencia para conducir y su registro de vehículo de motor, y la retención de su vehículo por un período de hasta 180 días (a un costo de $15 por día).

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2024-1021 Apparel, Awards, Incentives, Printing, and Related Products and Services (Round 11)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The McAllen Independent School District solicited proposals for apparel, awards, incentives, printing, and related products and services. This Request for Proposal ("RFP") is an extended response period, multiple award contract, solicited in accordance with the Financial Accountability System Resource Guide ("FASRG"), section 5.16, titled "Multiple/Catalog/Discount-from-List Contract Awards." This allows vendors to submit responses throughout the year through the contract term. Vendors are awarded on an incremental basis upon the Board of Trustees' approval. Seventy-nine (79) vendors were previously awarded through this RFP.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Three hundred eighty (380) vendors were invited to submit proposals, and fifteen (15) vendors responded, including five (5) no-bid responses and four (4) previously awarded (with no changes). The evaluation committee, comprised of Laura Williams, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Carol Quintanilla, Senior Buyer, evaluated the proposals. Administration is recommending that the six (6) companies listed on the attached list be approved as qualified vendors, for a total of eight-five (85) vendors.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

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

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2024-1021 Apparel, Awards, Incentives, Printing, and Related Products and Services (Round 11), and approve the companies on the attached list as qualified vendors, for a coterminous term through June 30, 2027.

Attachment: ☑

SUBMITTED BY: Laura Williams
Laura Williams (Oct 16, 2024 08:17 CDT)

SUPERVISOR: Lorena Garcia

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 16, 2024 14:11 CDT)

Superintendent of Schools

RECOMMENDED VENDORS

Request for Proposal ("RFP") 2024-1021

Apparel, Awards, Incentives, Printing, and Related Products and Services (Round 11)

No.	Responding Supplier	City	State	Recommendation
1	Digital Press Printing (Stone Shield Investments, LLC)	Crowley	TX	Qualified
2	Exclusive Designs	Mission	TX	Qualified
3	McAllen Sports, Inc.	McAllen	TX	Qualified
4	OTC Direct, Inc (Oriental Trading Company/Mindware)	Omaha	NE	Qualified
5	Rebel Athletic Inc	Carrollton	TX	Qualified
6	Rodriguez Screen Printing	San Juan	TX	Qualified

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2024-1020 Professional Development, Site Licenses, Supplemental Materials, & Other Related Products and Services (Round 12)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The McAllen Independent School District solicited proposals for Professional Development, Site Licenses, Supplemental Materials, & Other Related Products and Services. This Request for Proposal ("RFP") is an extended response period, multiple award contract, solicited in accordance with the Financial Accountability System Resource Guide ("FASRG"), section 5.16, titled "Multiple/Catalog/Discount-from-List Contract Awards." This allows vendors to submit responses throughout the year through the contract term. Vendors are awarded on an incremental basis upon the Board of Trustees' approval. One hundred sixty-five (165) vendors were previously awarded through this RFP.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Nine hundred seventy-four (974) vendors were invited to submit proposals, and twenty-six (26) vendors responded, including eight (8) no-bid responses, three (3) non-responsive, and three (3) previously awarded (with no changes). The evaluation committee, comprised of Laura Williams, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Sandra Pulido, Buyer, evaluated the proposals. Administration is recommending that the twelve (12) companies listed on the attached list be awarded as qualified vendors, for a total of one hundred seventy-seven (177) vendors.

LEGAL REVIEW:
None required.

BUDGETARY CONSIDERATIONS:

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

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2024-1020 Professional Development, Site Licenses, Supplemental Materials, & Other Related Products and Services (Round 12), and approve the companies on the attached list as qualified vendors, for a coterminous term through June 30, 2027.

Attachment: ✔

SUBMITTED BY: Laura Williams (Oct 16, 2024 11:04 CDT)

SUPERVISOR: Lorena Garcia

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 16, 2024 14:39 CDT)

Superintendent of Schools

RFP 2024-1020 Professional Development, Site Licenses, Supplemental Materials, & Other Related Products and Services (Round 12)

No.	Responding Supplier	City	State	Recommendation
1	BirdBrain Technologies, Inc	Eau Claire	WI	Qualified
2	College Board	New York	NY	Qualified
3	GF Educators, Inc.	Mineola	TX	Qualified
4	Instruction Partners Inc.	Nashville	TN	Qualified
5	Kaleidoscope Learning, Inc.	New York	NY	Qualified
6	Mavisoft Educational Technologies LLC	McAllen	TX	Qualified
7	Riverside Insights (Riverside Assessments, LLC)	Itasca	IL	Qualified
8	SLP Toolkit LLC	Meza	AZ	Qualified
9	STEM Education Works, LLC	Lafayette	IN	Qualified
10	Teachers First LLC	Phoenix	AZ	Qualified
11	TeachTown (Jigsaw Learning LLC)	Woburn	MA	Qualified
12	Tech4Learning, Inc.	San Diego	CA	Qualified

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Report Regarding Bilingual, ESL and Foreign Languages Department

REFERENCE: Goal 1: Students Achievement/Student Focus

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The McAllen ISD Bilingual, ESL, and Foreign Languages Department supports emergent bilingual students, including non-emergent bilingual students participating in a dual language program, academically, linguistically, and affectively in order for them to be successful in their education and to meet federal regulations and state policy. This department also serves students participating in foreign language courses at the secondary level. They strive to empower McAllen ISD teachers, administrators, and families of emergent bilingual students to ensure students successfully participate and take advantage of the different education programs offered in our district.

This evening, the Bilingual, ESL, and Foreign Languages Department will present on key aspects of our programs.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
By providing this overview, we aim to facilitate informed decision-making and secure support for ongoing services.

LEGAL REVIEW: None required.

BUDGETARY CONSIDERATIONS: None.

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

Attachment: ☑

SUBMITTED BY: Rocio Nava

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Rocio Nava
Office: 956-618-7338
eMail: rocio.nava2@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 16, 2024 10:07 CDT)

Superintendent of Schools Oct 16, 2024



Bilingual, ESL & Foreign Languages Department

Board Report

By Rocío Nava

October 22nd, 2024

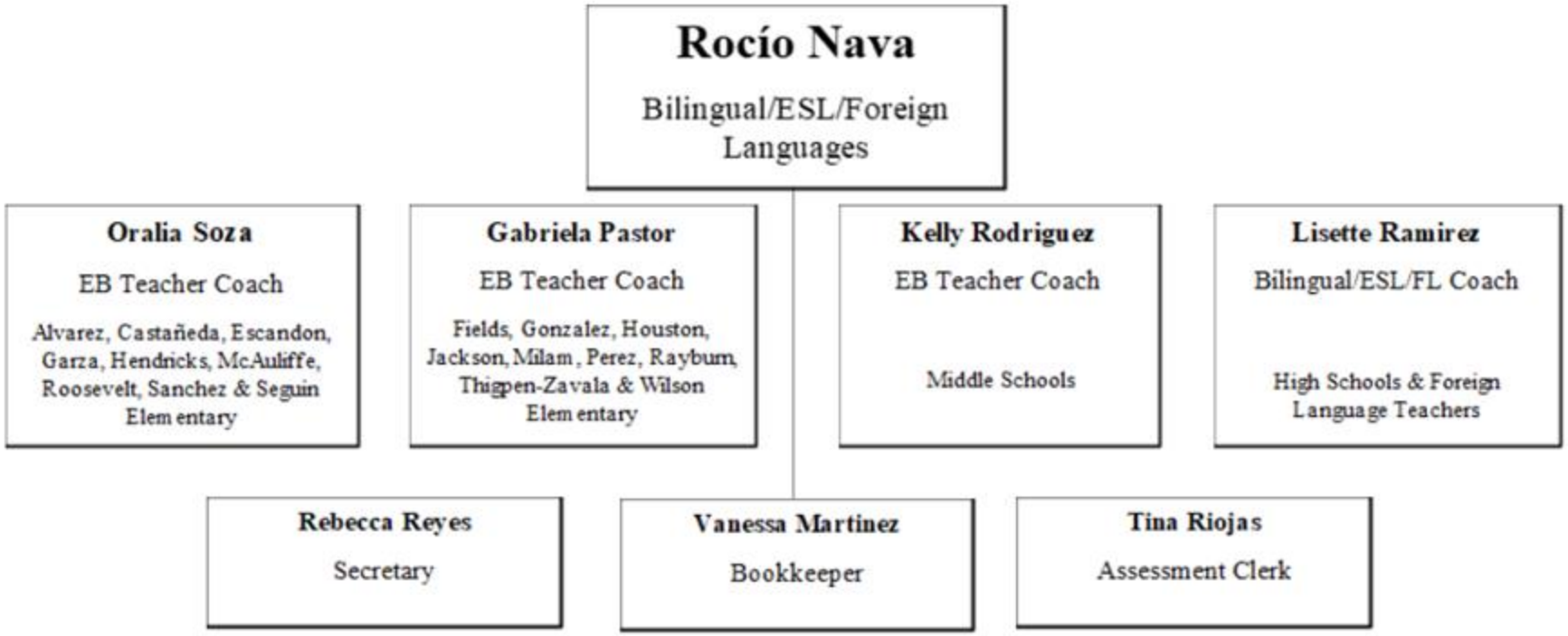
Our Mission

The McAllen ISD Bilingual and English as a Second Language (ESL) Department **supports** the district's mission and strategic plan in assuring **all emergent bilingual students** receive an **equitable educational opportunity** that **addresses their affective, linguistic, and cognitive needs** according to federal regulations and state policy.

McAllen ISD **ensures** emergent bilinguals **participate** in academically challenging programs that **respect** and **build upon** the unique **cultural and linguistic attributes** they bring to the learning community.

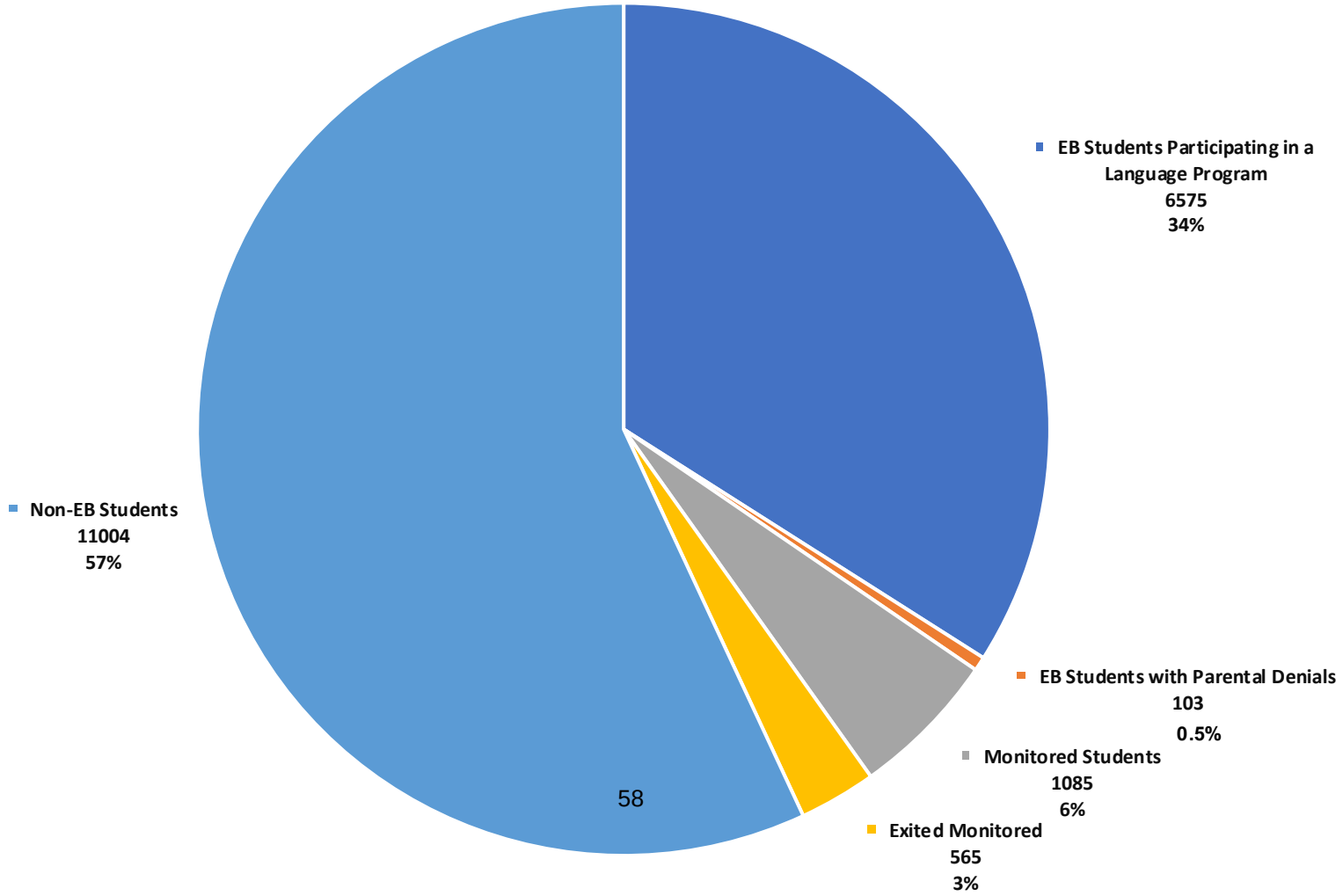


2024-2025 Bilingual/ESL/FL Department Organizational Chart



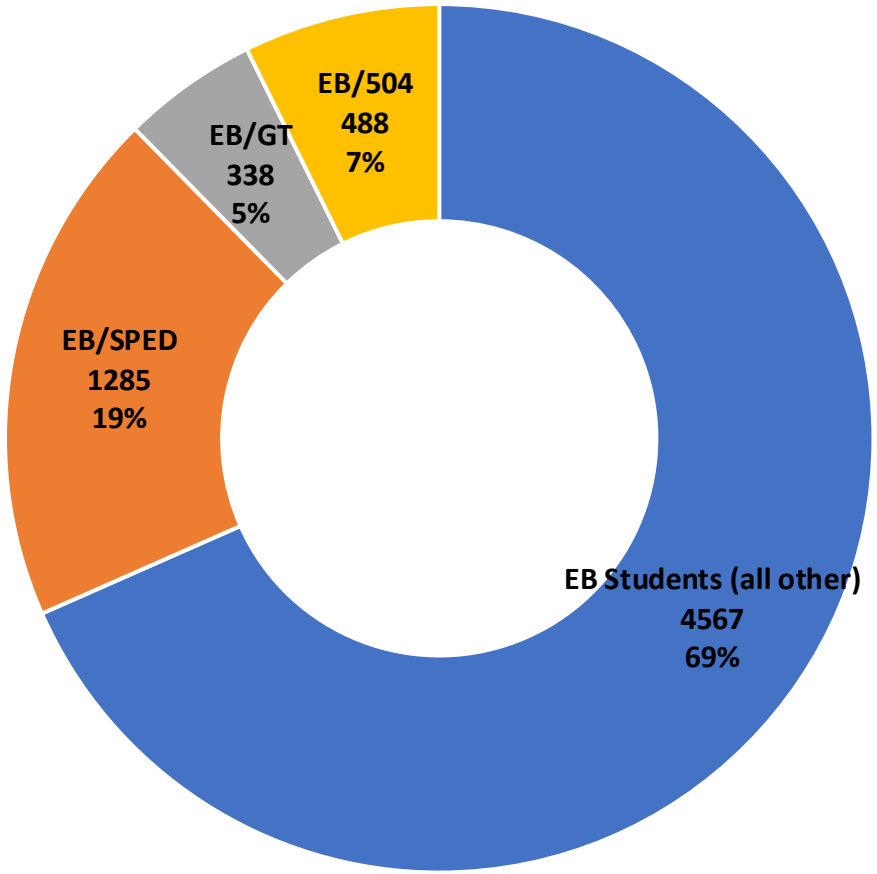
Quality, Value & Support

Our students

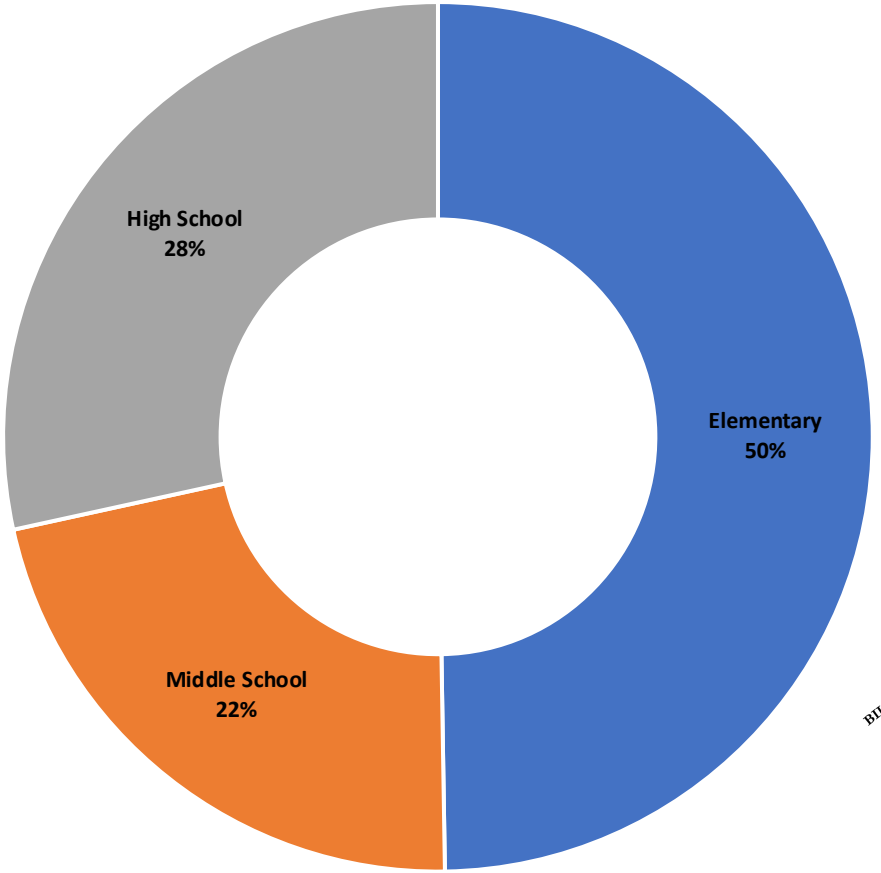


Our students

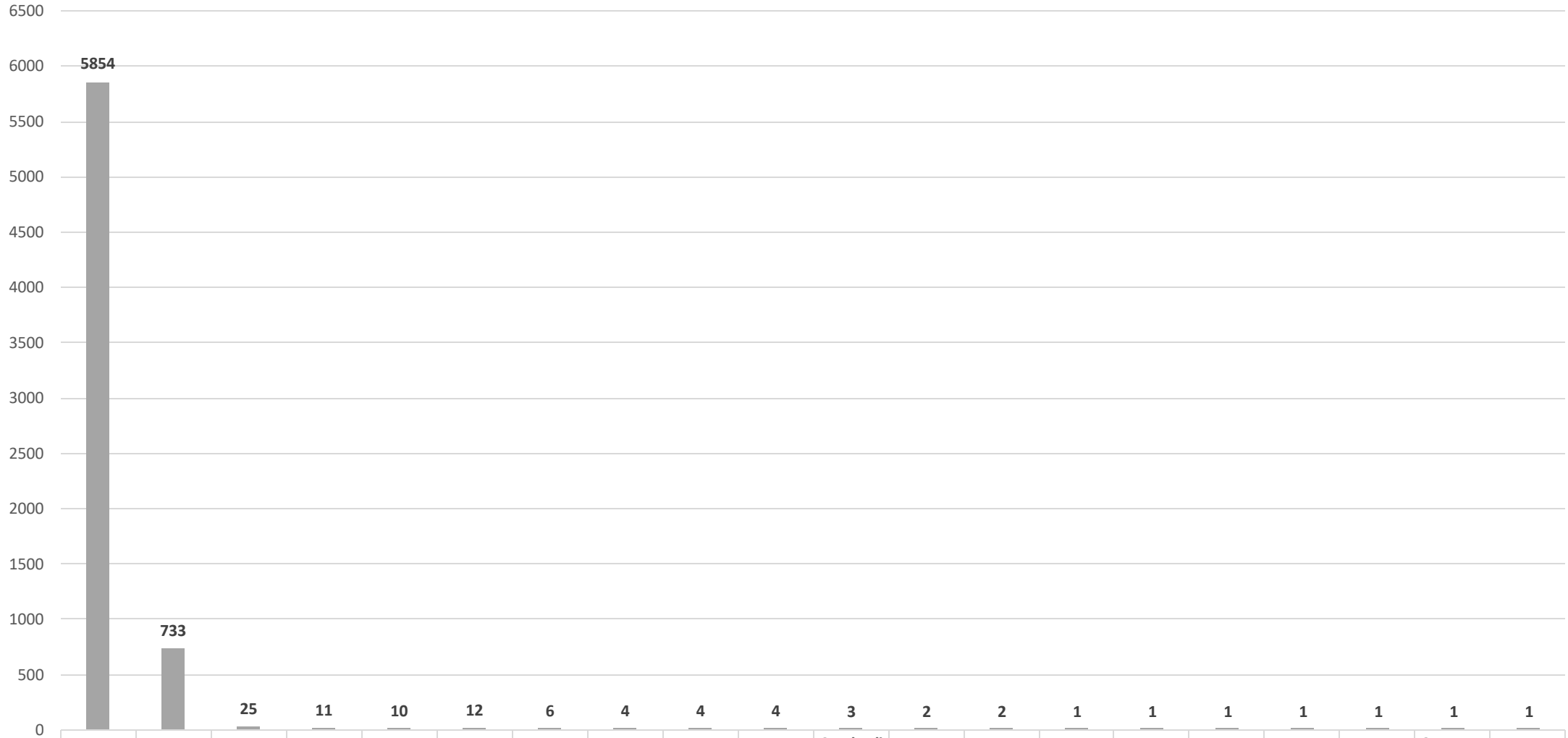
McAllen ISD Emergent Bilingual Student Population



McAllen ISD Emergent Bilingual Student Population

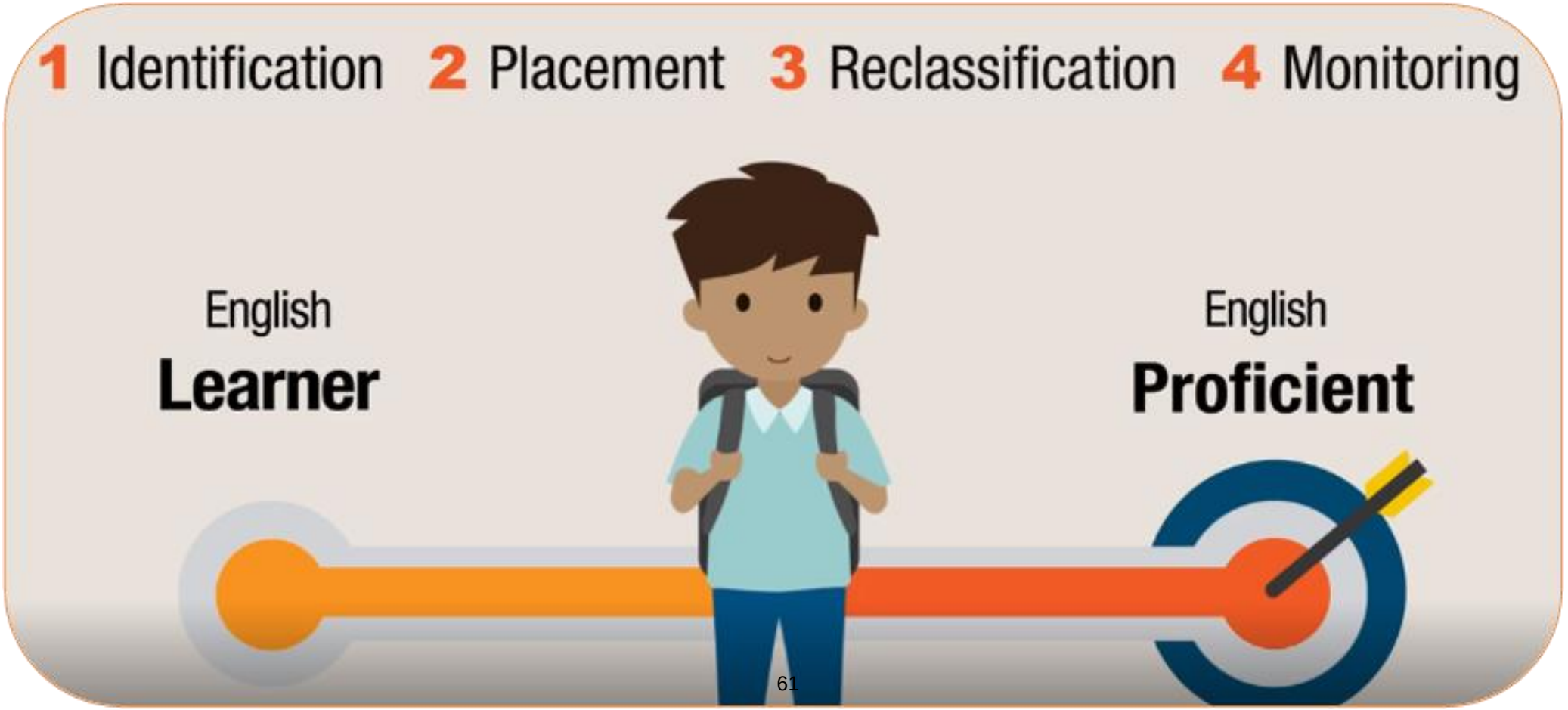


McAllen ISD EB Student Population by Student Language



	Spanish	English	Other	Mandarin (Chinese)	Vietnamese	Korean	Arabic	Russian	Pilipino (Tagalog)	Urdu	Cambodian (Khmer)	Gujarati	Portuguese	Japanese	Swahili	Sotho	Hakka (Chinese)	Cebuano (Visayan)	Cantonese (Chinese)	Hindi
EB Students	5854	733	25	11	10	12	6	4	4	4	3	2	2	1	1	1	1	1	1	1

How do we serve an emergent bilingual student in Texas? *(see video for additional information)*



Note: Emergent bilingual students are students learning English as their second language. They are also referred to as English learners in federal policies.

How do we serve our emergent bilingual students in McAllen ISD?

Six State-Approved Program Models for EBs

TEC 29.066; TAC 89.1210

Bilingual Education (BE) Program Models

Bilingual Early Exit

Alverez ES
Castaneda ES
Escandon ES
Garza ES
Gonzalez ES
Hendricks ES
Houston ES
Jackson ES
McAuliffe ES
Milam ES
Rayburn ES
Roosevelt ES
Sanchez ES
Seguin ES
Thigpen-Zavala ES
Wilson ES

Dual Language (1-way & 2-way)

Fields ES
Gonzalez ES
Jackson ES
McAuliffe ES
Milam ES
Perez ES
Sanchez ES
Fossum MS
AECHS

Learning Centers & HeadStart

English as a Second Language (ESL) Program Models

ESL Content-Based

Elementary Campuses

(as needed)

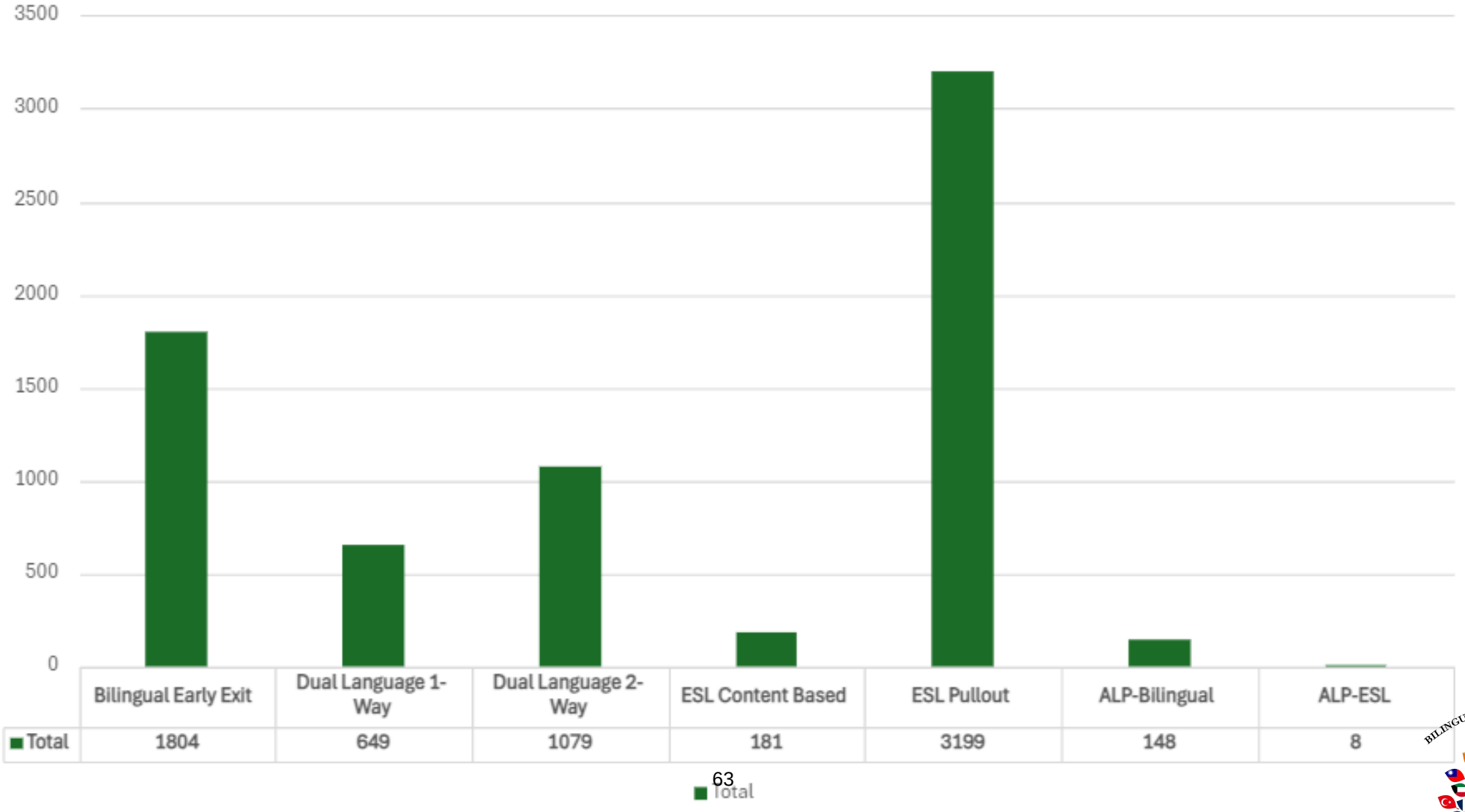
ESL Pull-Out

Secondary Campuses

20* EBs @ same grade and primary language district-wide = BE program required in elementary*

1* EB = ESL program required

2024-2025 McAllen ISD Population by Program Participation



Foreign Language Courses in McAllen ISD

Middle School

- Fossum Middle School – Dual Language (Spanish)
- De Leon Middle School – IB Language Acquisition (Spanish)

High School

- Spanish
- French
- American Sign Language



Department Supports



Students

- Intructional resources
- Instructional software
  - SUMMITK12
  - Learning AZ
  - Lexia Power Up
  - Achieve 3000
- Technology tools
- Language development camps
- Summer programs
- Enrichment camps
- Instructional support staff



Staff

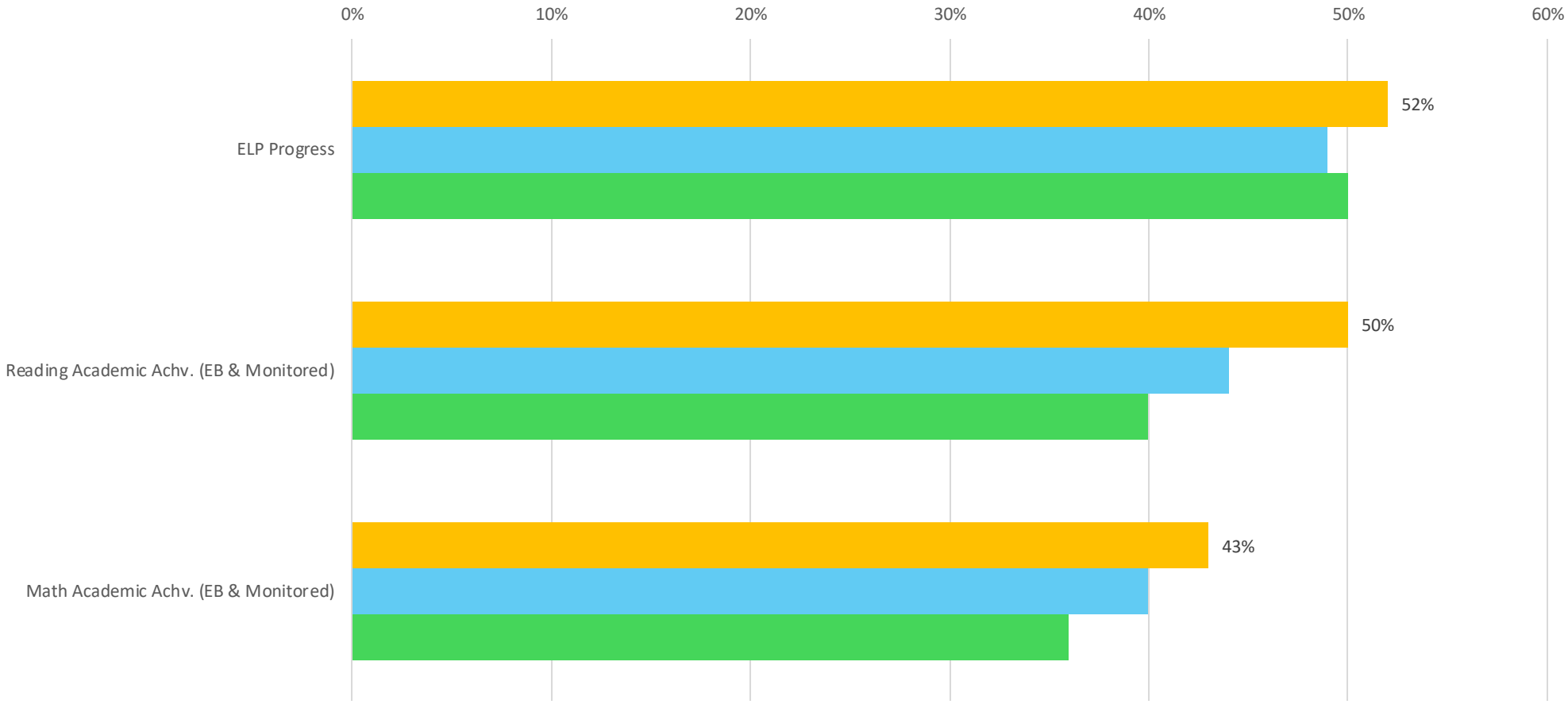
- LPAC
- Professional learning
- Instructional resources
- Instructional planning
- Curriculum support
- Instructional technology
- Stipends
- On-site support/coaching
- Instructional software
- Program implementation guides
- Bilingual/ESL certification preparation, reimbursement for testing associated cost



Parents and Families

- Academic, language development, and emotional resources
- Community resources
- Newsletter
- Events
  - TEA Title III Series
  - Region 1 Instituto de Padres
  - Literacy nights
  - Informational Sessions

2024 McAllen ISD EB & Monitored Students (Domain 3)



	Math Academic Achv. (EB & Monitored)	Reading Academic Achv. (EB & Monitored)	ELP Progress
McAllen ISD	43%	50%	52%
Region 1	40%	44%	49%
State	36%	40%	50%

Celebrations!

- 5th Grade Dual Language – Spanish High School Credit
  - 33 dual language students
- RICE Tapia Camp – dual language middle school students
  - 2nd and 3rd place in the Algorithms category
- UTRGV Torneo de Ortografía
  - 1st place – Preparatoria (high school)
  - 1st & 4th place– Secundaria (middle school)
  - 2nd place - Intermedio (elementary)
- Biliteracy Acknowledgement
  - 209 students
- Parent, Family, and Community Engagement
  - Increased participation year after year!
- Amazing teachers!
  - Dual Language Program Implementation Guide for Elementary
  - Renovated 7 Steps to a Language-rich Classroom Guide













WE ARE ALL IN!

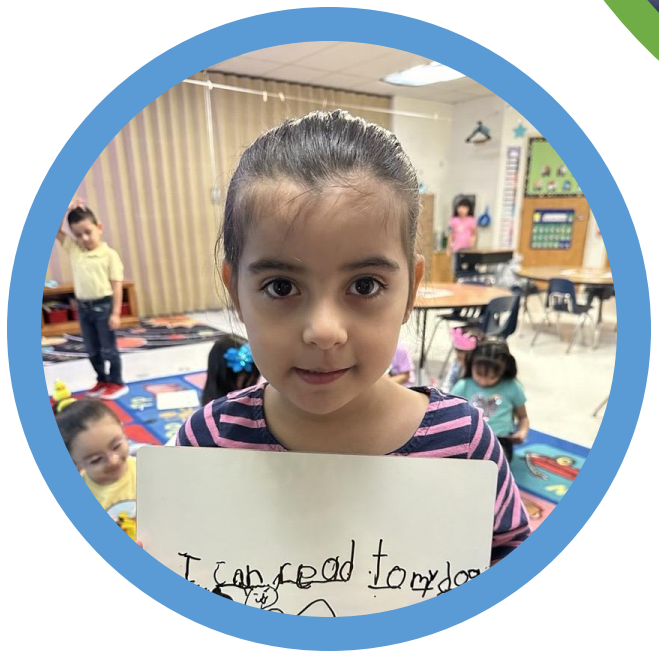




Thank you!

¡Gracias!

감사합니다!







BILINGUAL/ESL/FOREIGN LANGUAGES DEPARTMENT

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Report Regarding the McAllen Education Foundation

REFERENCE: Goal 1: Student Achievement/Student Focus,

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Education Foundation (MEF) provides support to help foster excellence and enhance educational opportunities for students in McAllen ISD. Non-profit group made of citizens and business leaders who support McAllen ISD. The organization formed in 1996.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

None Required.

LEGAL REVIEW:

None Required.

BUDGETARY CONSIDERATIONS:

None Required.

RECOMMENDED BOARD ACTION:

This item is for informational purposes only.

Attachment: ☑

SUBMITTED BY: Alberto Canales
Alberto Canales (Oct 16, 2024 11:10 CDT)

SUPERVISOR: Lorena Garcia

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 16, 2024 14:39 CDT)

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Report Regarding Taxes Collected for July through September 2024

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 quarterly net decrease to taxes receivable of $989,695.86 for July through September 2024. Modifications are posted to the general ledger on a monthly basis and are included as part of the monthly tax report.

The July through September 2024 Tax Collections Reports are attached. The amount collected was $745,799.26.
July:
Local Maintenance Collection ($124,681.66)
Debt Service Collection ($14,696.07)
August:
Local Maintenance Collection $562,318.27
Debt Service Collection $84,913.87
September:
Local Maintenance Collection $207,028.21
Debt Service Collection $30,916.64

LEGAL REVIEW:
Not required.

BUDGETARY CONSIDERATIONS:
Not required.

RECOMMENDED BOARD ACTION:
The Report Regarding Taxes Collected for July through September 2024 is submitted to the Board for information purposes only and requires no Board action.

Attachment: ☑

SUBMITTED BY: Iris Luna

SUPERVISOR: Lorena Garcia

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:

RENE GUTIERREZ (Oct 16, 2024 10:04 CDT)

Superintendent of Schools

PREPARED BY: Josue Guerra

PABLO "PAUL" VILLARREAL JR., ASSESSOR & COLLECTOR
MCALLEN I.S.D. TAXES COLLECTED FOR:
JULY 2024

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 2024/2025	COLLECTED 2023/2024
2024 TAX ROLL	-	-	-	-	-	#DIV/0!	#DIV/0!
2023 & PRIOR YRS	7,652,262.65	(139,377.73)	(383,840.26)	(617,797.64)	6,790,002.48	-2.10%	6.59%
ROLLBACK	17,450.24	-	-	12,115.23	29,565.47	0.00%	0.00%
TOTALS	7,669,712.89	(139,377.73)	(383,840.26)	(605,682.41)	6,819,567.95		

BREAKDOWN OF TAX COLLECTIONS AND FEES FOR THE MONTH OF JULY 2024

	MCALLEN ISD	MONTHLY MODIFICATIONS	
CURRENT YEAR-BASE TAX	-	-	CURRENT
CURRENT YEAR-P&I	-		
PRIOR YEARS-BASE TAX	(139,377.73)	(617,797.64)	PRIOR
PRIOR YEARS-P&I	79,413.00		
ROLLBACK	-	12,115.23	ROLLBACK
ROLLBACK P&I	-		
ATTORNEY FEES	64,517.73	(383,840.26)	PURGED
TOTAL COLLECTIONS	4,553.00	(989,522.67)	
LESS TRANSFERRED	296,408.23		
LESS IN TRANSIT	-		
LESS DUE TO HCAD COMM FEES	119.70		
LESS DUE TO CO TREASURER	13,854.00		
LESS COURT ORDER INTEREST			
BALANCE	(305,828.93)		

**********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 JULY IS CORRECT.

ASSESSOR-COLLECTOR OF TAXES FOR MCALLEN I.S.D., TEXAS

HIDALGO COUNTY ASSESSOR & COLL. OF TEXAS

SWORN AND SUBSCRIBED BEFORE ME THIS 12TH DAY OF AUGUST 2024 A.D.

NOTARY PUBLIC, HIDALGO COUNTY, TEXAS

NOTARY PUBLIC
Jose Edgar Jaramillo
Notary ID#
12911866-7
My Comm. Exp.
9-10-2024
STATE OF TEXAS

PREPARED BY: Josue Guerra

PABLO "PAUL" VILLARREAL JR., ASSESSOR & COLLECTOR
MCALLEN I.S.D. TAXES COLLECTED FOR:
AUGUST 2024

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 2024/2025	COLLECTED 2023/2024
2024 TAX ROLL	-	-	-	-	-	#DIV/0!	#DIV/0!
2023 & PRIOR YRS	7,652,262.65	491,621.29	(383,840.26)	(618,061.63)	6,158,739.47	7.39%	12.50%
ROLLBACK	17,450.24	16,233.12	-	12,115.23	13,332.35	54.91%	0.00%
TOTALS	7,669,712.89	507,854.41	(383,840.26)	(605,946.40)	6,172,071.82		

BREAKDOWN OF TAX COLLECTIONS AND FEES FOR THE MONTH OF AUGUST 2024

	MCALLEN ISD	MONTHLY MODIFICATIONS	
CURRENT YEAR-BASE TAX	-	-	CURRENT
CURRENT YEAR-P&I	-		
PRIOR YEARS-BASE TAX	630,999.02	(263.99)	PRIOR
PRIOR YEARS-P&I	168,986.50		
ROLLBACK	16,233.12	-	ROLLBACK
ROLLBACK P&I	-		
ATTORNEY FEES	112,795.54	-	PURGED
TOTAL COLLECTIONS	929,014.18	(263.99)	
LESS TRANSFERRED	159,541.68		
LESS IN TRANSIT	449,594.82		
LESS DUE TO HCAD COMM FEES	194.75		
LESS DUE TO CO TREASURER	13,854.00		
LESS TRANSFER FROM JULY DEFICIT	305,828.93		
BALANCE	-		

**********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 AUGUST 2024 IS CORRECT.

Pablo Paul Villarreal Jr.

ASSESSOR-COLLECTOR OF TAXES FOR MCALLEN I.S.D., TEXAS

SWORN AND SUBSCRIBED BEFORE ME THIS 13TH DAY OF SEPTEMBER 2024 A.D.

Mark Martinez

NOTARY PUBLIC, HIDALGO COUNTY, TEXAS

HIDALGO COUNTY ASSESSOR & COLL OF TEXAS

NOTARY PUBLIC
Mark A. Martinez
Notary ID# 13366428-4
My Comm. Exp. 04-18-2026
STATE OF TEXAS

PREPARED BY: Josue Guerra

PABLO "PAUL" VILLARREAL JR., ASSESSOR & COLLECTOR
MCALLEN I.S.D. TAXES COLLECTED FOR:
SEPTEMBER 2024

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 2024/2025	COLLECTED 2023/2024
2024 TAX ROLL	-	-	-	-	-	#DIV/0!	#DIV/0!
2023 & PRIOR YRS	7,652,262.65	717,450.91	(383,840.26)	(617,970.83)	5,933,000.65	10.79%	15.46%
ROLLBACK	17,450.24	28,348.35	-	12,115.23	1,217.12	95.88%	0.00%
TOTALS	7,669,712.89	745,799.26	(383,840.26)	(605,855.60)	5,934,217.77		

BREAKDOWN OF TAX COLLECTIONS AND FEES FOR THE MONTH OF SEPTEMBER 2024

	MCALLEN ISD	MONTHLY MODIFICATIONS	
CURRENT YEAR-BASE TAX	-	-	CURRENT
CURRENT YEAR-P&I	-		
PRIOR YEARS-BASE TAX	225,829.62	90.80	PRIOR
PRIOR YEARS-P&I	63,995.40		
ROLLBACK	12,115.23	-	ROLLBACK
ROLLBACK P&I	-		
ATTORNEY FEES	41,133.02	-	PURGED
TOTAL COLLECTIONS	343,073.27	90.80	
LESS TRANSFERRED	180,666.64		
LESS IN TRANSIT	148,523.09		
LESS DUE TO HCAD COMM FEES	29.54		
LESS DUE TO CO TREASURER	13,854.00		
	-		
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 2024 IS CORRECT.

Pablo Paul Villarreal Jr.

ASSESSOR-COLLECTOR OF TAXES FOR MCALLEN I.S.D., TEXAS

HIDALGO COUNTY ASSESSOR & COLL OF TEXAS

SWORN AND SUBSCRIBED BEFORE ME THIS 10TH DAY OF OCTOBER 2024 A.D.

Jose E Jaramillo

NOTARY PUBLIC, HIDALGO COUNTY, TEXAS

NOTARY PUBLIC STATE OF TEXAS

JOSE EDGAR JARAMILLO
Notary Public
STATE OF TEXAS
Notary ID# 129118667
My Comm. Exp. 09-10-2028

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2025-1000 Voluntary/Supplemental Insurance Products and Related Services

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen ISD (the "District") makes available Life Insurance, Accidental Death and Dismemberment ("AD&D"), Long Term Disability, Cancer, Vision, Legal and other benefits to employees for purchase on a voluntary basis.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Two hundred and thirty-seven (237) vendors were invited to submit proposals. Thirty-five (35) vendors responded from several companies and agents with varying benefits, costs, and options. Several proposals included value-added services to be funded by product commission dollars contingent on award of specific number or category of benefit plans.

Responses for this solicitation were evaluated by the Benefits Review Committee (the "Committee"), the Committee is composed of administrative staff, professional faculty, paraprofessional staff and auxiliary staff. The Committee, in consultation with Valley Risk Consulting, met to evaluate all proposals, interview and assign service agents.

The Committee met on September 12, 2024, September 16, 2024, and September 19, 2024 and September 30, 2024 to evaluate the proposals. On October 7, 2024, the committee interviewed and selected three ("3") insurance agents to service the awarded products.

After a Best And Final process, the committee met on October 17, 2024 for final review and recommendation of assignment of agents as per Attachment A. All vendors have guaranteed premiums/rates for a three-year period. Coverage effective date is January 1, 2025

LEGAL REVIEW:

The agreement has been approved by Legal counsel.

BUDGETARY CONSIDERATIONS:

Products are available for purchase by employees and are 100% employee paid.

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2025-1000 Voluntary/Supplemental Insurance Products and Related Services

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

RECOMMENDED BOARD ACTION:

Administration recommends:

A) that the Board of Trustees approve Request for Proposal No. 2025-1000 Voluntary/Supplemental Insurance Products and Related Services and award the vendors identified on Attachment A, for a term of three (3) years, from January 1, 2025 through December 31, 2027.

B) authorize the Superintendent to execute the contract, once the draft contract has been negotiated, and any renewal applications and related contract documents.

Attachment: ☑

SUBMITTED BY: Andres Silva

SUPERVISOR: Lorena Garcia
Lorena Garcia (Oct 18, 2024 13:42 CDT)

For further information contact:
Name: Mr. Andres Silva, Director for Employee Benefits & Safety/Risk Management
Office: 956-618-6007
Email: andres.silva@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 18, 2024 14:38 CDT)

Superintendent of Schools

ATTACHMENT A

RFP NO. 2025-1000 VOLUNTARY/SUPPLEMENTAL INSURANCE PRODUCTS AND RELATED SERVICES

RECOMMENDED VENDORS

PRODUCT	CARRIER	AGENT	COMMENTS
VISION	AFLAC-Davis Vision	Salazar Insurance Group, LLC	Same Provider, Benefits, Cost
CANCER	Colonial Life	Salazar Insurance Group, LLC	Same Carrier, Benefits, Cost
HOSPITAL INDEMNITY	United Healthcare	Salazar Insurance Group, LLC	Same Carrier, Benefits, **Lower Cost**
WHOLE LIFE	Texas Republic Life	Salazar Insurance Group, LLC	**New Carrier,** Comparable Plan, Potentially Lower **Cost** based on attained age and coverage level
ACCIDENT	The Hartford	RJG Retirement Services, LLC	**New Carrier, Higher Benefit Limits, Lower Cost**
LEGAL	Pre-Paid Legal Service	RJG Retirement Services, LLC	**New Carrier**, Comparable Benefits, **Advantageous** Composite Rate (Family)
GROUP TERM LIFE/AD&D	BC/BS-Dearborn National	Keith & Keith Insurance	**New Carrier, Higher cost**, **Same cost** for Child Term Coverage and AD&D

No.	RFP No. 2025-1000 (Vision) *Criteria #4 based on High Plan. High plan is most populated plan*	Max. Pts. 100	Blue Cross Blue Shield	AFLAC (Davis Vision)	HUMANA
	Total Points	**100**	**82.38**	**94.00**	**87.86**
	Ranking		**3**	**1**	**2**
1	**Price**	**30**	**27.66**	**30.00**	**27.27**
	Low Plan				
	Employee Only $5.11 Census: 161		$5.54	$5.11	$5.62
	Employee + Spouse $8.95 Census: 12		$9.71	$8.95	$9.84
	Employee + Children $9.80 Census: 37		$10.63	$9.80	$10.78
	Employee + Family $14.22 Census: 14		$15.42	$14.22	$15.64
	Annual Total: $17,902		**$19,412**	**$17,901**	**$19,689**
	High Plan				
	Employee Only $ 5.47 Census: 1131		$5.93	$5.47	$6.02
	Employee + Spouse $ 9.58 Census: 133		$10.39	$9.58	$10.54
	Employee + Children $10.49 Census: 298		$11.38	$10.49	$11.54
	Employee + Family $15.22 Census: 366		$16.51	$15.22	$16.74
	Annual Total: $193,887		**$210,271**	**$193,887**	**$213,314**
	Combined Total $211,789		**$229,683**	**$211,788**	**$233,003**
2	**Reputation of the vendor and of the vendor's goods or services;**	**3**	**3**	**3**	**2**
	AM Best Rating		**3**	**3**	**2**
	Max pts (3pts): A+ = 3 pts , A- to A = 2 pts, B+ below = 0 pts		A+	A+	A
3	**The quality of the vendor's goods or services**	**10**	**2.50**	**10.00**	**9.50**
	Accounts:	**3**	**2.50**	**3.00**	**2.50**
	Max pts (3 pts): 0.5 pts for each Tx reference + 0.5 pts each if comparable size (minimum of 2000)		2 ref (comp size/Tx) 1 ref (Tx)	3 ref (comp size/Tx)	2 ref (comp size/Tx) 1 ref (Tx)
	Are customer service agents bilingual?	**7**	**0**	**7**	**7**
	Max pts (7 pts): Yes = 7 pts, No = 0 pts		No	Yes	Yes
4	**The extent to which the goods or services meet District's needs**	**45**	**39**	**39**	**39**
	Frame Allowance: (#82)	**10**	**8**	**8**	**8**
	Max pts (10 pts): Exceeds = (10) pts, Match = (8 pts), Below = (0 pts) $175 Allowance		Match @ $175	Match @ $175	Match @ $175
	Frame Frequency: (#82)	**10**	**8**	**8**	**8**
	Max pts (10 pts): Exceeds = (10) pts, Match = (8 pts), Below = (0 pts) 24 months		Match @ 24 months	Match @ 24 months	Match @ 24 months
	Contact Lens Allowance: (#83)	**10**	**8**	**8**	**8**
	Max pts (10 pts): Exceeds = (10) pts, Match = (8 pts), Below = (0 pts) $175 Allowance		Match @ $175	Match @ $175	Match @ $175
	Do you have Out of Network Benefits? (#74)	**10**	**10**	**10**	**10**
	Max pts (10 pts): Yes = (10 pts), No = (5 pts)		Yes	Yes	Yes
	Can the member select where lenses are purchased? (#72)	**5**	**5**	**5**	**5**
	Max pts (5 pts): Yes = (5) pts, No = (3) pts		Yes	Yes	Yes
5	**Past Relationship with District**	**2**	**1**	**2**	**1**
	Max pts (2 pts): Yes = 2 pts, No = 1 pts		No	Yes	No
6	**HUB**	**0**	**0**	**0**	**0**
	N/A		0	0	0
7	**Total long-term cost to the district to acquire the vendor's goods or services;**	**10**	**9.22**	**10**	**9.09**
	Year 2	**5**	4.61	5	4.54
			$229,683	$211,788	$233,003
	Year 3	**5**	4.61	5	4.54
			$229,683	$211,788	$233,003
8	**Vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state**	**0**	**0**	**0**	**0**
	N/A		0	0	0
9	**Any other relevant factor specifically listed in the request for bids or proposals.**	**0**	**0**	**0**	**0**
	N/A		0	0	0

No.	RFP No. 2025-1000 (Cancer) *Criteria #4 based on Low Plan. Low plan is most populated plan*			Max. Pts. 100	Colonial Life	MetLife (Baybridge Adm)	CHUBB	Manhattan Life
	Total Points			**100**	**86.50**	**82.17**	**85.47**	**83.06**
	Ranking				**1**	**4**	**2**	**3**
1	**Price**			**40**	**40**	**36.47**	**36.06**	**37.18**
	Low Plan							
	Employee Only	$13.50	Census: 600		$13.50	$13.24	$13.38	$12.99
	Employee + Family	$22.45	Census: 249		$22.45	$27.67	$28.04	$27.13
	Annual Total:	**$164,281**			**$164,280.60**	**$178,005.96**	**$180,119.52**	**$174,592.44**
				20	20	18.46	18.24	18.82
	High Plan							
	Employee Only	$28.80	Census: 434		$28.80	$28.40	$28.54	$27.86
	Employee + Family	$47.80	Census: 317		$47.80	$59.12	$59.98	$57.98
	Annual Total:	**$331,822**			**$331,821.60**	**$372,799.68**	**$376,800.24**	**$365,650.80**
				20	20	18.01	17.82	18.37
	Combined Total:	**$496,102**			**$496,102.20**	**$550,805.64**	**$556,919.76**	**$540,243.24**
2	**Reputation of the vendor and of the vendor's goods or services;**			**3**	**2**	**3**	**3**	**0**
	AM Best Rating				**2**	**3**	**3**	**0**
	Max pts (3pts): A+ = 3 pts , A- to A = 2 pts, B+ below = 0 pts				A	A+	A++	B++
3	**The quality of the vendor's goods or services**			**10**	**10**	**10**	**9**	**9**
	References:			3	**2.50**	**3.00**	**1.50**	**2.00**
	Max pts (3 pts): 0.5 pts for each Tx reference + 0.5 pts each if comparable size (minimum of 2000)				2 ref (comp size/Tx) 1 ref (Tx)	3 ref (comp size/Tx)	3 ref (Tx)	1 ref (comp size/Tx) 2 ref (Tx)
	Are customer service agents bilingual?			7	**7**	**7**	**7**	**7**
	Max pts (7 pts): Yes = 7 pts, No = 0 pts				Yes	Yes	Yes	Yes
4	**The extent to which the goods or services meet District's needs**			**35**	**23**	**28**	**28**	**28**
	Radiation/Chemotherapy/Immunotherapy:			10	**8**	**10**	**10**	**10**
	Max pts (10 pts): Exceeds = (10) pts, Match = (8 pts), Below = (0 pts)		$150/day- $5,000 max/calendar year		Match	Exceeds @ $200/day	Exceeds @ $10,000	Exceeds @ $200
	Bone Marrow Transplant:			5	**3**	**5**	**5**	**5**
	Max pts (5 pts): Exceeds = (5) pts, Match = (3 pts), Below = (0 pts)		$10,000 max/lifetime		Match	Exceeds @ $15,000	Match	Exceeds @ $15,000
	New or Experimental Treatment:			5	**3**	**0**	**0**	**0**
	Max pts (5 pts): Exceeds = (5) pts, Match = (3 pts), Below = (0 pts)		$300/day-$10,000 max/lifetime		Match	Below @ $7,500	Below $75/visit (4 max)	Below @ $7,500
	First Occurrence Benefit:			5	**3**	**5**	**5**	**5**
	Max pts (5 pts): Exceeds = (5) pts, Match = (3 pts), Below = (0 pts)		$2,000 max		Match	Exceeds @ $2,500	Exceeds @ $5,000	Exceeds @ $2,500
	Hospital Confinement:			5	**3**	**3**	**3**	**3**
	Max pts (5 pts): Exceeds = (5) pts, Match = (3 pts), Below = (0 pts)		$100/day/30 days then $200/day/calendar year		Match	Match	Match	Match
	Ambulatory/Outpatient Surgical Benefit:			5	**3**	**5**	**5**	**5**
	Max pts (5 pts): Exceeds = (5) pts, Match = (3 pts), Below = (0 pts)		$250/day-$750/calendar year		Match	Exceed @ $1500	Exceeds $200 per day (4 max)	Exceeds @ $250/day (No Max)
5	**Past Relationship with District**			**2**	**2**	**1**	**1**	**1**
	Max pts (2 pts): Yes = 2 pts, No = 1 pts				Yes	No	No	No
6	**HUB**			**0**	**0**	**0**	**0**	**0**
	N/A				0	0	0	0
7	**Total long-term cost to the district to acquire the vendor's goods or services;**			**10**	**10.00**	**3.70**	**8.91**	**7.87**
	Year 2			5	**5.00**	**3.70**	**4.45**	**3.94**
					$496,102.20	$670,803	$556,919	$630,282
	Year 3			5	**5.00**	**0.00**	**4.45**	**3.94**
					$496,102.20	not offered	$556,919	$630,282
8	**Vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state**			**0**	**0**	**0**	**0**	**0**
	N/A				0	0	0	0
9	**Any other relevant factor specifically listed in the request for bids or proposals.**			**0**	**0**	**0**	**0**	**0**
	N/A				0	0	0	0

No.	RFP No. 2025-100 (Hospital Indemnity) Criteria	Max. Pts. 100	United Health Care	Lincoln Financial
	Total Points	**100**	**79.50**	**78.65**
	Ranking		**1**	**2**
1	**Price**	**30**	**30.00**	**27.11**
	Employee Only Census: 720		$5.58	$6.18
	Employee + Spouse Census: 168		$10.32	$11.42
	Employee + Children Census: 310		$9.75	$10.78
	Employee + Family Census: 540		$15.51	$17.16
	Annual Total: $228,630		**$205,791.12**	**$227,716.32**
2	**Reputation of the vendor and of the vendor's goods or services;**	**3**	**3**	**2**
	AM Best Rating		**3**	**2**
	Max pts (3pts): A+ = 3 pts , A- to A = 2 pts, B+ below = 0 pts		A+	A
3	**The quality of the vendor's goods or services**	**10**	**9.5**	**9.5**
	Accounts:	3	**2.5**	**2.5**
	Max pts (3 pts): 0.5 pts for each Tx reference + 0.5 pts each if comparable size (minimum of 2000)		2 ref (comp size/Tx) 1 ref (Tx)	2 ref (comp size/Tx) 1 ref (Tx)
	Are customer service agents bilingual?	7	**7**	**7**
	Max pts (7 pts): Yes = 7 pts, No = 0 pts		yes	yes
4	**The extent to which the goods or services meet District's needs**	**45**	**25**	**30**
	Hospital Admission:	15	**10**	**10**
	Max pts (15 pts): Exceeds = (15) pts, Match = (10 pts), Below = (0 pts) $500		Match @ $500	Match @ $500
	Hospital Confinement/ICU Confinement	15	**10**	**15**
	Max pts (15 pts): Exceeds = (15) pts, Match hospital = (5 pts) Match ICU = (5 pts.), Below = (0 pts) Hospital: $100 max - 364 days , ICU: $100 - 364 days		Hosp: Match @ $100 (364) days ICU: Match @ $100 (364) days	Hosp: Match @ $100 (364) days ICU: Exceeds @ $200 (364) days
	Emergency Room:	7.5	**5**	**5**
	Max pts (7.5 pts): Max pts (7.5 pts): Exceeds = (7.5) pts, Match = (5 pts), Below = (0 pts) $100 (4 days)		Match @ $100 (4) days	Match @ $100 (4) days
	Ambulance Benefit:	7.5	**0**	**0**
	Max pts (7.5 pts): Yes = (7.5) pts, None = (0 pts)		None	None
5	**Past Relationship with District**	**2**	**2**	**1**
			2	**1**
	Max pts (2 pts): Yes = 2 pts, No = 1 pts		Yes	No
6	**HUB**	**0**	**0**	**0**
	N/A		0	0
7	**Total long-term cost to the district to acquire the vendor's goods or services;**	**10**	**10**	**9.04**
	Year 2	5	**5**	**4.52**
			$205,791.12	$227,716.32
	Year 3	5	**5**	**4.52**
			$205,791.12	$227,716.32
			3 year rate	**5 year rate**
8	**Vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state**	**0**	**0**	**0**
	N/A		0	0
9	**Any other relevant factor specifically listed in the request for bids or proposals.**	**0**	**0**	**0**
	N/A		0	0

No.	RFP No. 2025-1000 Voluntary Products (Whole Life) Criteria	Max. Pts. 100	Texas Life Insurance	Texas Republic Life	Trustmark
	Total Points	**100**	**89.34**	**96.00**	**93.15**
	Ranking		**3**	**1**	**2**
1	**Price**	**30**	**24.34**	**30.00**	**26.15**
	Policy Premium *($50,000 face amount, average age 45 years old)*		**$59.25**	**$48.08**	**$55.16**
2	**Reputation of the vendor and of the vendor's goods or services;**	**3**	**3**	**2**	**2**
	AM Best Rating (#439)		3	2	2
	Max pts (3pts): A+ = 3 pts , A- to A = 2 pts, B+ below = 0 pts		A+	A	A
3	**The quality of the vendor's goods or services**	**10**	**10**	**8**	**9**
	Accounts:	**3**	3	3	2
	Max pts (3 pts): 0.5 pts for ea. Tx reference + 0.5 pts ea. if comparable size (minimum of 2000)		3 ref (comp size/Tx)	3 ref (comp size/Tx)	1 ref (comp size/Tx) 2 ref (Tx)
	Years in business	7	7	5	7
	Max pts (7 pts): 15+ = 7 pts, 7-14 = 5 pts, 0-6 = 3 pts		15+	11	15+
4	**The extent to which the goods or services meet District's needs**	**45**	**40**	**45**	**45**
	Is product subject to simplified underwriting with no medical exams (#458)	15	15	15	15
	Max pts (15 pts): Yes = 15 pts, No = 7.5 pts		yes	yes	yes
	Is product Guaranteed Issue (#456)	10	5	10	10
	Max pts (10 pts): Yes = 10 pts, No = 5 pts		no	yes	yes
	Is product available to Employee, Spouse, Children & Grandchildren (#460)	10	10	10	10
	Max pts (10 pts): Yes = 10 pts, No = 5 pts		yes	yes	yes
	Is policy portable (#453)	10	10	10	10
	Max pts (10 pts): Yes = 10 pts, No = 5 pts		yes	yes	yes
5	**Past Relationship with District**	**2**	**2**	**1**	**1**
	Max pts (2 pts): Yes = 2 pts, No = 1 pts		Yes	No	No
6	**HUB**	**0**	**0**	**0**	**0**
	N/A		0	0	0
7	**Total long-term cost to the district to acquire the vendor's goods or services;**	**10**	**10**	**10**	**10**
	Are rates guaranteed for (3) years (#461)	10	10	10	10
	Max pts (10 pts): Yes = 10 pts, No = 0 pts		Yes; based on attained age	Yes; based on attained age	Yes; based on attained age
8	**Vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state**	**0**	**0**	**0**	**0**
	N/A		0	0	0
9	**Any other relevant factor specifically listed in the request for bids or proposals.**	**0**	**0**	**0**	**0**
	N/A		0	0	0

No.	RFP No. 20251-1000 (Group Accident) Criteria				Max. Pts. 100	AETNA	Lincoln Financial	Securian Financial	The Hartford
	Total Points				**100**	**88.53**	**90.26**	**86.50**	**99.00**
	Ranking					**3**	**2**	**4**	**1**
1	**Price**				**30**	**25.89**	**25.32**	**30.00**	**30.00**
	Employee Only	$5.38	Census:	810		$4.68	$4.78	$4.04	$4.04
	Employee + Spouse	$8.32	Census:	101		$7.23	$7.40	$6.24	$6.24
	Employee + Children	$11.01	Census:	144		$9.57	$9.80	$8.26	$8.26
	Employee + Family	$16.54	Census:	201		$14.38	$14.72	$12.41	$12.41
	Annual Total:	**$121,297.20**				**$105,473.88**	**$107,869.44**	**$91,037.88**	**$91,037.88**
2	**Reputation of the vendor and of the vendor's goods or services;**				**3**	**2**	**3**	**3**	**3**
	AM Best Rating					**2**	**3**	**3**	**3**
	Max pts (3pts): A+ = 3 pts , A- to A = 2 pts, B+ below = 0 pts					A	A+	A+	A+
3	**The quality of the vendor's goods or services**				**10**	**10**	**10**	**10**	**10**
	Accounts:				3	**3.0**	**2.5**	**2.5**	**3.0**
	Max pts (3 pts): 0.5 pts for each Tx reference + 0.5 pts each if comparable size (minimum of 2000)					3 ref (comp size/Tx)	2 ref (comp size/Tx) 1 ref (Tx)	2 ref (comp size/Tx) 1 ref (comp size only not TX))	3 ref (comp size/Tx)
	Are customer service agents bilingual?				**7**	**7**	**7**	**7**	**7**
	Max pts (7 pts): Yes = 7 pts, No = 0 pts					Yes	Yes	Yes	Yes
4	**The extent to which the goods or services meet District's needs**				**45**	**41**	**43**	**33**	**45**
	Hospital Admission:				5	**5**	**5**	**5**	**5**
	Max pts (5 pts): Exceeds = (5) pts, Match = (3 pts), Below = (0 pts)	$1000				Exceed @ $1,250	Exceed @ $1,500	Exceed @ $2,000	Exceed @ $2,000
	Accident Emergency Treatment:				5	**5**	**5**	**5**	**5**
	Max pts (5 pts): Exceeds = (5) pts, Match = (3 pts), Below = (0 pts)	$150				Exceed @ $170	Exceed @ $200	Exceed @ $300	Exceed @ $250
	Accidental Death Benefit (Employee):				10	**8**	**10**	**8**	**10**
	Max pts (10 pts): Exceeds = (10) pts, Match = (8 pts), Below = (0 pts)	$50,000				Match @ $50,000	Exceed @ $100,000	Match @ $50,000	Exceed @ $100,000
	Accidental Death Benefit (Common Carrier):				10	**8**	**8**	**0**	**10**
	Max pts (10 pts): Exceeds = (10) pts, Match = (8 pts), Below = (0 pts)	$200,000				Match @ $200,000	Match @ $200,000	Below @ $100,000	Exceed @ $300,000
	Surgical Benefit (Cranial, Thoracic):				5	**5**	**5**	**5**	**5**
	Max pts (5 pts): Exceeds = (5) pts, Match = (3 pts), Below = (0 pts)	$1500				Exceed @ $2,000	Exceed @ $2,000/$2,250	Exceed @ $2,000	Exceed @ $3,000
	Physical Therapy Benefit:				5	**5**	**5**	**5**	**5**
	Max pts (5 pts): Exceeds = (5) pts, Match = (3 pts), Below = (0 pts)	$25 per day (10) day max				Exceed @ $30 per day (10) max	Exceed @ $50 per day (10) max	Exceed @ $600 max - lump sum	Exceed @ $125 per day (10) max
	Medical Imaging Study Benefit:				5	**5**	**5**	**5**	**5**
	Max pts (5 pts): Exceeds = (5) pts, Match = (3 pts), Below = (0 pts)	$163				Exceed @175	Exceed @ $200	Exceed @ $300	Exceed @ $300
5	**Past Relationship with District**				**2**	**1**	**1**	**1**	**1**
						1	1	1	1
	Max pts (2 pts): Yes = 2 pts, No = 1 pts					No	No	No	No
6	**HUB**				**0**	**0**	**0**	**0**	**0**
	N/A					0	0	0	0
7	**Total long-term cost to the district to acquire the vendor's goods or services;**				**10**	**8.63**	**8.44**	**10.00**	**10.00**
	Year 2				5	**4.32**	**4.22**	**5.00**	**5.00**
						$105,473.88	$107,869.44	$91,037.88	$91,037.88
	Year 3					**4.32**	**4.22**	**5.00**	**5.00**
					5	$105,473.88	$107,869.44	$91,037.88	$91,037.88
						5 year rate	**5 year rate**	**3 year rate**	**3 year rate**
8	**Vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state**				**0**	**0**	**0**	**0**	**0**
	N/A					0	0	0	0
9	**Any other relevant factor specifically listed in the request for bids or proposals.**				**0**	**0**	**0**	**0**	**0**
	N/A					0	0	0	0

No.	RFP No. 2025-1000 (Legal) Criteria				Max. Pts. 100	Pre-Paid Legal Services (Legal Shield)
	Total Points				**100**	**90.00**
	Ranking					**1**
1	**Price**				**30**	**30.00**
	Employee Only	$14.75	Census:	146		$16.50
	Employee + Family	$16.90	Census:	82 (COMPOSITE RATE)		
	Annual Total:	**$42,472**				**$45,144.00**
2	**Reputation of the vendor and of the vendor's goods or services;**				**3**	**0**
	AM Best Rating (#298)					**0**
	Max pts (3pts): A+ = 3 pts , A- to A = 2 pts, B+ below = 0 pts					N/A
3	**The quality of the vendor's goods or services**				**10**	**9**
	Accounts: (#300)				**3**	**2**
	Max pts (3 pts): 0.5 pts for each Tx reference + 0.5 pts each if comparable size (minimum of 2000)					1 ref (comp size/Tx) 2 ref (Tx)
	Years in business? (#297)				**7**	**7**
	Max pts (7 pts): 15+ = 7 pts, 7-14 = 5 pts, 0-6 = 3 pts					15+
4	**The extent to which the goods or services meet District's needs**				**45**	**40**
	Number of Affiliated Attorneys in Hidalgo Co? (#328)				20	**20**
	Max 20 pts.					2
	Are divorce benefits available?				10	**10**
	Yes = 10 pts No = 5 pts					Yes
	Are out of network benefits available?				10	**5**
	Yes = 10 pts, No = 5 pts					Call Center Assigned
	Portable and at same Active Employee Rate (#318 & 319)				5	**5**
	Max pts (5 pts): Yes/Yes = 5 pts, Yes/No = 2.5 pts, No = 0 pts					Yes/Yes
5	**Past Relationship with District**				**2**	**1**
					2	**1**
	Max pts (2 pts): Yes = 2 pts, No = 1 pts					No
6	**HUB**				**0**	
	N/A					0
7	**Total long-term cost to the district to acquire the vendor's goods or services;**				**10**	**10**
					5	**5**
	Year 2					$45,144.00
						5
	Year 3				5	$45,144.00
8	**Vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state**				**0**	**0**
	N/A					0
9	**Any other relevant factor specifically listed in the request for bids or proposals.**				**0**	**0**
	N/A					0

	RFP No. 2025-1000 Voluntary Products (Term Life & AD&D)			Dearborn National (BCBS)	Securian Financial
No.	Criteria		Max. Pts. 100		
	Total Points		**100**	**98.61**	**98.00**
	Ranking			1	2
1	**Price**		**30**	**29.71**	**30.00**
	Based on rate per $1,000				
	>25	$0.024		$0.027	$0.025
	25-29	$0.024		$0.027	$0.025
	30-34	$0.029		$0.033	$0.030
	35-39	$0.029		$0.033	$0.030
	40-44	$0.047		$0.053	$0.049
	45-49	$0.084		$0.095	$0.088
	50-54	$0.130		$0.148	$0.137
	55-59	$0.230		$0.261	$0.242
	60-64	$0.364		$0.413	$0.382
	65-69	$0.625		$0.709	$0.656
	70-74	$1.749		$1.985	$1.836
	75+	$1.749		$1.985	$1.836
	AD&D	$0.020		$0.020	$0.020
	Annual Total Term Life (EE Only)	$477346		**$570,923**	**$564,254**
	Annual Total AD&D (EE, CH, & EF)	$118,065		**$118,065**	**$118,065**
	Annual estimate of EE, ES, EC & AD&D $595,411			**$688,988**	**$682,319**
2	**Reputation of the vendor and of the vendor's goods or services;**		**3**	**3**	**3**
	AM Best Rating			**3**	**3**
	Max pts (3pts): A+ = 3 pts , A- to A = 2 pts, B+ below = 0 pts			A+	A+
3	**The quality of the vendor's goods or services**		**10**	**10**	**9**
	Accounts:		3	3	2
	Max pts (3 pts): 0.5 pts for ea. Tx reference + 0.5 pts ea. if comparable size (minimum of 2000)			3 ref (comp size/tx)	2 (ref comp size/tx)
	Are customer service agents bilingual?		7	7	7
	Max pts (7 pts): Yes = 7 pts, No = 0 pts			yes	yes
4	**The extent to which the goods or services meet District's needs**		**45**	**45**	**45**
	Waiver of Premium provision included?: (#171)		5	5	5
	Max pts (5 pts): Yes = (5) pts, No = (2.5 pts)			yes	yes
	Is policy portable?: (#183)		10	10	10
	Max pts (10 pts): Yes = (10) pts, No = (5 pts)			yes	yes
	Is policy convertible?: (#186)		5	5	5
	Max pts (5 pts): Yes = (5) pts, No = (2.5 pts)			yes	yes
	Does policy include accelerated death benefit for terminal illness?: (#180)		15	15	15
	Max pts (15 pts): Yes = (15) pts, No = (7.5 pts)			yes	yes
	Average claim processing time?: (#170)		10	10	10
	Max pts (10 pts): 0-7 days = (10) pts, 8+ days = (5 pts)			7 days	2.5 days
5	**Past Relationship with District**		**2**	**1**	**1**
	Max pts (2 pts): Yes = 2 pts, No = 1 pts			No	No
6	**HUB**		**0**	**0**	**0**
	N/A			0	0
7	**Total long-term cost to the district to acquire the vendor's goods or services;**		**10**	**9.90**	**10.00**
				4.95	**5.00**
	Year 2			$688,988	$682,319
				4.95	**5.00**
	Year 3			$688,988	$682,319
8	**Vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state**		**0**	**0**	**0**
	NA			0	0
9	**Any other relevant factor specifically listed in the request for bids or proposals.**		**0**	**0**	**0**
	N/A			0	0

LegalShield®

EMPLOYER AGREEMENT

1. Employer. McAllen Independent Schol District, a educational institution, (the "Employer") enters this agreement ("Agreement") with Pre-Paid Legal Services, Inc., an Oklahoma corporation ("PPLSI" or "Company") (each, a "Party" or collectively, "Parties"), for legal and identity theft services to be offered to Employer's employees as an employee benefit within the United States.

2. Term of Agreement. This Agreement is effective on January 1, 2025, and is for 3 year(s). After the initial term, this Agreement will automatically renew for additional one-year terms. If either Party does not want the Agreement to renew then either Party shall give the other Party at least 120 days prior written notice. Either Party may terminate this Agreement without cause and at any time upon giving 90 days prior written notice to the other Party.

3. Eligibility and Enrollment. All full-time and part-time employees of Employer working 20 plus hours a week are eligible to enroll. Employees may enroll in the group legal ("Service Plans") annually during the Employer's open enrollment. The employee ("Member") must enroll for the plan year. If a newly hired Employee enrolls midyear, they must enroll for the remainder of the plan year. We recognize qualifying life events as defined by the Employer. A Member may add, change, or cancel a membership according to the Employer's qualifying life event definitions.

4. Payment. The rate for the group legal plan ("LegalShield Plan") is $_16.50_ per month per Employee enrolled for the family plan, which includes any applicable supplement amounts. Each month, the Employer will provide the Company with a Member file list and payment for each Member.

5. Data Protection. The Company will comply with applicable laws, regulations, and government orders relating to personally identifiable information ("PII") and data privacy with respect to any such data that the Company receives or has access to under this Agreement. The Company will maintain physical, electronic and procedural safeguards to protect PII in accordance with accepted industry standards. The Company will not use or disclose any data made available or accessible under this Agreement for any purpose other than a business purpose as outlined in PPLSI's Privacy Policy available at https://www.pplsi.com/privacy-policy/.

6. Indemnification. Each Party (the "Indemnifying Party") agrees to defend, indemnify the other Party, its directors, officers, employees, and agents (the "Indemnified Party") and hold them harmless from and against all third-party claims, liability, fees, penalty, losses, direct costs and expenses, obligations (including reasonable attorney's fees and disbursements) judgment or damage ("Damages") directly resulting from the Indemnifying Party's breach of this Agreement or acts or omissions of the Indemnifying Party in the performance of its duties hereunder, except to the extent arising from such action or omission which constitutes gross negligence, recklessness or misconduct on the part of the Indemnified Party. The Indemnified Party will pay any Damages finally awarded against Employer for such action, provided that: (1) the Indemnified Party gives the Indemnifying Party prompt written notice of the action; (2) Indemnifying Party has sole control of the defense,

settlement, or compromise of the action; and (3) Indemnified Party provides the Indemnifying Party with reasonable cooperation, information, and other assistance requested by the Indemnifying Party in connection with the defense, settlement, or compromise of the action. The Indemnified Party may elect to participate in the action with an attorney of its own choice at its own expense. Each Party has a duty to mitigate damages that would otherwise be recoverable hereunder by taking appropriate and reasonable actions to reduce or limit the amount of such damages.

7. Service Plans. The Company will provide the services described in the LegalShield Plan Overview attached as Exhibit A to this Agreement (collectively, "Services") to enrolled Members in return for the membership fee.

8. LegalShield Eligibility. The following are eligible for Services under the family LegalShield Plan:
   a. The Member.

   b. The following family members of Member are also eligible for Services, unless provided otherwise in the family LegalShield Plan:
      i. The Member's spouse or domestic partner.
      ii. Dependent children of the Member, the Member's spouse, or domestic partner, under 26 years of age.
      iii. Children under 18 years of age for whom the Member, the Member's spouse, or domestic partner, is the legal guardian.
      iv. Any dependent child, regardless of age, who is physically disabled or mentally incapacitated resulting in an inability to make legally binding decisions, is unable to be employed and lives at home with the Member, Member's spouse, or domestic partner.
      v. A dependent child is the natural or adopted child of the Member, the Member's spouse, or domestic partner.

9. Change to Service Plan. No change in the Service Plans shall be valid until approved by an officer of the Company. No agent can change the Agreement or Service Plans or waive any of its provisions.

10. Confidential Information. Each Party agrees that during the term of this Agreement, it may disclose Confidential Information ("Disclosing Party") to the other Party ("Receiving Party") and that the Receiving Party will take all reasonable measures to protect the Confidential Information of the Disclosing Party, including, but not limited to, the same degree of care that Receiving Party uses to protect its own confidential information of a like kind and not disclose it except as may be set forth herein. Confidential Information may only be used by the Receiving Party for the purposes contemplated under this Agreement. Confidential Information shall not include information that the Receiving Party can demonstrate: (i) is, as of the time of its disclosure, or thereafter becomes part of the public domain through a source other than the Receiving Party without an obligation of confidentiality, (ii) was known to the Receiving Party prior to the time of its disclosure without an obligation of confidentiality, (iii) is independently developed by the Receiving Party without use of, or reference to, the Disclosing Party's Confidential Information, or (iv) is subsequently learned from a third party not under a confidentiality obligation to the Disclosing Party. If a Receiving Party is required by applicable law, regulation, court order or legal process to disclose any Confidential Information, the Receiving Party will provide the Disclosing Party with prompt notice of such request or requirement, and the Receiving Party will

use reasonable efforts to ensure that all Confidential Information so disclosed is treated confidentially. Such disclosure of Confidential Information in accordance with the foregoing sentence will not violate the terms of this Section 10.

11. Settlement of Disputes. All disputes or claims relating to the Company, the Service Plans, any Company products, any claims or causes of action between any Member, the Employer, and the Company whether in tort or contract, shall be settled totally and finally by arbitration in Oklahoma City, Oklahoma in accordance with the Commercial Arbitration Rules of the American Arbitration Association, including the optional rules for emergency measures of protection. Judgment on any award may be entered in the Pontotoc County District Court or in the United States District Court for the Eastern District of Oklahoma. Each Party will be responsible for consent to the personal jurisdiction and venue of such courts. This Agreement will be governed by and interpreted in accordance with the laws of the State of Oklahoma without regard to its conflict of laws principles. The courts of the State of Oklahoma shall have jurisdiction to resolve any disputes that arise under this Agreement, and each Party consents to such jurisdiction, and to venue in such courts.

12. Notice. All notices under this Agreement must be in writing and shall be deemed to have been duly given and received when (a) delivered by hand (with written confirmation of receipt); (b) sent by email (with written confirmation of receipt), provided that a copy is mailed by registered or certified mail, return receipt requested; or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses set forth below:

If to LegalShield: Pre-Paid Legal Services, Inc.
One Pre-Paid Way
Ada, Oklahoma 74820
Attn: General Counsel
generalcounsel@pplsi.com (email)

If to Employer: McAllen Independent School District
2000 N. 23rd Street
McAllen, Texas 78501
Attn: Dr. René Gutiérrez, Superintendent
CC to: Dr. Albert Canales. Chief Human Resources Officer

13. Reinstatement Procedure. Should the Member leave their employment; they may elect to continue their Service Plans directly with the Company by notifying the Company and providing a payment method. The Company, at its option, may reinstate the Service Plans upon payment by the Member of the member fee. The Effective Date of the reinstatement shall be the date the reinstatement is accepted and processed by the Company. Services are not available for any act or occurrence during the lapse period.

14. Change of Fees. The Company has the right to change the membership fee for the Services Plans. Changes in the fee will only occur on the anniversary date of the Services Plans. Should the fee be changed, the Member will be sent a 30-day written notice.

15. Severability. If any provision of this Agreement is deemed invalid or unenforceable in any

respect, such provision shall be, to the extent possible, reformed to make it effective. If any provision is deemed invalid and incapable of being reformed, it shall not impact the validity and enforceability of all other provisions of this Agreement, which shall remain valid and enforceable.

16. Entire Agreement. The terms and conditions of this Agreement constitute the entire Agreement between the parties and supersede all previous agreements, whether oral or written, between the parties with respect to the subject matter hereof.

PRE-PAID LEGAL SERVICES, INC.

By:_____
Print Name: _____
Title:_____
Date: _____

EMPLOYER

By: McAllen Independent School District
Print Name: Dr. René Gutiérrez
Title: Superintendent
Date: _____

Approved as to form:

By: JOHNATHAN BALL (Oct 18, 2024 13:35 CDT)
Johnathan Ball, Staff Attorney

EXHIBIT A

LEGALSHIELD PLAN OVERVIEW

LegalShield Plan Overview

Accessing Your Provider Law Firm

To receive legal services, you can call your dedicated provider law firm directly. If you have questions about your plan or accessing your provider law firm, you may contact Member Services at 1-888-807-0407 from 7:00 a.m. — 7:00 p.m. CT, Monday-Friday. The Participant and Covered Person will receive the services as outlined in this plan. The services will be provided by lawyers appointed by the Company, who are licensed lawyers (referred to as the Provider Law Firm). All requests for Services must be directed to the Provider Law Firm in your state of residence. For legal matters that arise within the United States and outside your state of residence, the Provider Law Firm may assign a lawyer who is licensed in the appropriate jurisdiction.

Who is Covered

The participant (employee); participant's spouse/domestic partner; dependent children up to the age of 26.

Parents of the participant and/or participant's spouse/domestic partner are also eligible for advice, consultation and document review for covered personal legal matters and can receive the services available to them through the Elder Care Services of this Plan. Services include preparation of a will and a Physicians/Medical Directive.

What Services Are Covered

The LegalShield plan includes the following covered services:

Advice and Consultation

Demand Letter or Phone Call

A phone call or a letter to a third party may be made by the provider law firm if it will further assist in the resolution of the personal legal matter.

Legal Research

This service covers legal research on any personal legal matter.

Office Visits

This service covers office visits with the provider law firm to discuss a personal legal matter. Office visits are available at an agreed appointment time.

Phone Consultation

This service covers toll-free phone consultations to discuss any personal legal matter.

Document Services

Affidavits

This service covers advice, consultation, preparation, and review of documents for an affidavit. The covered person must be the affiant.

Document Review

This service covers review of any personal legal document, such as letters, leases, or purchase agreements.

Family

Adoption and Paternity (Contested or Uncontested)

This service covers advice, consultation, document review and representation for an adoption of a minor in the United States for the covered person. This service covers advice, document review and representation for a legal determination of paternity in the United States for the participant or spouse. Preparation of any required publication notice or any governmental documentation such as fingerprints and criminal history checks are not part of this service.

Administrative Hearing

This service covers advice, consultation, preparation and review of documents and representation for the covered person in defense of an adverse governmental action before a local, municipal, county, state, or federal administrative board, agency or commission.

Bullying Protection

This service covers advice, consultation, document review and letter preparation on behalf of the covered person when a victim of bullying. Bullying is defined as an ongoing aggressive and unwanted behavior for the purpose of this service. Additionally, this service provides defense in administrative hearings for the covered person.

Child Custody (Contested or Uncontested)

This service covers advice, consultation, preparation, document review and court representation up to 30 hours on post-decree matters related to child custody and for suit of ownership of an egg/sperm/embryo for when the participant is the plaintiff or defendant. If the child custody is uncontested and all issues are agreed upon in writing by the parties, the lawyer's time is paid in full. This service is available for the participant only.

Civil and Social Discrimination

This service covers advice, consultation and review of documents for the covered person when a victim of differential treatment based on civil and/or social characteristics including age, disability, ethnicity, gender, marital status, national origin, race, religion or sexual orientation. Defense of an adverse governmental action before a local, municipal, county, state, or federal administrative board, agency or commission is covered. Representation as a plaintiff is available at a 25% discount from the provider law firm's hourly rate.

Divorce (Contested or Uncontested)

This service covers advice, consultation, preparation and review of documents and attendance at all hearings for the enforcement or modification of a support order, including child support and support alimony, even if the matter is contested. In addition, the service includes enforcement and modification of parental visitation with a minor child. These services are only for the post-decree matters described above and may only be used if available in the participant's state of residence. The participant will receive a total of 30 hours of assistance for this service if the order is contested. If the order is uncontested and all issues are agreed upon in writing by the parties, the lawyer's time is paid in full. This service is available to the participant only.

Elder Care Matters

This service covers advice, consultation, and review of documents for the participant, spouse or the parents of the participant or spouse (including Medicare, Medicaid, Social Security Benefits, Veterans Affairs, prescription plans, nursing home agreements, powers of attorney, Living Wills and Wills). The provider law firm will prepare a simple or complex Will, including a testamentary trust, Powers of Attorney and Physicians/Medical Directive for the participant's parents or the parents of the spouse. This service also covers preparation of a deed involving the parents when the participant or spouse is either the grantor or grantee; and preparation of promissory notes involving the parents when the participant or spouse is the payor or payee. This service does not cover trusts, family matters or court representation of the parents of the participant or spouse.

Enforcement and Modification of a Support Order (Contested or Uncontested)

This service covers advice, consultation, preparation and review of documents and attendance at all hearings for the enforcement or modification of a support order, including child support and support alimony, even if the matter is contested. In addition, the service includes enforcement and modification of parental visitation with a minor child. These services are only for the post-decree matters described above and may only be used if available in the participant's state of residence. The participant will receive a total of 30 hours of assistance for this service if the order is contested. If the order is uncontested and all issues are agreed upon in writing by the parties, the lawyer's time is paid in full. This service is available to the participant only.

Gender Rights

This service covers the review of government forms, and preparation of affidavits and powers of attorney concerning a gender identifier change, including updates to estate planning documents for the covered person. This service also covers advice, consultation and document review for gender verification, eligibility, and restrictions of athletic and other school related programs.

Guardianship/Conservatorship

This service covers advice, consultation, preparation and review of documents for the creation of a new guardianship or conservatorship over a person or estate. The named guardian or conservator must be the participant or spouse. This service includes obtaining permanent and/or temporary guardianship or conservatorship, gathering any necessary medical evidence, preparing the paperwork, preparing the initial accounting, and representation in guardianship appointment proceedings.

Immigration Assistance

This service covers advice, consultation, preparation of affidavits and powers of attorney, review of immigration documents and help to prepare for hearings in immigration-related matters.

Incompetency Defense

This service covers advice, consultation, preparation and review of documents and representation when the participant or spouse are the subject of a civil competency determination.

Juvenile Matters

This service covers advice, consultation, preparation and review of documents, and representation of a covered person in juvenile matters, unless there is a conflict of interest between the participant and the dependent child. In the event of a conflict, or where the court requires separate counsel for the child, this service provides a lawyer for the participant only. Matters in which a juvenile is charged as an adult are not part of this service.

Name Change

This service covers advice, consultation, preparation of documents and pleadings and representation at court hearings for a legal name change for a covered person. Preparation of any required publication notice and any governmental documentation such as fingerprints and criminal history checks are not part of this service.

Nursing Home Agreements

This service covers advice, consultation and document review regarding nursing home agreements and how the agreement that the covered person's parent(s) has entered into may impact them.

Pet Protection

This service covers advice, consultation and review of documents for the covered person related to pet legal rights including animal bites, emotional support animal registration, HOA requirements, landlord/tenant issues, pet custody and debt collection matters such as veterinary bills.

Postnuptial Agreements/Domestic Partnership Agreements

This service covers advice, consultation, preparation, negotiation, and review of documents when the covered person needs a postnuptial agreement or domestic partnership agreement. These agreements may not be applicable in all states.

Prenuptial Agreements

This service covers advice, consultation, preparation, negotiation and review of documents when the covered person needs a prenuptial agreement.

Protection from Domestic Violence

This service covers advice, consultation, preparation and review of documents and representation of the covered person when he or she seeks to be protected by a victim protection order.

Reproductive Matters

This service provides advice, consultation, preparation and review of documents for the participant on reproductive matters, including surrogacy, egg donation, sperm donation, gamete donation, embryo donation and embryo adoption. Representation for suit of ownership of an egg/sperm/embryo when the participant is the plaintiff or defendant is also covered.

* Representation is provided with the child custody coverage. Representation for contested child custody is available up to 30 hours and if the child custody is uncontested and all issues are agreed upon in writing by the parties, the lawyer's time is paid in full.

Home

Boundary or Title Disputes

This service covers advice, consultation, preparation and review of documents and representation for the covered person as a defendant in a boundary, title dispute, mechanics lien or eminent domain proceeding involving their primary or secondary residence. This service is not available when coverage is available under his/her homeowner or title insurance policies.

Deeds

This service covers advice, consultation, preparation and review of documents related to real property deeds, when the covered person is purchasing or selling a primary or secondary home.

Easements

This service covers advice, consultation, preparation and review of documents and representation for the covered person as a defendant in a dispute related to an easement connected to their primary residence.

Eviction and Tenant Problems (Primary Residence - Tenant Only)

This service covers advice, consultation, preparation and review of documents and representation for any covered person, 18 years of age or older, arising out of a residential lease. This includes security deposits, leases, disputes with a landlord, and property damage claims. The covered person must be the defendant. It does not include representation in disputes with other tenants.

Foreclosure

This service covers advice, consultation, preparation and review of documents and representation for the covered person in a court proceeding for foreclosure of their primary or secondary home. He or she must be the defendant.

Home Equity Loan Services

This service covers advice, consultation, preparation and review of documents for any home equity loan of the covered person for their primary or secondary home. He or she must be the mortgagor, borrower or buyer.

Mineral Rights Assistance

This service covers advice, consultation and review of documents concerning a gas or oil lease for the covered person's primary or secondary residence and any property purchased with the intent to develop for personal use.

Mortgage Document Services

This service covers advice, consultation, preparation and review of documents for any residential mortgage documents of the covered person for their primary or secondary home. They must be the mortgagor, borrower, or buyer. Mortgage document services include representation of the covered person in connection with a real estate closing if customary. The service includes review of and advice on an abstract, preliminary title reports or a title opinion, and matters necessary for clearance of title or for the sale or purchase of a primary or secondary home. The cost of title insurance is not included. The service does not include services provided by a lawyer representing a lending institution or title company.

Property Tax Assessments

This service covers advice, consultation, preparation and review of documents and representation for the covered person in a legal proceeding concerning property tax assessments and property evaluations related to his or her primary residence. This includes filing required paperwork, gathering evidence, and negotiating a settlement.

Refinancing of Home

This service covers advice, consultation, preparation and review of documents for any refinance loan of the covered person for their primary or secondary home. He or she must be the mortgagor, borrower, or buyer. This service does not include the refinancing of a second home, vacation property or property that is held for any rental, business, investment, or income purpose. The service does not include services provided by a lawyer representing a lending institution or title company.

Sale or Purchase of Home

This service covers advice, consultation, preparation, and review of documents (including the construction documents for a new home, the purchase agreement, mortgage, and deed), relating to the purchase or sale of a primary or secondary residence or property to be used for building a primary or secondary residence by the covered person. The service also includes attendance of a lawyer at closing if customary. The service includes review of and advice on an abstract, preliminary title reports or a title opinion, and matters necessary for clearance of title or for the sale or purchase of a primary or secondary home. The cost of title insurance is not included. The service does not include leases with option to buy or services or documents provided by a lawyer representing a lending institution or title company.

Security Deposit Recovery (Tenant Only)

This service covers advice, consultation, preparation and review of documents and write letters for any covered person, 18 years of age or older, to recover a security deposit from a residential landlord for the primary residence. It also covers assistance for the covered person in prosecuting a small claims action; helping prepare documents; advising on evidence, documentation, and witnesses; and preparing the covered person for the small claims trial. The service does not include the provider law firm's attendance or representation at a trial, collection activities after judgment, or any services relating to post-judgment actions or appeals.

Zoning Applications

This service covers advice, consultation, preparation and review of documents and representation for the covered person before a zoning authority for a personal zoning application for a primary residence.

Finance

Civil Litigation

This service covers advice, consultation, preparation and review of documents, and representation for the Covered Person in arbitration proceedings or civil proceedings before a local, municipal, county, state, or a federal trial court of general jurisdiction. He or she must be the defendant. The Service provides advice and document review for matters where the Covered Persons are the plaintiff.

Collection Letters

This service covers advice, consultation, review of documents and preparation of letters on behalf of the covered person to collect on amounts payable to them for personal collection matters.

Consumer Bankruptcy

This service covers advice, consultation, preparation and filing, review of documents and representation for the covered person as a debtor in a consumer bankruptcy. This service is not available if a creditor is affiliated with the sponsor or employer, even if the employee or spouse chooses to reaffirm that specific debt.

Consumer Credit Services

This service covers advice, consultation, review of the covered person's credit report for possible errors, and file credit disputes with the credit bureaus for the covered person to help remove derogatory information negatively impacting credit.

Consumer Protection

This service covers advice, consultation, preparation and review of documents and representation of the covered person in court in disputes over consumer goods and services where the amount being contested exceeds the small claims court limit in that jurisdiction and is documented in writing. This service does not include representation for construction, real estate, insurance matters or collection activities after a judgment.

Garnishment

This service covers advice, consultation, preparation and review of documents and representation for the covered persons for their wage or earnings garnishment. He or she must be the defendant.

Habeas Corpus

This service covers the covered person for the preparation of all paperwork needed, and attendance at the hearing to pursue a habeas corpus proceeding to obtain the release of a covered person who is being unlawfully imprisoned.

Identity Theft

This service covers advice, consultation and review of documents regarding potential creditor actions against the covered persons resulting from identity theft. This includes the provider law firm's legal services as needed to contact creditors, credit bureaus and financial institutions. It also provides defense services for specific creditor actions over disputed accounts. The defense services include limiting creditor harassment and representation in defense of any action that arises out of the identity theft, such as foreclosure, repossession, or garnishment, up to and including trial, if necessary. The service also provides the covered person information about identity theft and protection.

Personal Injury Matters

The provider law firm may handle personal injury matters for any covered person on a contingency fee or other agreed-upon basis when he or she is the plaintiff.

Personal Property Protection

This service covers advice, consultation and review of documents regarding the covered person's personal property matters such as consumer credit reports, contracts for the purchase of personal property, consumer credit agreements or installment sales agreements.

Promissory Notes

This service covers advice, consultation, preparation and review of documents related to a promissory note for a covered person.

Repossession

This service covers advice, consultation, preparation and review of documents and representation for the covered person in a legal proceeding for repossession of their personal property. He or she must be the defendant.

Small Claims Assistance

This service covers advice, consultation, preparation and review of documents and representation for the covered person, as a defendant, in a court proceeding for matters involving an appearance in small claims court. The service provides advice and document review for matters where he or she is the plaintiff.

Tax Audit and Collection Services

This service covers advice, consultation and representation of the covered person when notified in writing by any federal, state, or local taxing authority of an audit, investigation, or exam of his or her tax return. These services include a written request to appear at the offices of a federal, state, or local taxing authority about his or her tax return. Garnishments, attachments, appeals, or any other post judgment relief actions are not covered. Trust returns, business or corporate tax returns, payroll and related returns are not covered. Charges of tax fraud or income tax evasion are not covered. This service does not include prosecuting a claim for the return of overpaid taxes or the preparing of any tax returns.

Will and Estate Planning

Executor Appointment

This service covers, advice, consultation and document review for the covered person when they have been appointed Executor as the estate of a deceased person. Document review is limited to the Last Will and Testament of the deceased.

Living Will or Physician's Directive

A Directive to Physician or Living Will can be prepared for the covered person.

Power of Attorneys

This service covers a Power of Attorney for any Covered Person who are the principal. A Durable Power of Attorney is included in this service.

Probate

This service covers advice, consultation and review of documents for the probate of a Will. To receive this service the covered person must be the named executor. Advice, consultation and document review is also provided for all covered persons concerning beneficiary rights, funeral arrangement documents, debt collection and other related estate matters. In accordance with applicable law and court rules, the provider law firm will provide coverage for probate matters at a 25% discount. All fees, court costs and the retainer fee is the responsibility of the covered person.

Trusts

This service covers advice, consultation, preparation, and review of documents related to a revocable or irrevocable living trust in which the covered persons are the settlor. This service also covers special needs trusts for the participant or spouse's dependent children. This service does not include tax advice, financial planning, estate tax planning or services associated with funding a trust after it's created.

Wills and Codicils

This service covers preparation of a Will or Codicil for any covered person. Estate tax planning is not included. These services do not include the distribution of any assets outside of the United States.

Motor Vehicle

Moving Traffic Violations

This service covers advice, consultation, negotiation, review of documents and representation of the covered person in court for all misdemeanor and non-criminal moving traffic violations.

Motor Vehicle Property Damage

This service covers assistance up to, but not including the filing of a lawsuit to collect all property damage claims. These services are for property damage incurred due to a vehicle, owned by a covered person, being struck by any motor vehicle.

Reinstatement

The provider law firm will provide legal assistance to reinstate or maintain a driver's license due to job-related matters or medical reasons.

Suspended Driver's License Assistance

When a driver's license has been suspended or revoked for any reason by the issuing authority the provider law firm will advise and represent the covered person. In this situation, a right to appeal must be provided by statue.

Additional Benefits

24/7 Emergency Legal Access

This service covers toll-free access to the provider law firm on a 24-hour-a-day basis for the following emergencies, when the participant is: 1) detained by law enforcement; 2) seriously injured in an accident; or 3) served with a search warrant. Call the toll-free emergency number at 1-877-825-3797 to speak with Customer Care, who will connect the participant with the provider law firm. Phone access is subject to conditions set by the detaining or questioning authority, which may keep the provider law firm from speaking with the participant. Any other service is available 8:30 a.m. - 5:00 p.m.

25% Discount

For all personal legal matters that are not fully covered by this Plan, the covered person may be eligible for services at a 25% discount off the provider law firm's standard hourly rate. This does not apply to contingency fee matters or flat fee arrangements, which may be negotiated at a separate rate with the provider law firm. The 25% discount is available except in those instances listed in General Provision F of this Plan.

Free Legal Forms

Participants have access to online legal forms that focus on many of today's most common legal concerns.

Mobile App

The participant can directly call their provider law firm, as well as upload traffic tickets and other legal documents directly to the provider law firm through the LegalShield mobile app. A desktop version of the mobile app is also available.

Service General Provisions and Definitions

A. Entire Agreement: This Contract is the entire agreement between the Participant and the Company.

B. Availability of Services: A covered person is entitled to the services outlined in this Contract only to the extent such services are available and permitted by the laws of the state having jurisdiction over the legal matter.

C. Provider Law Firm's Professional Judgment: It is in the sole discretion of the provider law firm to determine whether claims or defenses, pertaining to any matter under this Contract, are frivolous or otherwise unmeritorious, including decisions to take any contingency case, appeal any judgment, or appeal any decision. The provider law firm reserves the right to make independent professional judgments about the provision of any services under this Contract. The Company will in no way influence or attempt to affect the rendering of professional services by the provider law firm.

D. Attorney-Client Contract and Representation: Any payment of additional costs or payment of a retainer to the provider law firm to cover reasonable anticipated legal services not covered by the Plan, shall be subject to the terms of an attorney-client contract. The Company is not a party to this attorney-client contract. This attorney-client contract is to be agreed upon by the covered person and the provider law firm prior to the time services are rendered. Any retainer and/or additional costs to be incurred shall be at the sole discretion of the provider law firm. When applicable, eligibility for receipt of services under the Plan is contingent upon payment of such retainers and additional costs prior to commencement of legal representation. The provider law firm has no duty or relationship under this Plan beyond the specified services.

E. Geographical Area of Coverage: This Plan only provides for services in the 50 states of the United States, except where prohibited.

F. General Exclusions: The following items are specifically excluded from this Plan, are not eligible for the 25% Discount, and shall not be interpreted as included services under any provision of the Plan:

1. Any matter involving any covered person which arises as a result of business matters or interests (regardless of the form of the entity), including but not limited to:

   a. Ownership, management, or association with a business, partnership, corporate entity, or trust.
   b. Any income producing property or venture regardless of the full-time or part-time nature.

2. The payment of fines, court costs, filing fees, ad litem fees, penalties, expert witness fees, bonds, bail bonds, and any out-of-pocket expenses.

3. Any matter involving a person or entity who starts or takes part in a lawsuit against the Company or any of its subsidiaries or affiliates, or any matter involving a person or entity that is named as a defendant or respondent in a lawsuit started by the Company or any of its subsidiaries or affiliates, shall be specifically excluded from receiving any of the Services of this Plan, during the pendency of such lawsuit or until its resolution.

4. Any matter, issue, consultation, action, proceeding, or dispute between the Covered Person and the Provider Law Firm or the Covered Person and the Company or the Covered Person and the Employer.

5. Any matter which the Provider Law Firm determines is resolved or has been raised an unreasonable number of times without substantial change of circumstance.
6. Any matters which are covered by any insurance policy or any other legal service plan.
7. Any matters related to Native or First American tribes and tribal governments including but not limited to legal issues before federal, tribal, and/or state courts, administrate bodies, arbitration panels or arbitrators, tribunals and/or hearing panels, judges, or officers.
8. Employment-related matters, including Employer or statutory benefits.
9. Matters relating to patent, trademark, and copyright.
10. Any matter if the Covered Person is representing or preparing to represent themselves pro se.
11. Matters for which an attorney-client relationship existed prior to the covered person becoming eligible for Plan benefits.

G. Discount Benefit for non-covered services. The following services are not covered by the Plan; however, the 25% Discount Service may apply after the Advice and Consultation services have been provided for the following, but not limited to:

1. Class actions, amicus curiae filings or interventions.
2. Attachments, collections, appeals or any other post-judgment relief action.
3. Counter claims, cross claims, and third-party claims.
4. Matters where the Participant is acting on behalf of, or representing another party (for example: executor, administrator, guardian, trustee) except where specifically provided otherwise.
5. Matters in which the Participant is a Plaintiff or Claimant, except where specifically provided otherwise.
6. Matters relating to family law, except as specifically provided under Family and Domestic Related services, including litigation related to prenuptial agreements.
7. Matters relating to bankruptcy law, except as specifically provided under Finance services.
8. Abstract, preliminary title reports or a title opinion.
9. Any matter resulting in criminal penalties, felony charges or it is alleged that the Participant is under the influence of or impaired (DUI/DWI) from using alcohol, intoxicants, medicines whether prescribed or not, controlled substances or chemicals
10. Any matter related to charges that Participant is driving without a valid driver's license or statutorily required insurance.
11. Any ongoing hearings or actions that must be filed in a different court for reconsideration or review.
12. Any matter that arises while driving a Commercial Vehicle.
13. Responsive affidavits and accounting proceedings in guardianship matters.
14. Representation of the Participant in a hearing or proceeding on immigration matters.
15. Representation of a Participant in a probate matter.

H. Conflict for Services: For any matter where a conflict arises between a Participant and a covered person, only the Participant is entitled to services.

I. Duplication of Coverage: A covered person may not secure services from the provider law firm for the same matter under more than one contract and is not entitled to the services of more than one provider law firm on the same matter.

J. Cancellation or Non-renewal of Plan: The Company may cancel this Plan for misrepresentation or fraud. The Company may cancel this Plan if the provider law firm determines that access to and necessary interaction with the Participant is severely limited. The Company may cancel this Plan if the provider law firm determines that the Participant is unable, unwilling, or incapable of accepting or understanding legal advice and services. The Company will provide written notice to the Participant of any such cancellation. The Company may cancel this Plan for non-payment of Membership fees by providing written notice to the Participant 10 days prior to the cancellation date. If the Company cancels the Plan, services will only be provided for those events reported in writing to the provider law firm during the Eligibility Period.

The Participant may cancel this Plan through their employer and according to their employers guidelines. Any Participant paying for the Plan by personal credit card or bank account may contact customer service @ 1-888-807-0407 from 7:00 a.m. - 7:00 p.m. CT, Monday-Friday.

All services will automatically cease at the end of the Eligibility Period.

The Company may, at its option, non-renew this Plan by providing written notice to the Participant.

K. Reinstatement Procedure: If the Company cancels this Plan for nonpayment of premium or the Plan lapses for nonpayment of premium the Participant may request the Plan be reinstated. The Participant must request the reinstatement within 45 days of the cancellation or lapse and confirm that no events have occurred for which services will be requested. A reinstatement fee may apply.

L. Change of Plan: No change in the Plan shall be valid until approved by an officer of the Company and added via endorsement or supplement to the Plan. No agent or sales associate has authority to change the Plan or to waive any of its provisions.

M. Duty to Report Changes: Any correspondence relating to this Plan will be sent to the Participant using the Participant’s contact information on file with the Company. The Participant shall report to the Company all changes to their contact information within 30 days of a change via the Company Contact Information below. Should you move to a new state, your Membership Plan could change and your provider law firm will change to your new state of residence.

N. Contact Information: Any correspondence relating to this Plan to the Company should be sent to Attn: Participant Service at One Pre-Paid Way, Ada, OK 74820, memberservice@legalshield.com or (800)654-7757.

O. Settlement of Disputes: All disputes or claims relating to the Company; this Plan; any Company products or services; any claims or causes of action between any covered person, the Company and any of the Company's officers, directors, employees, or affiliates, whether in tort or contract; shall be settled totally and finally by arbitration according to the Commercial Arbitration Rules of the American Arbitration Association. If agreed upon, the covered person and the Company may use other processes to settle the disputes or claims. Any covered person that files a claim or counterclaim against the Company or any of its officers, directors, employees, or affiliates may only participate in arbitration on an individual basis and not with any other participant or as part of a class action.

P. Severability: If any provision of this Plan is deemed invalid or unenforceable in any respect, such provision shall be, to the extent possible, reformed to make it effective. If any provision is deemed invalid and incapable of being reformed, it shall not change the validity and enforceability of all other provisions of this Plan, which shall remain valid and enforceable.

Q. Subrogation: If the Company or provider law firm makes a payment under this Plan and the person to or for whom payment was made has a right to recover damages from another, the Company or provider law firm shall be subrogated to that right.

R. Release of Information: If a covered person files a complaint with the Company about a provider law firm and requests help, the covered person authorizes the provider law firm to share to the Company all communications between the covered person and the provider law firm that are relevant to the complaint. A covered person should contact Participant Services at 1-800-654-7757 with a complaint. A written release may be required by the provider law firm prior to the disclosure of any communications between the covered person and the provider law firm.

S. Adequate and Timely Notice: The failure by the covered person to timely send to the provider law firm adequate facts, necessary documents, authorizations, or act per the instructions of provider law firm shall make any obligation of the provider law firm to provide the services null and void.

T. Prevailing Language: The English language version of this Plan shall be controlling in all respects and shall prevail in case of any inconsistencies with translated versions, if any.

Definitions

A. Commercial Vehicle: A Commercial Vehicle is any motor vehicle being driven by a Covered Person for commercial or income-producing purposes.

B. Company: Shall refer to LegalShield.

C. Contract: This legal service contract, (referred to as “Plan” throughout the contract) which includes any endorsements or supplements, between the Company and the Member.

D. Covered Person: Shall include:

The Employee (“Member” or Participant”). If the employee chooses family coverage, the following are also entitled to benefits, unless provided otherwise in the Plan:

The Member’s Spouse (referred to as “Spouse” throughout the Plan).

Any dependent children of the Member, or Spouse, under 26 years of age.

Children under 18 years of age for whom the Member, or the Member’s Spouse, is the legal guardian.

Any Dependent, regardless of age, who is physically disabled or mentally incapacitated resulting in an inability to make legally binding decisions.

E. Consumer Credit Issue: Credit issues of a personal nature relating directly to the Covered Person including, but not limited to, credit reporting matters and debt issues.

F. Dependent: The natural or adopted child of the Member, or Member’s Spouse, unless otherwise stated in this Plan.

G. Detained: Being restrained, searched, or deprived of instant freedom by a Law Enforcement Officer.

H. Effective Date: Effective Date is the start date of the Plan.

I. Eligibility Period: The period that starts on the Effective Date of the Plan and ends on the date the Plan is terminated, cancelled, nonrenewed, or expires.

J. Law Enforcement Officer: Any agent of any federal, state, or local law enforcement agency acting in the course and scope of such person’s employment. This includes any private security personnel acting in the course and scope of his or her employment.

K. Licensed Motor Vehicle: A vehicle, which is properly licensed, insured, registered, and inspected. The vehicle must have safe operating equipment. A Commercial Vehicle is not included in the definition of a Licensed Motor Vehicle.

L. Member: The person to whom this Plan is issued, who shall be a natural person. The Member must be a citizen or legal resident of the country in which this Plan is issued.

M. Member’s Spouse: The legal spouse or domestic partner of the Member as allowed by the Member’s employer.

N. Membership Year: The period starting on the Effective Date of the Plan and ending one year after.

O. Pre-Trial Time: Provider Law Firm time rendered prior to the date of jury selection, or prior to the date of opening statements if a non-jury trial.

P. Provider Law Firm: The Provider Law Firm is a lawyer or law firm who has contracted with the Company to provide the Services in this Plan in the Member's primary state of residence. The Provider Law Firm or the Company, under certain circumstances, may refer matters to a referral lawyer (a "Referral Law Firm"). Referral Law Firm and Provider Law Firm may be collectively referred to in this Plan as the Provider Law Firm.

Q. Services: The legal services outlined under the title What Services Are Covered, unless otherwise excluded by this Plan.

R. Standard Hourly Rate: The hourly rate charged by the Provider Law Firm to non-Covered Persons for a certain legal service.

S. Trial Time: Provider Law Firm time rendered starting with the date of jury selection, or the date of opening statements if a non-jury trial, and ending on the date of the verdict, bench decision or other conclusion.

T. Uncontested: All issues are agreed upon by both parties and where legal counsel does not represent the Member, the Member's Spouse, or any other Covered Person. Both parties must agree on all issues in writing without assistance from the Provider Law Firm.

U. Contested: Issues cannot be agreed upon by all parties and the Member or the Member's Spouse are represented by legal counsel in a judicial proceeding to challenge or defend against an adverse position.

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2025-1018 Short/Long Term Disability Insurance Re-bid

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen ISD (the "District") makes available Short/Long Term Disability and other benefits to employees for purchase on a voluntary basis. On September 24, 2024, the Board approved the rejection of all proposals received for Short/Long Term Disability through Request for Proposal No. 2025-1000 Voluntary/Supplemental Insurance Products and Related Services and authorized Administration to re-solicit for this benefit.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

One hundred fifty-four (154) vendors were invited to submit proposals and twelve (12) vendors responded, including three (3) no-bid, one (1) non-responsive and three (3) that submitted alternate plan options. Five (5) vendors submitted plans with varying benefits, costs, and options which offered plans and benefits comparable to existing offerings.

Responses for this solicitation were evaluated by the Benefits Review Committee (the "Committee"), the Committee is composed of administrative staff, professional faculty, paraprofessional staff and auxiliary staff. The Committee, in consultation with Valley Risk Consulting, met to evaluate all proposals, interview and assign service agents.

The Committee met on September 12, 2024, September 16, 2024, and September 19, 2024 and September 30, 2024. On October 7, 2024, the committee interviewed and selected three (3) agents to service the awarded product. The committee met on October 17, 2024 for final review and recommendation.

Administration recommend that the Board award the highest ranked vendor as listed on the attached evaluation matrix. The Vendor has guaranteed premiums/rates for a three-year period. Coverage effective date is January 1, 2025

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

Products is available for purchase by employees and is 100% employee paid.

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2025-1018 Short/Long Term Disability Insurance Re-bid

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

RECOMMENDED BOARD ACTION:

A) That the Board of Trustees approve Request for Proposal No. 2025-1018 Short/Long Term Disability Insurance Re-bid and award the highest ranked vendor as listed on the attached evaluation matrix, for a term of three (3) years, from January 1, 2025 through December 31, 2027.

B) Authorize the Superintendent to execute any renewal applications and related solicitation documents.

Attachment: ☑

SUBMITTED BY: Andres Silva **SUPERVISOR:** Lorena Garcia
Lorena Garcia (Oct 18, 2024 13:41 CDT)

For further information contact:
Name: Mr. Andres Silva, Director for Employee Benefits & Safety/Risk Management
Office: 956-618-7380
Email: andres.silva@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 18, 2024 14:40 CDT)

Superintendent of Schools

No.	RFP No. 2025-1018 Voluntary Products (Disability) *Criteria #1 based on Option A. Option A plan is most populated plan.*			Max. Pts. 100	Aflac	The Hartford	The Standard	New York Life	UNUM
	Total Points			**100**	**89.57**	**94.98**	**88.36**	**97.50**	**97.21**
	Ranking				**4**	**3**	**5**	**1**	**2**
1	**Price**			**30**	**24.43**	**26.23**	**26.90**	**30.00**	**28.66**
	Option A, SSADEA (Monthly Rate per increment of $100)								
	14/14	1177	$1.74		$2.91	$2.54	$2.65	$2.37	$2.48
	30/30	244	$1.38		$2.31	$2.01	$2.10	$1.88	$1.97
	60/60	58	$0.95		$1.59	$1.39	$1.45	$1.29	$1.36
	90/90	31	$0.72		$1.20	$1.05	$1.14	$0.98	$1.03
	180/180	14	$0.54		$0.90	$0.79	No Quote	$0.73	$0.77
	Annual Total (based on cost comparison)	1524							
	Annual Total:		**$641,677**		**$1,073,271**	**$999,434**	**$974,733**	**$873,934**	**$914,948**
2	**Reputation of the vendor and of the vendor's goods or services;**			**3**	**3**	**3**	**2**	**3**	**2**
	AM Best Rating (#56)				**3**	**3**	**2**	**3**	**2**
	Max pts (3pts): A+ = 3 pts , A- to A = 2 pts, B+ below = 0 pts				A+	A+	A	A++	A
3	**The quality of the vendor's goods or services**			**10**	**7**	**10**	**9.5**	**8.5**	**10**
	Accounts: (#58)			3	**0**	**3**	**2.5**	**1.5**	**3**
	Max pts (3 pts): 0.5 pts for each Tx reference + 0.5 pts each if comparable size				None Provided	3 Ref (comp size/TX)	2 Ref (comp size/TX) 1 Ref (TX)	2 Ref (comp size/TX) 1 Ref (TX)	3 Ref (comp size/TX)
	Years in business? (#55)			**7**	**7**	**7**	**7**	**7**	**7**
	Max pts (7 pts): 15+ = 7 pts, 7-14 = 5 pts, 0-6 = 3 pts				15+	15+	15+	15+	15+
4	**The extent to which the goods or services meet District's needs**			**45**	**45**	**45**	**40**	**45**	**45**
	Does policy match current benefit schedule?			**10**	**10**	**10**	**5**	**10**	**10**
	Yes = 10, No = 5 (Provided 5 Elimination Periods: 14/14, 30/30, 60/60, 90/90, 180/180)				yes	yes	Does not include 180/180	yes	yes
	Waiver of Elimination Period (14/14 days) (#80)			**10**	**10**	**10**	**10**	**10**	**10**
	Yes = 10; No = 0				yes	yes	yes	yes	yes
	Does policy include a primary plan based on Social Security Normal Retirement Age (ADEA w/SSNRA) benefits?			**10**	**10**	**10**	**10**	**10**	**10**
	Yes = 10, No = 0				yes	yes	yes	yes	yes
	Does your policy include a second plan with a benefit maximum duration of (5) years, (60 months)?			**5**	**5**	**5**	**5**	**5**	**5**
	Yes = 5, No = 0				yes	yes	yes	yes	yes
	What is the monthly benefit maximum? (#89)			**10**	**10**	**10**	**10**	**10**	**10**
	$8,000+ = 10 <$8,000 = 0				$8,000	$8,000	$8,000	$8,000	$8,000
5	**Past Relationship with District**			**2**	**2**	**2**	**1**	**1**	**2**
					2	**2**	**1**	**1**	**2**
	Max pts (2 pts): Yes = 2 pts, No = 1 pts				yes	Yes	No	No	yes
6	**HUB**			**0**	**0**	**0**	**0**	**0**	**0**
	N/A				0	0	0	0	0
7	**Total long-term cost to the district to acquire the vendor's goods or services;**			**10**	**8.14**	**8.74**	**8.97**	**10.00**	**9.55**
	Year 2			**5**	**4.07**	**4.37**	**4.48**	**5.00**	**4.78**
					$1,073,270.88	$999,434.04	$974,732.76	$873,933.96	$914,948.28
	Year 3			**5**	**4.07**	**4.37**	**4.48**	**5.00**	**4.78**
					$1,073,270.88	$999,434.04	$974,732.76	$873,933.96	$914,948.28
	Rate Guarantee (#76)				**3 year rate**	**3 year rate**	**3 year rate**	**3 year rate**	**3 year rate**
8	**Vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state**			**0**	**0**	**0**	**0**	**0**	**0**
	N/A				0	0	0	0	0
9	**Any other relevant factor specifically listed in the request for bids or proposals.**			**0**	**0**	**0**	**0**	**0**	**0**
	N/A				0	0	0	0	0

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Discussion and Possible Action on Interlocal Contract 2025-161 with The Department of Information Resources Relating to the Use of the Department of Information Resources Shared Services Master Service Agreements

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The interlocal contract authorizes McAllen Independent School District to participate in the Department of Information Resources ("DIR") Shared Services program.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The Department of Information Resources is providing cybersecurity resources that are available to school districts at zero cost. The McAllen Independent District ("District") will participate to enhance and harden the District's cybersecurity posture.

LEGAL REVIEW:

The interlocal contract has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

Not applicable.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Interlocal Contract 2025-161 with The Department of Information Resources Relating to the Use of the Department of Information Resources Shared Services Master Service Agreements.

Attachment: ☑

SUBMITTED BY: Judith Escamilla
Judith Escamilla (Oct 15, 2024 11:07 CDT)

SUPERVISOR: Lorena Garcia

For further information contact:
Name: Ms. Judith Escamilla, Executive Director for Technology
Office: (956) 657-4444
Email: Judith.Escamilla@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 15, 2024 14:43 CDT)

Superintendent of Schools

INTERLOCAL CONTRACT
BETWEEN
THE DEPARTMENT OF INFORMATION RESOURCES
AND
MCALLEN INDEPENDENT SCHOOL DISTRICT
RELATING TO THE USE OF THE DIR SHARED SERVICES MASTER SERVICE AGREEMENTS

This Interlocal Contract ("ILC" or "Contract") is entered into by the governmental entities shown above as contracting parties (referred to individually as a "Party" and collectively as the "Parties") pursuant to the provisions of the Interlocal Cooperation Act, Chapter 791, Texas Government Code. This ILC is created under the authority of and to give effect to the intent and purpose of Chapters 2054 and 2059 of the Texas Government Code.

The entity receiving services under the DIR Shared Services Contracts through this ILC is hereinafter referred to as the "Receiving Entity" or the "DIR Customer."

This ILC authorizes DIR Customer to participate in the Department of Information Resources ("DIR" or "Performing Agency") Shared Services Program. The DIR Shared Services Program includes contracts that have been competitively procured by DIR. All specific services and products are purchased through the DIR Shared Services Program contracts and subject to the processes and terms therein.

DIR's Shared Services Program provides for a Multisourcing Service Integrator (MSI) service provider ("MSI SCP") and various Service Component Providers ("SCP"). The Shared Services Master Service Agreements, as amended, are defined on the Shared Services web page on the DIR website ("DIR Shared Services Contracts") and are incorporated herein. Unless otherwise referenced, the references to Exhibits and Attachments herein are references to Exhibits and Attachments of the DIR Shared Services Contracts.

DIR Customer acknowledges and agrees that this ILC is with DIR and, therefore, DIR Customer does not have privity of contract with the SCPs.

Capitalized terms not defined herein shall have the meaning set forth in the relevant DIR Shared Services Contract.

SECTION I
CONTRACTING PARTIES

DIR CUSTOMER: McAllen Independent School District

PERFORMING AGENCY: Department of Information Resources

SECTION II
STATEMENT OF SERVICES TO BE PERFORMED

2.1 Effect of ILC and General Process

The DIR Shared Services Program offers a variety of services and related support and products. The list of such services is provided through the DIR Shared Services Catalog and the DIR Shared Services portal. Further, SCPs may work with third-party vendors to provide additional services or products within the requirements of the relevant DIR Shared Services Contract.

This ILC describes the rights and responsibilities of the Parties relating to implementation, operation, maintenance, use, payment, and other associated issues by and between DIR Customer and DIR related to the Services to be provided through the DIR Shared Services Contracts. DIR Customer shall receive the Services described in the DIR Shared Services Contracts, subject to the terms of the relevant DIR Shared Services Contracts and this ILC. DIR Customer is only subject to those specific terms to the extent DIR Customer requests services or products through those specific DIR Shared Services Contracts. Each specific DIR Shared Services program also has program-specific terms and conditions. Upon DIR Customer's approval of such terms and conditions, the program-specific terms and conditions are incorporated automatically herein.

The details of specific processes and procedures are contained in the relevant Service Management Manual ("SMM"), developed by the MSI and/or SCPs, approved by DIR, and incorporated herein. The DIR Shared Services Contracts require the MSI and SCPs to develop appropriately documented policies, processes, and procedures and to provide training to DIR Customer personnel where required to ensure effective service interfaces, before approval and adoption of the SMM.

The terms of the relevant DIR Shared Services Contracts will apply to this ILC and will remain in full force and effect except as may be expressly modified by any amendment to the specific DIR Shared Services Contract. Such amendments will automatically apply to this ILC with no further action by the Parties. DIR shall keep DIR Customer generally informed of such amendments and provide the opportunity to provide input to DIR through the Shared Services portal as well as the DIR Shared Services Program Governance structure described below.

2.2 DIR Shared Services Program Process

To obtain Services, DIR Customer shall either order services directly through the MSI Marketplace portal where certain services and pricing are established or request certain services and products through the Request for Services process. This process is detailed in the relevant SMM for each SCP. As part of the response to a Request for Service, DIR Customer will receive a proposal, including the proposed solution or service, estimated cost or other financial obligations, if any, and any other relevant program-specific terms and conditions related to the services provided for in response to the Request for Service.

DIR Customer may accept or decline those terms and services at that time. The final DIR Customer approved technical solution, financial solution, and related terms are contractually binding terms that incorporate the terms of this ILC and the relevant Shared Services Contract(s). The program-specific terms and all other service/solution related terms and conditions are incorporated herein automatically upon DIR Customer's approval of such terms and conditions. Later termination of a Service or solution after an original approval or any pre-payment, may result in additional cost to the DIR Customer and may not allow for any refund of payments already made.

2.3 Change Orders and Change Control

In accordance with the relevant SMM and Shared Services Contract requirements, DIR Customer will coordinate with the MSI and/or SCP for all change requests. Change Control processes and authority may vary between DIR Shared Services Contracts as it relates to the rights of Customers to request changes. Further, Change Control does not allow DIR Customers to alter terms and conditions of the DIR Shared Services Contracts.

SECTION III
DIR CUSTOMER PARTICIPATION

3.1 General Shared Services Governance

Governance of the DIR Shared Services Program is based on an owner-operator approach in which DIR Customers, in the role of operator, actively work with all SCPs to resolve local operational issues and participate in committees to address enterprise matters. Enterprise-level decisions, DIR Customer issues, and resolution of escalated DIR Customer-specific issues are carried out by standing governance committees, organized by subject area and comprised of representatives from DIR Customers, DIR management, SCP management, MSI management, and subject-matter experts. DIR Customers are structured into partner groups that select representatives to participate in these committees. DIR Customer shall participate within this Governance structure as described above and within the relevant SMM(s) ("Shared Services Governance").

3.2 DIR Customer and SCP Interaction and Issue Escalation

In accordance with the relevant SMM(s), DIR Customer shall interface with SCPs on the performance of "day-to-day" operations, including work practices requiring SCP and DIR Customer interaction, issues resolution, training, planning/coordination, and "sign-off." All issues are intended to be resolved at the lowest level possible. In those instances where it becomes necessary, the following escalation path is utilized. If DIR Customer is not able to resolve an issue directly with SCP staff, DIR customer escalates the issue to SCP management. If the issue cannot be resolved by SCP management, DIR Customer escalates to DIR. If the issue cannot be resolved by DIR, DIR Customer escalates to the appropriate DIR Shared Services Program Governance committee.

3.3 DIR Customer Specific Laws

Per the Compliance with Laws section of the DIR Shared Services Contracts, DIR Customer shall notify DIR, in writing, of all DIR Customer-specific laws ("DIR Customer-Specific Laws"), other than SCP Laws, that pertain to any part of DIR Customer's business that is supported by SCPs under the DIR Shared Services Contracts, and DIR will notify SCPs, in writing, of such DIR Customer-Specific Laws. The Parties intend that such DIR Customer-Specific Laws will be identified and included in the portion of the SMM specific to DIR Customer. DIR Customer shall use commercially reasonable efforts to notify DIR, in writing, of any changes to DIR Customer-Specific Laws that may, in any way, impact the performance, provision, receipt and use of Services under the DIR Shared Services Contracts. DIR shall advise SCPs of such change and require that any changes to DIR Customer-Specific Laws are identified and included in the SMM. If necessary to facilitate DIR compliance with the requirements of the DIR Shared Services Contracts, DIR Customer shall provide written interpretation to DIR of any DIR Customer-Specific Law.

3.4 DIR Customer responsibilities

Where appropriate, DIR Customer shall support the following:

(a) Software currency standards are established for the Shared Services environment through the owner operator governance model. DIR Customers will be engaged in approval of these standards and the development of technology roadmaps that employ these software currency standards. DIR Customers are expected to remediate applications in order to comply with the standards

(b) Technology standards (e.g. server naming standards, reference hardware architectures, operating system platforms) are established through Shared Services Governance. DIR Customers will adhere to these standards. Any exceptions will follow governance request processes.

(c) DIR Customer shall ensure network connectivity and sufficient bandwidth to meet DIR Customer's needs.

(d) DIR Customers will collaborate with SCPs to establish and leverage standard, regular change windows to support changes to enterprise systems. These change windows will be constructed to support varying degrees of service impact, from planned down-time to no service impact. Standard enterprise changes during these windows may affect all systems in one or more of the consolidated data centers simultaneously.

(e) DIR Customers will support the consolidation of commodity services into shared enterprise solutions that leverage common management and configuration practices delivered by the service providers. Examples of such commodity services are SMTP mail relay and DNS management.

(f) DIR Customers will support and align with standard enterprise Service Responsibilities Matrixes and associated processes for obtaining an exception or making improvements to the standard enterprise Service Responsibility Matrixes.

3.5 DIR Customer Equipment and Facilities

Any use by SCPs of DIR Customer Equipment and/or Facilities shall be limited to the purpose of fulfilling the requirements of this ILC or the DIR Shared Services Contracts.

DIR Customer will retain ownership of DIR Customer Equipment. DIR Customer shall comply with DIR refresh policies, as amended from time to time by DIR.

3.6 DIR Customer Contracts, Leases, and Software with Third Parties

DIR Customer will make available for use or use its best efforts to cause to be made available for use by DIR and/or SCPs the DIR Customer Contracts and Leases with third parties ("DIR Customer Third Party Contracts and Leases") and DIR Customer third party software ("DIR Customer-Licensed Third Party Software") that pertain to the Shared Services. Any use by DIR and/or SCPs of DIR Customer Third Party Contracts and Leases and/or DIR Customer-Licensed Third Party Software shall be limited to fulfilling the requirements of this ILC or the DIR Shared Services Contracts.

SCPs shall obtain all Required Consents in accordance with DIR Shared Services Contracts. DIR Customer will use its best efforts to assist SCPs to obtain from each Third Party Software licensor the right to use the DIR Customer-Licensed Third Party Software for Services provided under the DIR Shared Services Contracts. Except to the extent expressly provided otherwise and in accordance with the DIR Shared Services Contracts, SCPs shall pay all transfer, re-licensing, termination charges and other costs or expenses associated with obtaining any Required Consents or obtaining any licenses or agreements as to which SCPs are unable to obtain such Required Consents. If requested by DIR, DIR Customer shall cooperate with SCPs in obtaining the Required Consents by executing appropriate DIR approved written communications and other documents prepared or provided by SCPs.

3.7 Security

DIR Customer shall comply with recommended relevant security standards and relevant SCP security guides, as amended from time to time by DIR, the MSI, or the SCP. DIR Customer shall inform DIR as to any DIR Customer specific security considerations.

DIR Customer acknowledges that any failure on its part to follow recommended security standards, policies, and procedures may place its own data and operations at risk as well as those of SCP(s) and other governmental entities. DIR Customer accepts the related potential risks and liabilities that are created by DIR Customer's failure to comply with the recommendations if it is determined such recommendations would have prevented an issue. DIR accepts no responsibility for the risk or liability incurred due to a DIR

Customer's decision to not follow DIR's recommendations. SCP will not be liable for violations of security policies and procedures by DIR Customer. Additionally, failure to comply with security standards, policies, and procedures may lead to the suspension or termination of the availability of certain Applications and services. SCP will give DIR and the DIR Customer notification of non-compliance.

SECTION IV
CONTRACT AMOUNT

In accordance with terms of the DIR Shared Services Contracts, including all relevant pricing and accepted Request for Services proposals, and this ILC, DIR Customer shall be responsible for and agrees to pay DIR the applicable Charges for Services received from the SCPs and the MSI, Services DIR Customer agrees to pre-pay, the DIR recovery fees, any allocated charges, and any Pass Through Expenses incurred by DIR or SCPs on behalf of DIR Customer. The applicable fees are set out in the relevant DIR Shared Services Contracts as incorporated herein and, if applicable, specifically addressed in response to any Request for Services. Certain pricing is based upon DIR Customer's specific consumption; therefore, DIR Customer controls the amounts and duration of the contract amounts. It is understood and agreed that amounts are subject to change depending upon Services required and/or requested and approved and further dependent upon legislative direction and appropriations available for such Services.

Attachment A provides the estimated spend for services as approved by DIR Customer. DIR Customer may complete this form, as may be required by DIR Customer's own processes and procedures, and submit it to DIR. This form may be revised and updated by DIR Customer at any time as needed without a formal amendment from DIR by DIR Customer submitting to DIR an updated form. DIR Customer must adhere to its own policies and processes for authorizing an adjustment to such amounts internally. DIR Customer is solely responsible for monitoring compliance with Attachment A and to communicate any changes to Attachment A to DIR. DIR shall not be responsible for monitoring or ensuring such compliance.

SECTION V
PAYMENT FOR SERVICES

DIR shall electronically invoice DIR Customer for Services on a monthly basis. Certain Services may not require Customer payment and, thus, may not be invoiced. Each invoice shall include the applicable monthly charges for Services received from the SCPs, the DIR recovery fees, all allocated charges, and any Pass-Through Expenses incurred by DIR or SCPs on behalf of DIR Customer in accordance with the DIR Shared Services Contracts.

The DIR recovery fees shall be reviewed at least annually in accordance with the requirements for billed statewide central services as set forth in OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments (as updated, revised or restated) and other applicable statutes, rules, regulations and guidelines. DIR shall retain

documentation for the DIR recovery fees. DIR fees are also determined and reported in accordance with DIR processes and sections 2054.0345-0346 of the Texas Government Code.

Each invoice shall include sufficient detail for DIR Customer to allocate costs to all federal and state programs in accordance with the relative benefits received and to make federal claims according to the federal cost plan of DIR Customer.

In order to allow DIR to meet the statutory payment requirements in Chapter 2251, Texas Government Code, DIR Customer shall make monthly payments by check or Electronic Funds Transfer (EFT) within twenty (20) days following receipt of each invoice from DIR. For purposes of determination of the payment due date, DIR and DIR Customer shall use the date when the invoice is electronically transmitted by DIR to DIR Customer and posted on the chargeback system along with reports that substantiate the service volumes and associated charges. Although cash flow considerations require timely payments as required herein, the rights of DIR Customer and DIR to dispute charges shall be consistent with Texas law.

The MSI SCP is required to develop and maintain a chargeback system. DIR shall coordinate requirements and functionality for the chargeback system with DIR Customer needs and requirements under federal and state requirements for invoiced charges generated through the system. DIR Customer shall utilize this chargeback system to link the designated measurable activity indicators (such as applications or print jobs) with the appropriate financial coding streams. DIR Customer shall update this information monthly, or at such other intervals as are necessary, to enable the MSI SCP to generate accurate invoices reflecting the appropriate distribution of costs as designated by DIR Customer.

DIR Customer is liable for all costs and expenses associated with providing Services under the ILC to the extent such costs and expenses have been incurred by DIR and such Services have been provided to DIR Customer or DIR Customer agrees to pay for such Services prior to receiving them.

Except as allowed in Texas Government Code, Chapter 2251, DIR Customer shall have no right to set off, withhold or otherwise reduce payment on an invoice. In accordance with Texas Government Code, Section 791.015, to ensure enforceability of payment obligations, DIR Customer consents to DIR presenting this ILC and all unpaid invoices to the alternate dispute resolution process, as set forth in Chapter 2009, Texas Government Code. Provided, however, that such consent shall not constitute an agreement or stipulation that Services have been provided or that the invoices are correct. DIR Customer expressly retains all rights to which it is entitled under Texas Government Code, Chapter 2251, in the event of a disagreement with DIR as to whether Services have been provided and accepted or an invoice contains an error.

If DIR Customer disputes an invoice, it shall present the billing dispute in writing directly to the MSI through the Service Catalog within four (4) invoice cycles after the date DIR Customer receives the invoice and reports that substantiate the service volumes and

associated Charges from DIR. DIR Customer will provide to the MSI all relevant documentation to justify the billing dispute.

SECTION VI
TERM AND TERMINATION OF CONTRACT AND SERVICES

6.1 Term and Termination of ILC

The term of this ILC shall commence upon start of services or execution of this ILC, whichever shall come earlier, and shall terminate upon mutual agreement of the Parties.

This ILC is contingent on the continued appropriation of sufficient funds to pay the amounts specified in DIR Customer's Requests for Services, including the continued availability of sufficient relevant federal funds if applicable. Continuation of the ILC is also contingent on the continued statutory authority of the Parties to contract for the Services. If this ILC is terminated for any reason other than lack of sufficient funds, lack of statutory authority, or material breach by DIR, DIR Customer shall pay DIR an amount sufficient to reimburse DIR for any termination charges and any termination assistance charges incurred under the DIR Shared Services Contracts and this ILC as a result of such termination by DIR Customer. DIR Customer shall provide at least ninety (90) days' written notice to DIR prior to termination. Payment of such compensation by DIR Customer to DIR shall be a condition precedent to DIR Customer's termination.

DIR and DIR Customer acknowledge and agree that compliance with federal law and ongoing cooperation with federal authorities concerning the expenditure of federal funds in connection with the DIR Shared Services Contracts and this ILC are essential to the continued receipt of any relevant federal funds.

6.2 Termination of Services

If DIR Customer terminates certain Services, that it requested and approved, for convenience, DIR Customer shall pay the remaining requisite unrecovered costs that have already been incurred prior to the notice of termination, such unrecovered costs will be calculated in accordance with the relevant Shared Services Contract, SMM, or the approved services proposal and related terms. DIR Customer understands that it may not be able to terminate services or receive any refund of a pre-payment after approving the relevant financial solution.

SECTION VII
MISCELLANEOUS PROVISIONS

7.1 Public Information Act Requests

Under Chapter 552, Texas Government Code (the Public Information Act), information held by SCPs in connection with the DIR Shared Services Contracts is information collected, assembled, and maintained for DIR. DIR shall respond to Public Information Act requests for SCP information. If DIR Customer receives a Public Information Act request for SCP information that DIR Customer possesses, DIR Customer shall respond to the request as it relates to the information held by DIR Customer. Responses to requests for confidential information shall be handled in accordance with the provisions of the Public Information Act relating to Attorney General Decisions. Neither Party is authorized to receive or respond to Public Information Act requests on behalf of the other. If SCP or DIR receives a Public Information Act request for information or data owned by DIR Customer, DIR or SCP will refer the requestor to DIR Customer.

7.2 Inventory Control

DIR shall coordinate financial accounting and control processes between DIR Customer and SCPs and ensure inclusion of reasonable control and reporting mechanisms, including any control and reporting mechanisms specifically required by DIR Customer, in the Service Management Manual. Such procedures shall specifically recognize DIR Customer requirements for inventory control and accounting for state owned and leased equipment and facilities, including hardware, software, contracts, and other items of value that may be utilized by, or authorized for use under the direction and control of SCPs.

7.3 Confidential Information

DIR shall require SCPs to maintain the confidentiality of DIR Customer information to the same extent that DIR Customer is required to maintain the confidentiality of the information, and with the same degree of care SCPs use to protect their own confidential information. DIR acknowledges that DIR Customer may be legally prohibited from disclosing or allowing access to certain confidential data in its possession to any third party, including DIR and SCPs. The relevant SMM shall document detailed confidentiality procedures, including the process DIR Customer shall follow to identify confidential information it is legally prohibited from disclosing or allowing access to by DIR and SCPs and including confidentiality procedures required that are specific to DIR Customer. The DIR Shared Services Contracts sets forth the confidentiality obligations of SCPs.

DIR Customer shall notify DIR, in writing, (1) if DIR Customer is a covered entity subject to the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations at 45 Code of Federal Regulations Parts 160 and 164, that is required to enter into a business associate agreement with DIR or SCPs; (2) if DIR Customer receives Federal tax returns or return information; and (3) if DIR Customer is subject to any other requirements specific to the provision of Services. If DIR Customer receives federal tax returns or return information, then DIR Customer must comply with the requirement of IRS Publication 1075 and Exhibit 7 to IRS Publication 1075. In the event a DIR customer is subject to additional requirement as mentioned in this section, DIR shall require SCPs to maintain the confidentiality of DIR Customer information in accordance with language

included in Attachment B of this agreement. Such additional requirements as is included in Attachment B of this agreement shall be included in the relevant SMM.

7.4 Notification Information

Contact information for purposes of notification for each Party is set forth below.

DIR Customer's Primary Contact

Name: Judith Escamilla
Title: Executive Director of Technology
Address: 4309 Warrior Drive McAllen, TX 78501
Telephone: 956-632-3238
Email: judith.escamilla@mcallenisd.net

DIR's Primary Contact

sharedservicescontractoffice@dir.texas.gov

The DIR Billing Contact is listed in the DIR Contacts section of the monthly Shared Services Payment Guidance letter, which is provided to the DIR Customer with the monthly Shared Services invoice.

7.5 Binding Effect

The Parties hereto bind themselves to the faithful performance of their respective obligations under this ILC.

7.6 Amendments

This ILC may not be amended except by written document signed by the Parties hereto or as specified within this ILC or the attachment being amended.

7.7 Conflicts between Agreements

If the terms of this Contract conflict with the terms of any other contract between the Parties, the most recent contract shall prevail. This Contract provides a general description of certain terms within the DIR Shared Services Contracts. If the terms of this Contract conflict with the terms of the DIR Shared Services Contracts, the DIR Shared Services Contracts' terms shall prevail. If the terms of this Contract conflict with the terms of an accepted proposal or solution from a Request for Services, this Contract shall prevail.

7.8 Responsibilities of the Parties

The Parties shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the ILC. The parties do not intend to create a joint venture. Each Party acknowledges it is not an agent, servant or employee of the other. Each Party is responsible for its own acts and deeds and for those of its agents, servants and employees. Notwithstanding the foregoing, DIR will cooperate with DIR Customer in all reasonable respects to resolve any issues pertaining to federal funding in connection with this ILC or the DIR Shared Services Contracts.

DIR and DIR Customer agree that Services contemplated in this ILC shall be governed by provisions in the DIR Shared Services Contracts regarding individual responsibilities of the parties, including Services provided by the SCPs. DIR Customer shall comply with all policies, procedures, and processes in the relevant SMM (s) and as provided by DIR. In the event DIR Customer actions, failure to perform certain responsibilities, or Request for Services result in financial costs to DIR, including interest accrued, those costs shall be the responsibility of DIR Customer. DIR and DIR Customer shall coordinate and plan for situations where conflicts, failure to perform or meet timely deadlines, or competition for resources may occur during the term of this contract. Unless otherwise specifically addressed, the governance process, addressed above, for the DIR Shared Services Contracts shall be used for issue resolution between DIR Customers, DIR and DIR SCPs.

7.9 Audit Rights of the State Auditor's Office

In accordance with Section 2262.154, Texas Government Code and other applicable law, the Parties acknowledge and agree that: (1) the state auditor, the Parties' internal auditors, and if applicable, the Office of Inspector General of DIR Customer or their designees may conduct audits or investigations of any entity receiving funds from the state directly under the Contract or the DIR Shared Services Contracts, or indirectly through a subcontract under the DIR Shared Services Contracts; (2) that the acceptance of funds directly through this Contract or indirectly through a subcontractor under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, the Parties' internal auditors, and if applicable, the Office of Inspector General of DIR Customer or their designees to conduct audits or investigations in connection with those funds; and (3) that the Parties shall provide such auditors or inspectors with access to any information considered relevant by such auditors or inspectors to their investigations or audits.

7.10 General Terms

Except as expressly provided herein, no provision of this ILC will constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies or immunities available to DIR Customer. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to DIR Customer by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Except as expressly provided herein, DIR

Customer does not waive any privileges, rights, defenses, remedies or immunities available to DIR Customer.

This Customer Agreement will be construed and governed by the laws of the State of Texas. Venue for any action relating to this Customer Agreement is in Texas state courts in Austin, Travis County, Texas, or, with respect to any matter in which the federal courts have exclusive jurisdiction, the federal courts for Travis County, Texas.

If one or more provisions of this ILC, or the application of any provision to any Party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this ILC and the application of the provision to other Parties or circumstances will remain valid and in full force and effect.

Signatory Warranty

Each signatory warrants requisite authority to execute the ILC on behalf of the entity represented.

SECTION VIII
CERTIFICATIONS

The undersigned Parties hereby certify that: (1) the matters specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of State Government; (2) this ILC serves the interest of efficient and economical administration of State Government; and (3) the Services, supplies or materials in this ILC are not required by Section 21, Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

IN WITNESS WHEREOF, the Parties have signed this ILC effective on date of last signature below.

RECEIVING ENTITY: McAllen Independent School District

By: _____

Printed Name: Sofia M. Peña

Title: Board President

Date: _____

Approved as to form

by: JOHNATHAN BALL (Oct 10, 2024 14:37 CDT)

Johnathan Ball, Staff Attorney

PERFORMING AGENCY: DEPARTMENT OF INFORMATION RESOURCES

By: _____

Printed Name: Dale Richardson

Title: Chief Operating Officer

Date: _____

Legal: _____

Attachments to ILC

Attachment A Estimated Spend Form – (Customer may provide Attachment A to DIR if required by their processes.)

Attachment B Additional Confidentially Requirements – (As necessary and described in Section 7.3, Confidential Information)

Attachment A
Estimated Spend Form

*This form is to be used as needed by the DIR Customer to capture spend within the Shared Services Program. This amount may be based upon the DIR Customer's biennial budget(s).

Below are the estimated spend amounts for certain DIR Shared Services received through this ILC and may change based upon DIR Customer consumption. This amount is to be managed and monitored solely by the DIR Customer. Amounts may be transferred by the DIR Customer that change this amount. Such increases or decreases are strictly within the control of the DIR Customer.

DIR Customer is required to pay for any costs incurred in accordance with this ILC and the related DIR Shared Services Contracts regardless of the estimated spend amounts reflected herein.

Updates to this form may be executed through written notice by the DIR Customer to DIR.

Costs, such as incremental network expenses, which are billed directly to or paid by the DIR Customer, are not included in these amounts.

Type Text Here

For the period MONTH DAY, YEAR through MONTH DAY, YEAR the estimated spend is $0.00 as the spend applies to FREE Services.

DIR Customer acknowledges and agrees that the responsibility to manage, monitor, and change the amounts contained in this form are the sole responsibility of the DIR Customer. Further, each signatory warrants requisite authority to execute any changes to this Attachment A in accordance with the DIR Customer's applicable approval processes.

By: _____

Printed Name: Sofia M. Peña

Title: Board President

Date: _____

Attachment B
Additional Confidentiality Requirements

NONE.

MANAGED SECURITY SERVICES TERMS AND CONDITIONS

This agreement is part of and incorporated within the Interagency/Interlocal Contract ("Contract") that has been entered into by the contracting parties. DIR Customer acknowledges and agrees that this Contract is with DIR and, therefore, DIR Customer does not have privity of contract with the SCPs.

Capitalized terms not defined herein shall have the meaning set forth in the relevant DIR Shared Services Contract.

DIR Customer agrees to the following conditions for receiving Managed Security Services:

1. Conditions for Providing Security Services

1.1 Access

DIR and/or Service Component Provider (SCP) shall use the Internet for primary access to DIR Customer's systems unless otherwise noted and agreed upon. DIR Customer shall not employ special access restrictions against DIR and/or Service Component Provider that it does not apply to the rest of the public network over the course of regular business.

1.2 Network Control

DIR Customer must inform DIR if DIR Customer does not control its network access and/or its Internet service is provided via a third party. DIR Customer is responsible for obtaining all necessary approvals. DIR Customer shall provide all necessary contact information for the third parties that control its network access, Internet service, and/or web applications. DIR Customer's emergency contact list shall include primary and secondary staff capable of administering DIR Customer computer systems specific to the type of services being requested or required.

1.3 Disclosure of Objectionable Material

In conducting the services authorized by DIR Customer, DIR may inadvertently uncover obscene, excessively violent, harassing, or otherwise objectionable material that may violate State or Federal law, including material that may infringe the intellectual property of a third party on DIR Customer devices or networks. DIR shall notify DIR Customer's Executive Director or highest level executive of the existence of all such objectionable and/or potentially illicit material so that DIR Customer may deal with the objectionable and/or potentially illicit material as it deems appropriate.

If DIR accesses child pornography, as defined in the Child Sexual Exploitation and Pornography Act, 18 U.S.C., Chapter 110, in conducting approved Services, DIR shall report such to DIR Customer's Executive Director or highest level executive and an appropriate law enforcement agency and provide the law enforcement agency access to the visual depictions of child pornography.

If DIR accesses information that they perceive as a serious threat to human life or safety in conducting the approved Services, DIR shall report such threat to an appropriate law enforcement agency and DIR Customer's Executive Director or highest-level executive.

1.4 No Warranties and Limitation of Liability

DIR makes no representation or warranty that its security services will disclose, identify, or prevent all vulnerabilities. DIR hereby disclaims all warranties, both express and implied, including without limitation, the implied warranties of merchantability and fitness for a particular purpose. In no event shall DIR be liable for damages of any kind or nature that may arise from the services provided by DIR or DIR's Service Component Provider or Service Provider.

1.5 Service Interruption

DIR will endeavor not to disrupt DIR Customer's services and to adhere to best practices for all work performed. However, tools or services may affect the serviceability of poorly configured or overextended systems or services. It is possible that control of DIR Customer's system may be lost. For any testing that DIR may be conducting, DIR endeavors to use the safest methods to compromise DIR Customer's systems; however, DIR Customer should be prepared to restore a damaged system from a recent, acceptable backup within an acceptable time as determined by DIR Customer. During any testing DIR may conduct, DIR will NOT conduct any deliberate Denial-of-Service attack. DIR Customer agrees not to hold DIR liable in the event of any service interruption(s) that may arise as a result of performance of any Services. If either party becomes aware of a service interruption, that party will notify the other party's emergency contact.

1.6 Termination of Services

If DIR Customer terminates certain Services, that it requested and approved, for convenience, DIR Customer shall pay the remaining requisite unrecovered costs that have already been incurred prior to the notice of termination, such unrecovered costs will be calculated in accordance with the relevant DIR Shared Services Contract, SMM, or other DIR Customer approved terms. DIR Customer understands that it may not be able to terminate services or receive any refund of a pre-payment after approving the relevant financial solution.

2. DIR and DIR Customer Responsibilities

2.1 DIR Customer agrees as follows to the extent assessment Services are requested or required:

a) DIR Customer responses to information requests and artifacts gathering pertinent to this security and risk assessment will be timely;

b) The artifacts data are reasonably available via interviews and documents review;

c) DIR Customer will make available the necessary Subject Matter Expert (SME) with required expertise to work with the SCP Assessment Team and will remain available thru the duration of the assessment;

d) DIR Customer SME will be available when required for interaction with the SCP Assessment Team and that all the interviews will be conducted over the number of consecutive days as established during the project planning and scheduling phase;

e) DIR Customer is responsible for the coordination and scheduling of resources and providing meeting facilities as necessary;

f) Deliverables will be complete when DIR Customer has approved in writing that the deliverable meets the acceptance criteria;

g) All document deliverables must be in formats (hard copy and/or electronic) as specified by DIR Customer. At a minimum, the formats must be in industry-accepted standards (e.g., MS Word, MS PowerPoint MS Project);

h) DIR Customer will assist with meeting coordination for meetings between DIR Customer Key Personnel and DIR and the Service Provider and other staff to gather requirements and other activities;

i) DIR may receive final copies of reports if DIR is paying for the assessment.

2.2 Penetration Testing

2.2.1 DIR Customer agrees as follows to the extent penetration testing ("PT") is requested or required:

a) SCP may conduct a passive scan to determine the number of live IPs within the Customer designated IP range.
b) DIR Customer shall not intentionally place an unsecured system or device in the test scope.
c) If DIR Customer detects SCP testing activities, DIR Customer technical staff shall follow standard operating procedures and policies.

2.3 DIR Customer Compliance

DIR Customer shall comply with all policies, procedures, and processes in the relevant SMM(s) and as provided by DIR.

Sofia M. Peña, Board President
McAllen Independent School District

Approved as to form

by: JOHNATHAN BALL (Oct 10, 2024 14:37 CDT)
Johnathan Ball, Staff Attorney

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Discussion and Possible Action on Competitive Sealed Proposal No. 2025-1017 Safety/Security Film Application Phase II

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

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

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Six hundred eighty-two (682) contractors were invited to submit proposals, nine (9) contractors responded including four (4) no bids. On October 16, 2024, the evaluation committee, comprised of Ruben Treviño, Executive Director for Facilities, Maintenance, and Operations; Melissa Ortiz, Project Manager for Facilities, Maintenance, and Operations; Juan Montemayor, Captain of Police Department; Laura Williams, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Graciela Garza, Senior Buyer, evaluated the proposals.

LEGAL REVIEW:

A draft copy of the Draft AIA contract is attached.

BUDGETARY CONSIDERATIONS:

Funds for this project are available through the Safety and Facilities Enhancement (SAFE) Cycle 1 Grant.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees:
A. approve the ranking for selection of General Contractor for Competitive Sealed Proposal ("CSP") No. 2025-1017 Safety/Security Film Application Phase II; 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 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: _____ **SUPERVISOR:** Lorena Garcia

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 17, 2024 17:38 CDT)

Interim Superintendent of Schools

MCALLEN INDEPENDENT SCHOOL DISTRICT

Competitive Sealed Proposal
No. 2025-1017 Safety/Security Film Application Phase II
Evaluation Matrix

Vendor Names		Security Asssessment Group LLC	Sunsational Solutions	Safe Haven Defense US, LLC	Flip Lok LLC	Epic Solar Control, LLC
Rank		**3**	**2**	**5**	**1**	**4**
Maximum points	**100.00**	**70.38**	**75.06**	**62.85**	**90.50**	**66.08**
Price	**62**	**38**	**46**	**30**	**62**	**34**
Price per square feet (14 mil Base Bid)		$ 19.00	$ 15.50	$ 25.00	$ 11.00	$ 22.00
Estimated Square Feet	10000	$ 190,000.00	$ 155,000.00	$ 250,000.00	$ 110,000.00	$ 220,000.00
Contingency		$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00
Base Bid (Includes Contingency)		$210,000.00	$175,000.00	$270,000.00	$130,000.00	$240,000.00
Offeror's experience and reputation	**19**	**14**	**16**	**17**	**13.5**	**14.5**
Three (3) K-12 reference forms	1.5	1.5	1.5	1	0	1.5
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 (BA160)	1.5	1.5	1.5	0	1.5	1.5
Claims, judgments, arbitration proceedings or suits (BA67)	1	1	1	1	1	1
Three (3) current or past K-12 projects (BA 68-86)	12	10	12	12	8	12
Similar scope and size (2 pts for scope; 2 pts for size)		*3 scopes, 2 size*			*2 scopes, 2 size*	
Current or past Non K-12 projects (BA 88-105)	3	0	0	3	3	0
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**	**0**	**2**	**0**	**2**
Repeat business for similar scope/size (BA106)	2	2	0	2	0	2
The impact on the ability of the district to comply with rules relating to historically underutilized businesses - HUB (BA17)	**1**	**0**	**1**	**0**	**1**	**1**
Offeror's safety record	**6**	**6**	**3**	**5**	**5**	**5**
OSHA Form 300 Log (BA161)	1	1	1	0	0	1
Safety program manual and/or procedures. (BA162)	2	2	2	2	2	1
Drug/alcohol prevention policy and/or procedures. (BA163)	1	1	0	1	1	1
Frequency of safety inspections (BA107)	2	2	0	2	2	2
Offeror's Proposed Personnel	**6**	**6**	**6**	**6**	**6**	**6**
Staff experience (industry) (BA112-131)	3	3	3	3	3	3
Staff experience (firm) (BA112-131)	3	3	3	3	3	3
Whether the offeror's financial capability is appropriate to the size and scope of the project	**2**	**2**	**2**	**1**	**2**	**2**
Financial Statement (BAI65)	1	1	1	0	1	1
Surety Letter (BAI64)	1	1	1	1	1	1
Any other relevant factors specifically listed in the CSP	**2**	**2**	**1**	**2**	**1**	**2**
On-time project completion (BA49-66; BA69-86; BA 88-105)	1	1	0	1	1	1
Projects currently in progress. (134-157)	1	1	1	1	0	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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User Notes: (793592913)

TABLE OF ARTICLES

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EXHIBIT B CONTRACTOR'S PROPOSAL
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NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" 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)*
Sofia M. Pena, 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
EXHIBIT B	CONTRACTOR'S PROPOSAL
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EXHIBIT E	DRAWINGS
EXHIBIT F	SPECIFICATIONS

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~~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.

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§ 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).

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

...

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

month.

§ 5.1.3 ~~Provided that an Application for Payment is received by~~ The Contractor shall submit monthly Applications for Payment to the Architect not later than the ~~day of a month, the Owner shall make payment of the amount certified~~ last day of each month, on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. The Architect will have seven business days to approve the Contractor's Application and submit its Certificate for Payment to the Owner. The Architect may require from the Contractor any additional information required by the Contract Documents and deemed necessary to substantiate the Application for Payment. The Owner shall pay to the Contractor, the certified undisputed amounts in the Payment Application to the Contractor not later than ~~the __ day of the _ month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than _ (_) days after the Architect receives the Application for Payment.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~30 days from the Owner's receipt of the Certificate of Payment from the Architect if the Owner's Board meets twice a month or more, and 45 days from the Owner's receipt of the Certificate of Payment from the Architect if the Owner's Board meets only once per month.

...

.1 That portion of the Contract Sum properly allocable to completed ~~Work;~~Work, as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;

.2 ~~That~~ If approved in advance by the Owner, that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, ~~if approved in advance by the Owner,~~ suitably stored off the site at a location agreed upon in writing; and

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.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document ~~A201–2017;~~ A201–2017, or amounts certified by the Architect and disputed by the Owner; and

...

Five Percent (5%) if the amount set forth in Section 4.1 above for the Contract Sum is at least Four Hundred Thousand Dollars ($400,000) and Ten Percent (10%) if the amount is less than Four Hundred Thousand Dollars ($400,000)

...

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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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...

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

...

[Name]
[Title]

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

...

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

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

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

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

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

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

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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		_____

...

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

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

THE OWNER:
(Name, legal status and address)

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

THE ARCHITECT:
(Name, legal status and address)

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

THE CONTRACTOR/CONSTRUCTION MANAGER

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

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

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

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

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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)*
Sofia M. Pena, 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: _____

DRAFT

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15 CLAIMS AND DISPUTES

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

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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.

...

§ 3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ **§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

§ 3.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§ 3.13.3 Without prior approval of the Owner, the Contractor shall not permit any workers to use any of Owner's existing facilities at or adjacent to the Project site, including, without limitation, lavatories, toilets, entrance and parking areas other than those designated by the Owner. The Contractor shall comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and District's Buildings.

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§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together ~~properly.~~ properly, provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Contract Documents. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

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§ 3.15.1 The Contractor ~~shall~~ shall, on a daily basis, keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains,

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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.

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The Contractor shall provide the ~~Owner and Architect~~ Owner, Architect and their designated representatives, with access to the Work in preparation and progress wherever located. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work. Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on an inspection of the Work.

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~~The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.~~THE CONTRACTOR SHALL PAY ALL ROYALTIES AND LICENSE FEES. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES DEFEND AGAINST ANY AND ALL SUITS, CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS ALLEGED TO HAVE RESULTED FROM CONTRACTOR'S INFRINGEMENT, AND SHALL INDEMNIFY AND HOLD THE OWNER THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM LOSS ON ACCOUNT THEREOF, INCLUDING ATTORNEY'S FEES (AS PERMITTED BY STATUTE), BUT SHALL NOT BE RESPONSIBLE FOR DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS, OR PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS, OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS, OR OTHER DOCUMENTS PROVIDED BY THE OWNER OR PREPARED BY THE ARCHITECT. HOWEVER, IF AN INFRINGEMENT OF A COPYRIGHT OR PATENT ATTRIBUTABLE TO THE OWNER OR ARCHITECT, IS DISCOVERED BY, OR MADE KNOWN TO, THE CONTRACTOR, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOSS UNLESS THE INFORMATION IS PROMPTLY FURNISHED TO THE OWNER AND THE ARCHITECT.

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§ 3.18.1 ~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND (EXCEPT AS LIMITED BELOW) AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS,

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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.

...

§ 5.4.1 Each subcontract agreement for ~~a~~ any unperformed portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner ~~for cause pursuant to Section 14.2~~ or abandonment of the Project by the Contractor and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and ~~Contractor; and~~Contractor in writing;

.2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond relating to the ~~Contract.~~Contract; and

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

...

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation ~~shall~~ may, in the Owner's sole discretion, be equitably adjusted for increases in cost resulting from the suspension. Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. ~~If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~Owner shall only be responsible for compensating subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

§ 5.5 Notice Of Subcontractor Default

Contractor shall promptly notify Owner and Architect of any material defaults by any Subcontractor or Sub-subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor, Sub-subcontractor or other materialman or worker employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor.

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

...

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual ~~agreement.~~ agreement by the Owner and Contractor. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 ~~Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.~~[Paragraph Deleted.]

...

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the

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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.

...

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the ~~Architect~~ Owner will allocate the cost among those responsible.

...

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. Changes may be funded out of a contingency fund, if any, or other allowance established herein, or may require a change in the Contract Sum. The authority to approve a change to the Work, the Contract Sum, approve payment from a Contingency or Allowance, or a change in the Project Time, rests solely with the Owner. A Change Order funded from the Contingency or other Allowance shall be referred to herein for clarity as a "Contingency Authorization Order".

§ 7.1.2 A Contingency Authorization Order or Change Order shall be based upon agreement among the Owner, Contractor, and ~~Architect. A Construction Change Directive~~ Architect executed prior to commencement of any Work covered by the Order. A Construction Change Directive (whether funded from contingency, if any, or by an increase in the Contract Sum) requires agreement by the Owner and Architect and may or may not be agreed to by ~~the Contractor.~~ the Contractor prior to the commencement of the Work. An order for a minor change in the Work may be issued by the Architect ~~alone.~~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.

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§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended ~~use.~~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.

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§ 9.8.3 Upon receipt of the Contractor's list, the Architect accompanied by the Owner or Owner's representative, at the Owner's option, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, then the Architect shall so notify the Contractor and Owner in writing, and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.3.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

§ 9.8.3.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

§ 9.8.4 When the Work or designated portion thereof is ~~substantially complete,~~ Substantially Complete, as defined by the Contract Documents, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion ~~thereof~~ 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,

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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~~

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~~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~~

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~~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~~

~~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.]

DRAFT

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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)*
Sofia M. Pena, 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.~~

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Discussion and Possible Action to Advertise for a Request for Qualifications for Legal Services for Property Damage Claim

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On April 28, 2023, McAllen ISD experienced property damage due to a wind storm. A claim was filed with the insurance carrier and the claim is nearing completion.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Administration is recommending that the Board of Trustees discuss and consider advertising for a request for qualifications for legal services for the property damage claim to determine if additional funds may be recouped.

LEGAL REVIEW:

Not required.

BUDGETARY CONSIDERATIONS:

These type of contracts are usually paid on a percentage basis of funds recovered, if any.

RECOMMENDED BOARD ACTION:

That the Board of Trustees discuss and take possible action to advertise for a request for qualifications for legal services for property damage claim.

Attachment: ☑

SUBMITTED BY: Andres Silva

SUPERVISOR: Lorena Garcia

For further information contact:
Name: Andres Silva, Director for Employee Benefits, Safety & Risk Management
Office: (956) 618-6007
Email: andres.silva@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 18, 2024 08:24 CDT)

Superintendent of Schools

Report Regarding

Insurance Claim

Windstorm - April 29, 2023

Report Regarding

Wind Storm Summary

A rapidly developing and accelerating squall line raced through the populated Lower Rio Grande Valley region of Texas, initially producing large hail up to golfball size in southern Zapata and southwestern Starr County before evolving into the squall line that produced wind damage from southern Starr County through southern portions of Hidalgo and Cameron County. The initial hail reports occurred from 1005 PM through 1130 PM April 28th, with the swath of wind damage occurring between 1130 PM April 28th and 130 AM April 29th.

Thunderstorm Wind 1: McAllen to Progresso, Hidalgo County Texas... Peak Wind /E/: 75 to 85 mph
Path Length /statute/: 25.8 miles Path Width /maximum/: 6 miles

Source: National Weather Service

Report Regarding

Insurance Claim

Claim filed – April 29th

Adjuster Assignment – Sedgwick

Young & Associates

Inspections started May 8, 2023

Inspections concluded June 12, 2023

Reinspection January 8, 2024 – January 12, 2024

Advance Payment of $1,500,000

Report Regarding

Scope of Damage

District wide but with greatly varying severity.

Minor – Wind blown outdoor property & downed trees/limbs

Major – Portable roof(s) blown off & structural damage

McALLEN INDEPENDENT SCHOOL DISTRICT

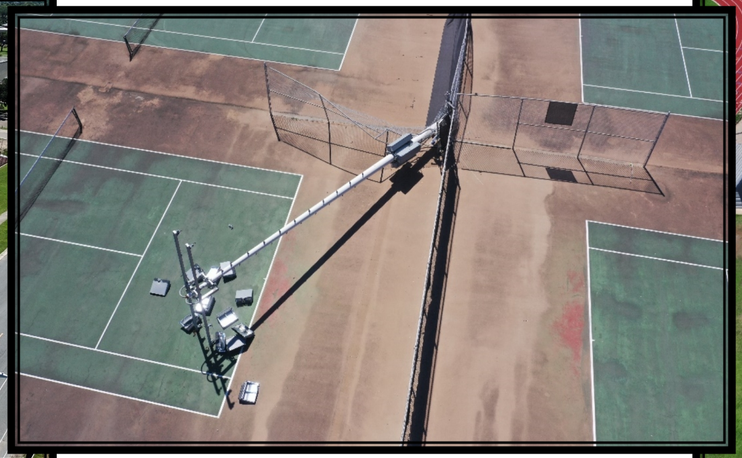
Report Regarding













Report Regarding

Insurance Claim Status

Complete – Pending Final Statement of Loss & Related Docs

Outstanding reimbursement due - $981,436

Total Net Recoverable - $2,841,436.83

Minus Advance Payment of $1,500,000

Report Regarding

Next Steps?

Options include RFQ for Legal Services

11/9 Ad 1 - 11/16 Ad 2
12/2 Closes
12/10 Board Meeting

11/9 Ad 1 - 11/16 Ad 2
12/9 Closes
1/14 Board Meeting

Report Regarding

Questions?

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Discussion and Possible Action to Approve Board of Education Meeting Minutes

REFERENCE:

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The minutes for each meeting of the Board of Education are traditionally brought to the Board for approval. After approval, the minutes become the official record for Board Action.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
The Administration asks that the Board of Education consider approval of the attached minutes.

LEGAL REVIEW: None

BUDGETARY CONSIDERATIONS: None

RECOMMENDED BOARD ACTION:
That the Board approve the minutes of the following meeting(s):

Regular Board Meeting October 8, 2024 5:30 PM

Attachment: ✓

SUBMITTED BY: Natalia Goza

SUPERVISOR: Sofia Perced Pena (Oct 11, 2024 16:32 CDT)

For further information contact:
Name: Natalia Goza
Office: 956 618-6094
Email: natalie.goza@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 15, 2024 14:50 CDT)

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Discussion and Possible Action to Approve Board of Education Meeting Minutes

REFERENCE:

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The minutes for each meeting of the Board of Education are traditionally brought to the Board for approval. After approval, the minutes become the official record for Board Action.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
The Administration asks that the Board of Education consider approval of the attached minutes.

LEGAL REVIEW: None

BUDGETARY CONSIDERATIONS: None

RECOMMENDED BOARD ACTION:
That the Board approve the minutes of the following meeting(s):

Regular Board Meeting October 8, 2024 5:30 PM

Attachment: ✓

SUBMITTED BY: Natalia Goza

SUPERVISOR: Sofia Perced Pena (Oct 11, 2024 16:32 CDT)

For further information contact:
Name: Natalia Goza
Office: 956 618-6094
Email: natalie.goza@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 15, 2024 14:50 CDT)

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Discussion and Possible Action on Human Resources Recommendation(s) for School Year 2024-2025

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District utilizes a comprehensive hiring system that screens, evaluates and recommends the "best" candidates with the skill sets to maximize student learning. All recommended candidates meet compliance with State Law requirements, that is to increase the academic achievement of all students by helping campuses and district improve teacher quality.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Considerations are made in accordance with Board Policy DC (LEGAL) and District Staffing Guidelines. Individual(s) to be identified under separate cover.

LEGAL REVIEW:

Not Applicable

BUDGETARY CONSIDERATIONS:

Provided with individuals identified under separate cover.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve Human Resources Recommendation(s) for School Year 2024-2025.

Attachment: ☐

SUBMITTED BY: Alberto Canales
Alberto Canales (Oct 15, 2024 10:45 CDT)

SUPERVISOR: Lorena Garcia

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

Approved for presentation to the Board of Education:

Rene Gutierrez
RENE GUTIERREZ (Oct 15, 2024 14:43 CDT)

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: October 22, 2024

SUBJECT: Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2024-2025

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Employees desiring to voluntarily separate from the school district for reasons such as retirement, relocation or other such reasons provide written notice to their immediate supervisor and the Human Resources Department. All resignations include current position, work site and date resignation is to be effective.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Human Resources Department shall notify all appropriate personnel of the resignation, including the Payroll Department. All vacant positions will be closely reviewed by corresponding department administration, along with aligning to staffing guidelines and addressing staffing needs in determining position status.

LEGAL REVIEW:

Not Applicable.

BUDGETARY CONSIDERATIONS:

Not Applicable.

RECOMMENDED BOARD ACTION:

This item is for information only. No Board action required.

Attachment: ☐

SUBMITTED BY: Alberto Canales
Alberto Canales (Oct 15, 2024 10:44 CDT)

SUPERVISOR: Lorena Garcia

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Oct 16, 2024 14:59 CDT)

Superintendent of Schools