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, January 14, 2025, 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. **SUPERINTENDENT'S REPORT(S)**

   Presenter: Dr. René Gutiérrez, Superintendent

   A) H-E-B donates $50,000 to McAllen Education Foundation

   B) Coffee with Superintendent visits Morris Middle School

   C) Turf donated for McAllen ISD athletes

6. **PUBLIC HEARING** for 2023-2024 District Annual Report **6**

   Presenter: Dr. René Gutiérrez, Superintendent

7. **PUBLIC NOTICE:** Notice of Public Meeting and Notice of Proposed Contract for Legal Services under Texas Government Code § 2254.1036(a)(1) **43**

   Presenter: Dr. René Gutiérrez, Superintendent

8. **DONATIONS**

   A) Discussion and Possible Action for the Approval of Donations to Leonelo H. Gonzalez Elementary 46
   Item Submitted: Jeanette Nino, Associate Superintendent for Instructional Leadership

Presenter: Dr. René Gutiérrez, Superintendent

9. **CONSENT AGENDA ITEMS**

A) Discussion and Possible Action on Affiliation Agreement No. 2025-174 Educational Experience for The University of Texas Rio Grande Valley (UTRGV) School Psychology Program Practicum — 48
Item Submitted: Dr. Rosalba De Hoyos, Associate Superintendent for Instructional Services and Jeanette Nino, Associate Superintendent for Instructional Leadership

Presenter: Dr. René Gutiérrez, Superintendent

B) Discussion and Possible Action on Request for Proposal No. 2025-1020 Fine Arts Equipment, Supplies, & Other Related Products and Services — 55
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

C) Discussion and Possible Action on Request for Proposal No. 2024-1023 Catering, Entertainment, Field Trips, Fundraising, Food, Restaurants, and Rentals (Round 10) — 57
Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

Presenter: Dr. René Gutiérrez, Superintendent

D) Discussion and Possible Action on Extension of the Agreement No. 2024-254 City of McAllen Community Development Block Grant Funding for Track Lighting Project at Dorothea Brown Middle School — 59
Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

Presenter: Dr. René Gutiérrez, Superintendent

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

A) **Instructional Services/ Instructional Leadership Item(s)** (Dr. Rosalba De Hoyos and/or Jeanette Nino)

1. Report Regarding the Career Technical Education Department — 78
Item Submitted: Dr. Rosalba De Hoyos, Associate Superintendent for Instructional Services

Presenter: Dr. René Gutiérrez, Superintendent

2. Report Regarding Partnership Agreement No. 2025-210 Texas Regional Pathways Network with Region One Education Service Center — 101
Item Submitted: Dr. Rosalba De Hoyos, Associate Superintendent for Instructional Services

Presenter: Dr. René Gutiérrez, Superintendent

3. Report Regarding the 2025-2026 School Calendar — 109
Item Submitted: Dr. Rosalba De Hoyos, Associate Superintendent for Instructional Services

Presenter: Dr. René Gutiérrez, Superintendent

4. Discussion and Possible Action on the Advanced Course List for UIL "No Pass - No Play" 2024-2025 with Amended Language Regarding Core Courses Taught Solely by College and University Staff — 135
   Item Submitted: Dr. Rosalba De Hoyos, Associate Superintendent for Instructional Services

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

1. Discussion and Possible Action of Additions/ Revisions Deletions of Local Policies Resulting from the TASB Policy Review Session- 2nd Reading — 137
   Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

   Presenter: Dr. René Gutiérrez, Superintendent

2. Report Regarding the School Board Elections to be held May 3, 2025 — 237
   Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

   Presenter: Dr. René Gutiérrez, Superintendent

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

1. Report Regarding 2025-2026 Budget Calendar — 243
   Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

   Presenter: Dr. René Gutiérrez, Superintendent

2. Report Regarding Timeline for Facilities Improvement Projects — 250
   Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

   Presenter: Dr. René Gutiérrez, Superintendent

3. Report Regarding Intention to Apply for the 2025-2026 Community Development Block Grant (CDBG) for an All-Inclusive Playground at Juan Seguin Elementary, Theodore Roosevelt Elementary, William B. Travis Middle School Community Track Project, and a parking lot at Dorothea Brown Middle School Community Track — 260
   Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operation

   Presenter: Dr. René Gutiérrez, Superintendent

4. Discussion and Possible Action on Request for Proposals No. 2025-1022 Facilities Needs Assessment — 272
   Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

   Presenter: Dr. René Gutiérrez, Superintendent

5. Discussion and Possible Action on the McAllen Independent School District December Budget Amendment for Fiscal Year Beginning July 1, 2024 and Ending June 30, 2025 — 274
   Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

   Presenter: Dr. René Gutiérrez, Superintendent

6. Discussion and Possible Action on Request for Qualifications No. 2025-1003 Bond Counsel Services 280
Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

Presenter: Dr. René Gutiérrez, Superintendent

7. Discussion and Possible Action on Competitive Sealed Proposal No. 2025-1028 Safety/Security Film Application Phase III 282
Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

Presenter: Dr. René Gutiérrez, Superintendent

8. Discussion and Possible Action on Findings Made upon Approval of Contract for Legal Services under Texas Government Code § 2254.1036(b) 423
Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

Presenter: Dr. René Gutiérrez, Superintendent

9. Discussion and Possible Action on Contingent Fee Contract for Legal Services with Millin & Millin, PLLC 425
Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

Presenter: Dr. René Gutiérrez, Superintendent

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

1. Approval of Board of Education Meeting Minutes 435
   a) Regular Board Meeting December 10, 2024
   b) School Safety and Security Committee Meeting January 09, 2025

11. **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 Athletic Coordinator/ Head Football Coach at James Nikki Rowe High School Recommendation for 2024-2025

D) Discussion of Superintendent's Employment Contract

E) Discussion of Intruder Detection Audit Report Findings

F) Pending and/or Potential Litigation

G) Possible Real Estate Acquisition

12. **RECONVENE IN OPEN SESSION**

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

A) Discussion and Possible Action of Human Resources Recommendation(s) for School Year 2024-2025 436
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 — 437
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

C) Discussion and Possible Action of Recommendation for Athletic Coordinator/ Head Football Coach at James Nikki Rowe High School 2024-2025 — 438
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

D) Discussion and Possible Action Regarding Superintendent's Employment Contract — 439

E) Discussion of Intruder Detection Audit Report Findings

F) Pending and/or Potential Litigation

G) Possible Real Estate Acquisition

14. **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 January 10, 2024 by 3:00 P.M.
Natalia Goza
on behalf of the Board of Trustees

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Public Hearing for 2023-2024 District Annual Report

REFERENCE: Goal 1: Student Achievement/Student Focus, Texas Education Code Section 39.306

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
Statue, Texas Education Code 39.306, requires that each district's board of trustees hold a public hearing to discuss the district's annual report. The district received the annual report on December 12, 2024. The public notice of this hearing was posted on December 18, 2024 in the Monitor.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
An overview of the District Annual Report will precede the public hearing scheduled for January 14, 2025. Public may access the District Annual Report on the McAllen ISD District Website.

LEGAL REVIEW:
None

BUDGETARY CONSIDERATIONS:
None

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

Attachment: ☑

SUBMITTED BY: _____

SUPERVISOR: Jeanette Nino (Jan 6, 2025 10:25 CST)

For further information contact:
Name: Jeanette C. Nino
Office: 956-618-6053
eMail: jeanette.nino@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 6, 2025 15:27 CST)

Superintendent of Schools Jan 6, 2025

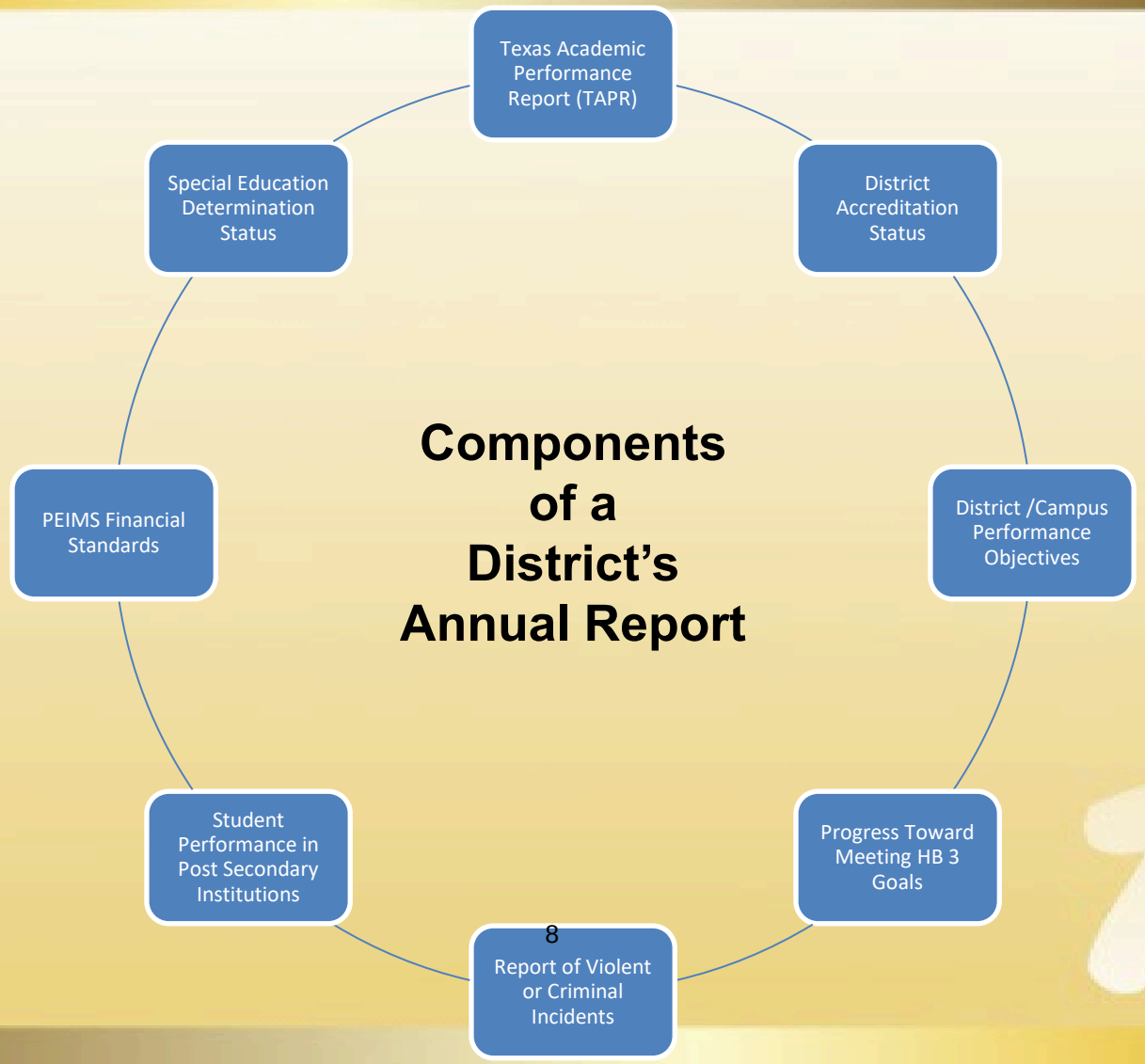
Public Hearing
of
McAllen Independent School District
2023-2024
Texas Academic Performance Report

Presented: Tuesday, January 14, 2025

Public notification posted in *The Monitor* newspaper:
Wednesday, December 18, 2024

McAllen ISD 2023-2024 Annual Report

Texas Education Code Section (TEC) § 39.306 § 39.362



District Accreditation Status*

2023-24 Financial Integrity Rating System of Texas (FIRST) Rating: **A - Superior Achievement**

(based on 2022-23 data)

2022 Accountability Rating: **A**

2022 Accreditation Status: **Accredited**

2024 Special Education Determination Status: **Meets Requirements**

**District accreditation statuses for the 2023-2024 and 2024-2025 school years have not been issued as the issuance of A-F ratings under the 2023 and 2024 rules are pending and subject to change.*

Source: https://tea4avcastro.tea.state.tx.us/accountability/accreditation/2022_2023_accreditation_statuses.html

2024-2025 Reading Language Arts District Performance Goals

Name of Campus: McAllen ISD

Indicator: ELA/Reading Language Arts
Grade: All Grades

	2021 STAAR Tested Campus Participation	2021 STAAR Tested Campus Performance	2022 STAAR Tested Campus Participation	2022 STAAR Tested Campus Performance	2023 STAAR Campus Performance/Participation			2024 STAAR Campus Performance/Participation			2024-2025 STAAR Goal Campus Performance
Group	**Percentage**	**Percentage**	**Participation Percentage**	**Performance Percentage**	**# Tested**	**Total Passed**	**% Passed**	**# Tested**	**Total Passed**	**% Passed**	**Passing Percentage**
All Students	60%	72%	99%	80%	12595	10136	80%	12065	9646	80%	100%
American Indian	67%	67%	100%	71%	8	7	88%	7	5	71%	100%
Asian	68%	95%	100%	96%	113	108	96%	125	117	94%	100%
African American	51%	76%	98%	86%	42	38	90%	52	47	90%	100%
Hispanic	60%	71%	99%	80%	11429	9048	79%	11389	9039	79%	100%
White	63%	86%	99%	91%	430	397	92%	425	388	91%	100%
Pacific Islander	*	*	100%	100%	3	3	100%	2	2	100%	100%
Two or More Races	46%	91%	100%	93%	54	52	96%	51	47	92%	100%
Male	67%	67%	99%	76%	6353	4836	76%	6310	4772	76%	100%
Female	76%	76%	99%	84%	5724	4814	84%	5755	4874	85%	100%
Eco Disadvantage	60%	65%	99%	76%	8254	6245	76%	8816	6665	76%	100%
Special Education	58%	36%	99%	47%	1959	992	51%	2213	1160	52%	100%
At-Risk	55%	55%	99%	70%	7352	5238	71%	7453	5123	69%	100%
EB/EL (English Learner)	68%	51%	99%	69%	5042	3529	70%	4799	3289	69%	100%
Migrant	50%	50%	98%	66%	231	149	65%	213	139	65%	100%
Gifted and Talented	98%	98%		100%	1560	1555	100%	1991	1987	100%	100%

2024-2025 Math District Performance Goals

Name of Campus: McAllen ISD

Indicator: Math
Grade: All Grades

	2021 STAAR Tested Campus Participation	2021 STAAR Tested Campus Performance	2022 STAAR Tested Campus Participation	2022 STAAR Tested Campus Performance	2023 STAAR Campus Performance/Participation			2024 STAAR Campus Performance/Participation			2024-2025 STAAR Goal Campus Performance
Group	**Percentage**	**Percentage**	**Participation Percentage**	**Performance Percentage**	**# Tested**	**Total Passed**	**% Passed**	**# Tested**	**Total Passed**	**% Passed**	**Passing Percentage**
All Students	55%	65%	99%	78%	9779	7680	79%	9552	7494	78%	100%
American Indian	40%	*	100%	67%	7	7	100%	6	5	83%	100%
Asian	71%	96%	99%	97%	88	85	97%	92	85	92%	100%
African American	46%	83%	100%	85%	36	30	83%	38	30	79%	100%
Hispanic	55%	64%	99%	77%	9090	7060	78%	9032	7032	78%	100%
White	64%	81%	99%	89%	343	306	89%	334	300	90%	100%
Pacific Islander	*	*	100%	100%	3	3	100%	2	2	100%	100%
Two or More Races	52%	95%	100%	96%	44	43	98%	43	39	91%	100%
Male	62%	62%	99%	76%	5025	3910	78%	4924	3819	78%	100%
Female	63%	63%	99%	78%	4585	3622	79%	4628	3675	79%	100%
Eco Disadvantage	53%	57%	99%	73%	6578	4869	74%	7072	5264	74%	100%
Special Education	50%	37%	100%	50%	1634	970	59%	1901	1080	57%	100%
At-Risk	47%	47%	99%	68%	5707	4047	71%	5907	4018	68%	100%
EB/EL (English Learner)	54%	47%	100%	69%	4030	2886	72%	3825	2731	71%	100%
Migrant	42%	42%	99%	57%	178	115	65%	182	126	69%	100%
Gifted and Talented	96%	96%		99%	1301	1289	99%	1664	1657	100%	100%

2024-2025 Science District Performance Goals

Name of Campus: McAllen ISD

Indicator: Science
Grade: All Grades

	2021 STAAR Tested Campus Participation	2021 STAAR Tested Campus Performance	2022 STAAR Tested Campus Participation	2022 STAAR Tested Campus Performance	2023 STAAR Campus Performance/Participation			2024 STAAR Campus Performance/Participation			2024-2025 STAAR Goal Campus Performance
Group	**Percentage**	**Percentage**	**Participation Percentage**	**Performance Percentage**	**# Tested**	**Total Passed**	**% Passed**	**# Tested**	**Total Passed**	**% Passed**	**Passing Percentage**
All Students	55%	73%	99%	80%	4717	3623	77%	4494	3397	76%	100%
American Indian	*	*	100%	100%	3	3	100%	2	1	50%	100%
Asian	70%	95%	95%	100%	44	39	89%	43	42	98%	100%
African American	45%	78%	100%	83%	19	17	89%	21	17	81%	100%
Hispanic	55%	72%	99%	79%	4234	3176	75%	4259	3190	75%	100%
White	60%	83%	98%	89%	154	142	92%	145	126	87%	100%
Pacific Islander	*	*	100%	100%	1	0	0%	1	1	100%	100%
Two or More Races	40%	100%	96%	91%	18	15	83%	20	18	90%	100%
Male	72%	72%	99%	78%	2331	1800	77%	2248	1715	76%	100%
Female	73%	73%	99%	80%	2142	1592	74%	2246	1682	75%	100%
Eco Disadvantage	53%	66%	99%	76%	3034	2156	71%	3299	2327	71%	100%
Special Education	54%	43%	99%	45%	711	347	49%	773	397	51%	100%
At-Risk	56%	56%	99%	71%	2832	1895	67%	2800	1832	65%	100%
EB/EL (English Learner)	52%	48%	99%	69%	1900	1247	66%	1791	1167	65%	100%
Migrant	57%	57%	97%	62%	89	50	56%	90	55	61%	100%
Gifted and Talented	97%	97%		100%	566	557	98%	664	651	98%	100%

2024-2025 Social Studies District Performance Goals

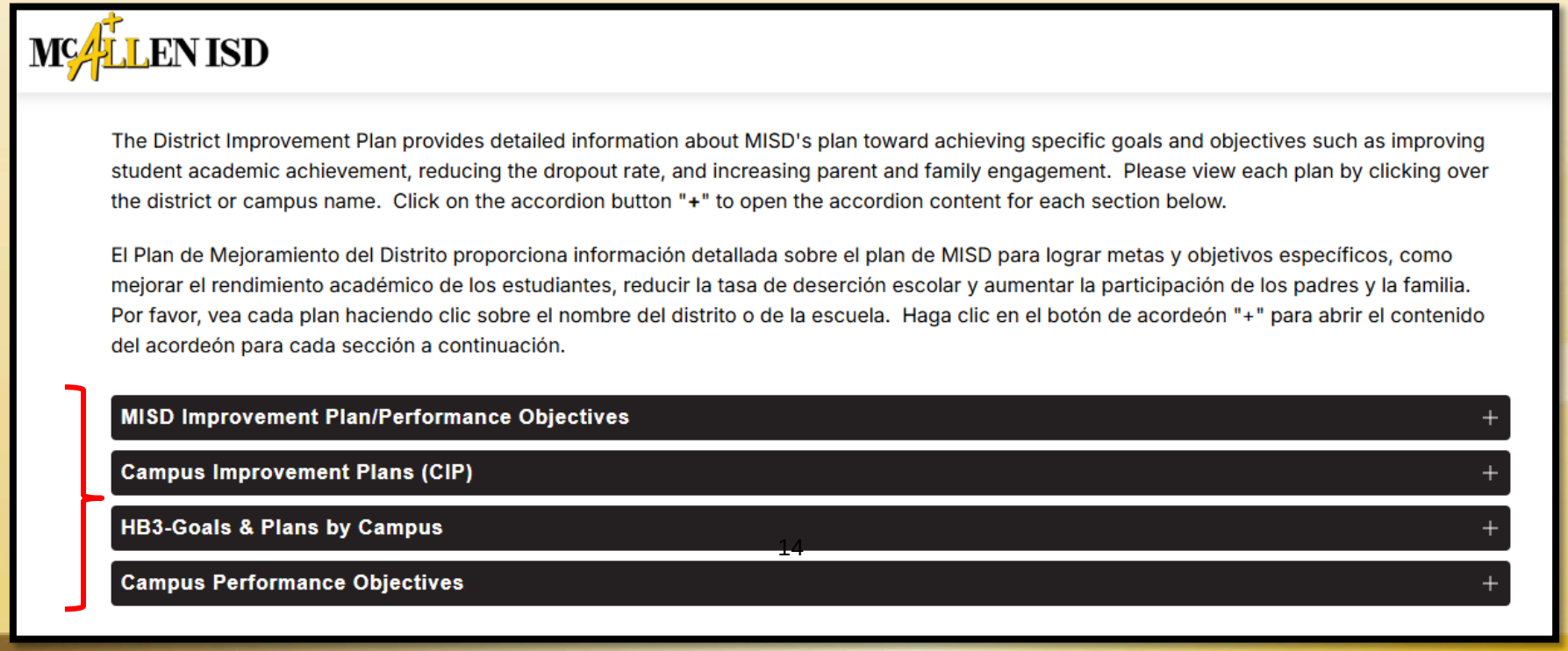
Name of Campus: McAllen ISD

Indicator: Social Studies
Grade: All Grades

	2021 STAAR Tested Campus Participation	2021 STAAR Tested Campus Performance	2022 STAAR Tested Campus Participation	2022 STAAR Tested Campus Performance	2023 STAAR Campus Performance/Participation			2024 STAAR Campus Performance/Participation			2024-2025 STAAR Goal Campus Performance
Group	**Percentage**	**Percentage**	**Participation Percentage**	**Performance Percentage**	**# Tested**	**Total Passed**	**% Passed**	**# Tested**	**Total Passed**	**% Passed**	**Passing Percentage**
All Students	63%	81%	99%	80%	3271	2635	81%	3104	2524	81%	100%
American Indian	*	*	100%	100%	1	1	100%	*	*	*	100%
Asian	73%	94%	100%	97%	32	28	88%	29	28	97%	100%
African American	64%	100%	100%	88%	11	11	100%	14	12	86%	100%
Hispanic	62%	80%	99%	80%	2781	2162	78%	2935	2373	81%	100%
White	67%	87%	99%	88%	108	99	92%	104	93	89%	100%
Pacific Islander	*	*	*	*	1	1	100%	1	1	100%	100%
Two or More Races	65%	100%	100%	100%	13	10	77%	18	14	78%	100%
Male	81%	81%	99%	80%	1538	1214	79%	1535	1255	82%	100%
Female	79%	79%	99%	79%	1409	1098	78%	1569	1269	81%	100%
Eco Disadvantage	61%	75%	99%	76%	1973	1449	73%	2196	1685	77%	100%
Special Education	58%	54%	98%	52%	404	217	54%	344	222	65%	100%
At-Risk	67%	67%	99%	71%	1867	1289	69%	1819	1283	71%	100%
EB/EL (English Learner)	55%	55%	99%	65%	1072	687	64%	1056	704	67%	100%
Migrant	78%	78%	97%	74%	60	40	67%	59	43	73%	100%
Gifted and Talented	97%	97%		98%	287	282	98%	427	419	98%	100%

2024-2025
Campus and District Performance Goals

- May be accessed via https://www.mcallenisd.org/page/misd-campus-improvement-plans
- Scroll to the bottom of this page to view the requested document



2023-24 Texas Academic Performance Report (TAPR)

District Name: MCALLEN ISD

District Number: 108906

2024 Special Education Determination Status:

Meets Requirements

McAllen ISD Overview
2023-2024 Student Information

Texas Education Agency

2023-24 Student Information (TAPR)

MCALLEN ISD (108906) - HIDALGO COUNTY

	Membership				Enrollment			
	District		State		District		State	
Student Information	Count	Percent	Count	Percent	Count	Percent	Count	Percent
Total Students	20,058	100.0%	5,517,464	100.0%	20,095	100.0%	5,531,236	100.0%

STAAR 2023-2024 at Approaches Grade Level or Above - All Grades

Texas Education Agency
2023-24 STAAR Performance (TAPR)
MCALLEN ISD (108906) - HIDALGO COUNTY

	School Year	State	Region 01	District	African American	Hispanic	White	American Indian	Asian	Pacific Islander	Two or More Races	Special Ed (Current)	Special Ed (Former)	Continu-ously Enrolled	Non-Continu-ously Enrolled	Econ Disadv	EB/EL (Current & Monitored)
At Masters Grade Level	2024	12%	3%	**7%**	*	6%	15%	*	13%	-	*	0%	-	6%	8%	2%	0%
	2023	12%	3%	**5%**	-	5%	7%	*	30%	-	*	0%	0%	6%	3%	3%	0%
All Grades All Subjects																	
At Approaches Grade Level or Above	2024	75%	75%	**80%**	86%	79%	90%	75%	95%	100%	90%	55%	84%	80%	78%	76%	73%
	2023	76%	76%	**80%**	91%	80%	92%	95%	94%	90%	93%	54%	77%	80%	81%	76%	74%
At Meets Grade Level or Above	2024	48%	47%	**55%**	67%	53%	71%	56%	86%	83%	76%	29%	61%	55%	52%	48%	44%
	2023	49%	48%	**55%**	75%	54%	72%	67%	89%	60%	72%	29%	51%	55%	54%	47%	45%
At Masters Grade Level	2024	20%	18%	**24%**	34%	23%	38%	25%	67%	17%	43%	11%	34%	24%	24%	18%	17%
	2023	20%	18%	**24%**	42%	23%	39%	14%	65%	10%	47%	12%	22%	24%	25%	18%	17%
All Grades ELA/Reading																	
At Approaches Grade Level or Above	2024	76%	75%	**81%**	92%	80%	92%	71%	95%	*	92%	53%	87%	82%	79%	77%	73%
	2023	77%	76%	**82%**	93%	81%	93%	88%	96%	*	96%	51%	78%	82%	81%	78%	75%
At Meets Grade Level or Above	2024	54%	53%	**62%**	84%	61%	77%	71%	90%	*	84%	31%	66%	63%	59%	55%	50%
	2023	53%	52%	**61%**	83%	60%	79%	75%	89%	*	82%	28%	54%	61%	60%	53%	50%
At Masters Grade Level	2024	22%	21%	**29%**	48%	28%	44%	43%	72%	*	47%	12%	36%	29%	29%	22%	19%
	2023	20%	19%	**27%**	43%	25%	42%	25%	63%	*	51%	12%	20%	26%	28%	19%	18%
All Grades Mathematics																	
At Approaches Grade Level or Above	2024	72%	74%	**80%**	82%	79%	89%	86%	94%	*	91%	57%	87%	80%	78%	76%	75%
	2023	75%	76%	**80%**	83%	79%	89%	100%	97%	*	98%	59%	77%	80%	80%	75%	75%
At Meets Grade Level or Above	2024	43%	43%	**51%**	55%	50%	66%	43%	80%	*	73%	29%	63%	51%	50%	44%	43%
	2023	45%	44%	**51%**	61%	50%	66%	63%	93%	*	69%	31%	51%	51%	50%	44%	43%
At Masters Grade Level	2024	17%	16%	**21%**	34%	20%	33%	14%	60%	*	40%	11%	37%	21%	21%	16%	16%
	2023	19%	17%	**22%**	36%	21%	34%	0%	70%	*	44%	13%	25%	22%	23%	17%	17%
All Grades Science																	
At Approaches Grade Level or Above	2024	75%	75%	**76%**	81%	76%	88%	*	98%	*	90%	52%	75%	77%	75%	71%	69%
	2023	77%	77%	**77%**	90%	77%	91%	*	90%	*	84%	49%	74%	77%	79%	73%	70%
At Meets Grade Level or Above	2024	43%	40%	**43%**	57%	42%	65%	*	84%	*	65%	23%	48%	44%	41%	35%	32%
	2023	47%	44%	**47%**	70%	46%	61%	*	84%	*	53%	25%	41%	47%	45%	40%	36%

McAllen ISD students performed above peers compared to Region One and in the state for all subjects.

2023-2024 STAAR Participation

Texas Education Agency

2023-24 STAAR Participation (TAPR)

MCALLEN ISD (108906) - HIDALGO COUNTY

	State	Region 01	District	African American	Hispanic	White	American Indian	Asian	Pacific Islander	Two or More Races	Special Ed (Current)	Special Ed (Former)	Continu-ously Enrolled	Non-Continu-ously Enrolled	Econ Disadv	EB/EL (Current & Monitored)
2024 STAAR Participation (All Grades)																
All Tests																
Assessment Participant	99%	99%	**100%**	100%	100%	99%	94%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Included in Accountability	92%	93%	**93%**	83%	93%	94%	94%	92%	100%	94%	95%	95%	97%	83%	92%	88%
Not Included in Accountability: Mobile	4%	3%	**3%**	14%	3%	4%	0%	2%	0%	6%	2%	3%	1%	8%	3%	3%
Not Included in Accountability: Other Exclusions	2%	3%	**4%**	3%	4%	1%	0%	6%	0%	0%	2%	2%	2%	8%	4%	8%
Not Tested	1%	1%	**0%**	0%	0%	1%	6%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Absent	1%	0%	**0%**	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Other	0%	0%	**0%**	0%	0%	0%	6%	0%	0%	0%	0%	0%	0%	0%	0%	0%

Student Performance in Post Secondary Institutions (2021-2022 Graduates attending 2022-2023)

	# of MISD Graduates	Grade Point Average (GPA) for 1st Year in Public Higher Education in Texas					
		< 2.0	2.0-2.49	2.5-2.99	3.0-3.49	> 3.5	Unknown
Four-Year Public University	526	96	52	82	121	169	6
Two-Year Public Colleges	385	155	54	47	59	45	25
Independent Colleges and Universities	42						
Not Trackable	126						
Not Found	499						
Total Graduates 2021-2022	1,578						

Source: Texas Higher Education Coordinating Board and Texas Education Agency

Report on Criminal and Violent Crimes 2023-2024

Campus	Incident Codes																
	11	12	13	14	16	17	18	19	29	30	31	32	36	37	46	47	48
McAllen High School										1			3				
Memorial High School													4				
Rowe High School													3				
Lamar Academy																	
Achieve ECHS																	
I & G Center																	
Brown Middle School																	
Cathey Middle School																	
De Leon Middle School																	
Fossum Middle School																	
Morris Middle School																	
Travis Middle School										1							
Alvarez Elementary																	
Bonham Elementary																	
Escandon Elementary																	
Fields Elementary																	
Garza Elementary																	
Gonzalez Elementary																	
Hendricks Elementary																	
Houston Elementary																	
Jackson Elementary																	
McAuliffe Elementary																	
Milam Elementary																	
Perez Elementary																	
Rayburn Elementary																	
Roosevelt Elementary																	
Sanchez Elementary																	
Seguin Elementary																	
Thigpen-Zavala Elementary																	
Wilson Elementary																	

Summary:

2 = (Code 30) Aggravated Assault Under Penal Code Section 22.02 Against Someone Other

10 = (Code 36) Felony Controlled Substance Violation

	Incident Code Description
11	Used, Exhibited, or Possessed a Firearm
12	Used, Exhibited, or Possessed an Illegal Knife
13	Used, Exhibited, or Possessed and Illegal Club
14	Used, Exhibited ,or Possessed Weapon Under Penal Code Section 46 .05
16	Arson
17	Murder, Capital Murder, Criminal Attempt to Commit Murder, or Capital Murder
18	Indecency with a Child
19	Aggravated Kidnapping
29	Aggravated Assault Under Penal Code Section 22.02 Against District Employee
30	Aggravated Assault Under Penal Code Section 22.02 Against Someone Other
31	Sexual Assault Under Penal Code 22.011
32	Sexual Assault Under Penal Code 22.011 or Aggravated Sexual Assault of a Child
36	Felony Controlled Substance Violation
37	Felony Alcohol Violation
46	Aggravated Robbery
47	Manslaughter
48	Criminally Negligent Homicide

Violence Prevention/Awareness Programs

- **Counselor/Administration Support Initiatives:**
  - Drug Prevention
  - Bullying Awareness and Prevention
  - Conflict Resolution
  - Anger Management
  - Consequences of violence
- **Social Emotional Learning (SEL) Lessons:**
  - Delivered every six weeks at all schools by counselors.
- **Comprehensive Campus Counseling Plans:**
  - Focus on violence prevention strategies and initiatives.
- **Safe and Supportive School Teams:**
  - Dedicated to addressing individual needs of students.
- **Individual or Group Counseling:**
  - One-on-one group sessions provided by counselors to address personal issues, offering a safe space for students to express their feelings and develop constructive solutions to aggressive behavior.

2024-2025 House Bill 3
Adopted Goals/Action Plan

- Early Childhood Reading
- Early Childhood Math
- College, Career and Military Readiness (CCMR)

House Bill 3 Plan Requirements: Student Outcome Goals

The board must adopt three student outcome goals:

1. Early childhood literacy aligned to 3rd grade STAAR Reading,
2. Early childhood numeracy aligned to 3rd grade STAAR Math, and
3. College, Career and Military Readiness (CCMR) Goals aligned to graduates that meet readiness requirements.

House Bill 3 (HB 3) Plan Requirements: Goals must be quantifiable and measurable

HB3 District student outcome goal requirements:

1. Identify five-year student outcome goals with annual targets for:
   - "all-student" populations and
   - all other student populations;
2. Monitor progress through progress monitoring calendar; and
3. Display plan on district and campus websites annually.

Progress Monitoring: Board Update Calendar

HB3 Student Outcome Goals Progress Monitoring Board Update Calendar		
Board Update	**HB3 Academic Year**	**Action**
December 2020	House Bill 3 Year 1 2019-20	Board Approval of Adopted District Student Outcome Goals 1, 2, and 3 /Action plan
December 2021	House Bill 3 Year 2 2020-21	Board Approval of Updated Adopted District Student Outcome Goals 1, 2, and 3 /Action plan
January 2023	House Bill 3 Year 3 2021-22	Progress Monitoring: Board Update of progress towards goals
February 2024	House Bill 3 Year 4 2022-23	Progress Monitoring: Board Update of progress towards goals
February 2025	House Bill 3 Year 5 2023-24	Progress Monitoring: Board Update of progress towards goals

House Bill (HB) 3 GOAL 1: EARLY CHILDHOOD LITERACY

Early Childhood Literacy Board Outcome Yearly Target Goals for STAAR 3rd Grade Reading

The percent of 3rd grade student (all students) that score at meets grade level or above on STAAR Reading will increase each year.

House Bill 3 YEAR 1 (19-20 AY)		
Percent STAAR Reading Mastery Pre-Pandemic Goal	Percent STAAR Reading Mastery New Goal	Percent STAAR Reading Actual Score
2020	2020	2020
47%	N/A	NA
Face to Face - August 2020 to March 2020 Remote Instruction - March 2020 to May 2020 Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 2 (20-21 AY)		
Percent STAAR Reading Mastery Pre-Pandemic Goal	Percent STAAR Reading Mastery New Goal	Percent STAAR Reading Actual Score
2021	2021	2021
50%	N/A	*33%
Remote Instruction - Face to Face Minimal * 50% of Students Participated in Testing Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 3 (21-22 AY)		
Percent STAAR Reading Mastery Pre-Pandemic Goal	Percent STAAR Reading Mastery New Goal	Percent STAAR Reading Actual Score
2022	2022	2022
53%	40%	57%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 4 (22-23 AY)		
Percent STAAR Reading Mastery Pre-Pandemic Goal	Percent STAAR Reading Mastery New Goal	Percent STAAR Reading Actual Score
2023	2023	2023
57%	46%	54%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 5 (23-24 AY)		
Percent STAAR Reading Mastery Pre-Pandemic Goal	Percent STAAR Reading Mastery New Goal	Percent STAAR Reading Actual Score
2024	2024	2024
60%	48%	59%
Face to Face A-F Accountability in Progress		

House Bill 3 Goal:

60 percent of all students will meet the state's "Meets" standard on the STAAR test by 2030.

This is also known as the state's 60x30 plan.

Early Childhood Literacy Progress Measure for Reading

Progress Measure 1.1: The percent of **Pre-Kindergarten students** that score on grade level or above in Reading on the Circle diagnostic will increase from 56% to 64% by June 2024.

House Bill 3 YEAR 1 (19-20 AY)		
Percent Circle Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Circle Diagnostic Reading Mastery New Goal	Percent Circle Diagnostic Reading Actual Score
2020	2020	2020
56%	N/A	NA
Face to Face August 2020 to March 2020 Remote Instruction March 2020 to May 2020 Students Did Not Test Online Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 2 (20-21 AY)		
Percent Circle Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Circle Diagnostic Reading Mastery New Goal	Percent Circle Diagnostic Reading Actual Score
2021	2021	2021
58%	N/A	81%
Remote Instruction - Face to Face Minimal Some Students Tested Face to Face and Majority of Students Tested Remotely Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 3 (21-22 AY)		
Percent Circle Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Circle Diagnostic Reading Mastery New Goal	Percent Circle Diagnostic Reading Actual Score
2022	2022	2022
60%	60%	87%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 4 (22-23 AY)		
Percent Circle Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Circle Diagnostic Reading Mastery New Goal	Percent Circle Diagnostic Reading Actual Score
2023	2023	2023
62%	62%	82%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 5 (23-24 AY)		
Percent Circle Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Circle Diagnostic Reading Mastery New Goal	Percent Circle Diagnostic Reading Actual Score
2024	2024	2024
64%	64%	81%
Face to Face A-F Accountability in Progress		

Early Childhood Literacy Progress Measure for Reading

Progress Measure 1.2: The percent of **Kindergarten students** that score "on track to meet grade level demands" in Reading on the M Class Amplify Dibels reading diagnostic will increase from 52% to 60% by June 2024.

House Bill 3 YEAR 1 (19-20 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2020	2020	2020
52%	N/A	NA
Face to Face August 2020 to March 2020 Remote Instruction March 2020 to May 2020 Students Did Not Test Online Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 2 (20-21 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2021	2021	2021
54%	N/A	50%
Remote Instruction - Face to Face Minimal Some Students Tested Face to Face and Majority of Students Tested Remotely Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 3 (21-22 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2022	2022	2022
56%	56%	64%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 4 (22-23 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2023	2023	2023
58%	48%	79%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 5 (23-24 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2024	2024	2024
60%	50%	78%
Face to Face A-F Accountability in Progress		

Early Childhood Literacy Progress Measure for Reading

Progress Measure 1.3: The percent of **1st grade students** that score "on track to meet grade level demands" in Reading on the Amplify Dibels and Idel reading diagnostic will increase from 55% to 63% by June 2024.

House Bill 3 YEAR 1 (19-20 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2020	2020	2020
55%	N/A	NA
Face to Face August 2020 to March 2020 Remote Instruction March 2020 to May 2020 Students Did Not Test Online Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 2 (20-21 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2021	2021	2021
57%	N/A	53%
Remote Instruction - Face to Face Minimal Some Students Tested Face to Face and Majority of Students Tested Remotely Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 3 (21-22 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2022	2022	2022
59%	59%	66%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 4 (22-23 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2023	2023	2023
61%	48%	68%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 5 (23-24 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2024	2024	2024
63%	50%	75%
Face to Face A-F Accountability in Progress		

Early Childhood Literacy Progress Measure for Reading

Progress Measure 1.4: The percent of **2nd grade students** that "on track to meet grade level demands" in Reading on the Amplify Dibels and Idel reading diagnostic will increase from 61% to 69% by June 2024.

House Bill 3 YEAR 1 (19-20 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2020	2020	2020
61%	N/A	NA
Face to Face August 2020 to March 2020 Remote Instruction March 2020 to May 2020 Students Did Not Test Online Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 2 (20-21 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2021	2021	2021
63%	N/A	59%
Remote Instruction - Face to Face Minimal Some Students Tested Face to Face and Majority of Students Tested Remotely Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 3 (21-22 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2022	2022	2022
65%	65%	61%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 4 (22-23 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2023	2023	2023
67%	48%	68%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 5 (23-24 AY)		
Percent Amplify Diagnostic Reading Mastery Pre-Pandemic Goal	Percent Amplify Diagnostic Reading Mastery New Goal	Percent Amplify Diagnostic Reading Actual Score
2024	2024	2024
69%	50%	68%
Face to Face A-F Accountability in Progress		

House Bill (HB) 3 GOAL 2: EARLY CHILDHOOD MATH

Early Childhood Math Board Outcome Yearly Target Goals for STAAR 3rd Grade Mathematics

The percent of 3rd grade student (all students) that score at meets grade level or above on STAAR Mathematics will increase each year.

House Bill 3 YEAR 1 (19-20 AY)		
Percent STAAR Math Mastery Pre-Pandemic Goal	Percent STAAR Math Mastery New Goal	Percent STAAR Math Actual Score
2020	2020	2020
53%	N/A	NA
Face to Face August 2020 to March 2020 Remote Instruction March 2020 to May 2020 Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 2 (20-21 AY)		
Percent STAAR Math Mastery Pre-Pandemic Goal	Percent STAAR Math Mastery New Goal	Percent STAAR Math Actual Score
2021	2021	2021
55%	N/A	*29%
Remote Instruction - Face to Face Minimal * 51% of Students Participated in Testing Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 3 (21-22 AY)		
Percent STAAR Math Mastery Pre-Pandemic Goal	Percent STAAR Math Mastery New Goal	Percent STAAR Math Actual Score
2022	2022	2022
57%	33%	48%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 4 (22-23 AY)		
Percent STAAR Math Mastery Pre-Pandemic Goal	Percent STAAR Math Mastery New Goal	Percent STAAR Math Actual Score
2023	2023	2023
59%	43%	49%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 5 (23-24 AY)		
Percent STAAR Math Mastery Pre-Pandemic Goal	Percent STAAR Math Mastery New Goal	Percent STAAR Math Actual Score
2024	2024	2024
61%	48%	47%
Face to Face A-F Accountability in Progress		

House Bill 3 Goal:

60 percent of all students will meet the state's "Meets" standard on the STAAR test by 2030.
This is also known as the state's 60x30 plan.

Early Childhood Progress Measure for Mathematics

Progress Measure 2.1: The percent of **Pre-Kindergarten** that score "on track" on the CIRCLE progress monitoring math diagnostic will increase from 55% to 70% by June 2024.

House Bill 3 YEAR 1 (19-20 AY)		
Percent CIRCLEPM Diagnostic Math Mastery Pre-Pandemic Goal	Percent CIRCLEPM Diagnostic Math Mastery New Goal	Percent CIRCLEPM Diagnostic Math Actual Score
2020	2020	2020
55%	N/A	NA
Face to Face August 2020 to March 2020 Remote Instruction March 2020 to May 2020 Students Did Not Test Online Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 2 (20-21 AY)		
Percent CIRCLEPM Diagnostic Math Mastery Pre-Pandemic Goal	Percent CIRCLEPM Diagnostic Math Mastery New Goal	Percent CIRCLEPM Diagnostic Math Actual Score
2021	2021	2021
57%	N/A	83%
Remote Instruction - Face to Face Minimal Some Students Tested Face to Face and Majority of Students Tested Remotely Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 3 (21-22 AY)		
Percent CIRCLEPM Diagnostic Math Mastery Pre-Pandemic Goal	Percent CIRCLEPM Diagnostic Math Mastery New Goal	Percent CIRCLEPM Diagnostic Math Actual Score
2022	2022	2022
60%	60%	92%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 4 (22-23 AY)		
Percent CIRCLEPM Diagnostic Math Mastery Pre-Pandemic Goal	Percent CIRCLEPM Diagnostic Math Mastery New Goal	Percent CIRCLEPM Diagnostic Math Actual Score
2023	2023	2023
64%	64%24	84%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 5 (23-24 AY)		
Percent CIRCLEPM Diagnostic Math Mastery Pre-Pandemic Goal	Percent CIRCLEPM Diagnostic Math Mastery New Goal	Percent CIRCLEPM Diagnostic Math Actual Score
2024	2024	2024
70%	70%	88%
Face to Face A-F Accountability in Progress		

Early Childhood Progress Measure for Mathematics

Progress Measure 2.2: The percent of **Kindergarten students** that score "on track" on Go Math* End-Of-Year (EOY) will increase from 54% to 66% by June 2024.

House Bill 3 YEAR 1 (19-20 AY)		
Percent Go Math Diagnostic Math Mastery Pre-Pandemic Goal	Percent Go Math Diagnostic Math Mastery New Goal	Percent Go Math Diagnostic Math Actual Score
2020	2020	2020
54%	N/A	NA
Face to Face August 2020 to March 2020 Remote Instruction March 2020 to May 2020 Students Did Not Test Online Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 2 (20-21 AY)		
Percent Go Math Diagnostic Math Mastery Pre-Pandemic Goal	Percent Go Math Diagnostic Math Mastery New Goal	Percent Go Math Diagnostic Math Actual Score
2021	2021	2021
58%	N/A	98%
Remote Instruction - Face to Face Minimal Some Students Tested Face to Face and Majority of Students Tested Remotely Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 3 (21-22 AY)		
Percent Go Math Diagnostic Math Mastery Pre-Pandemic Goal	Percent Go Math Diagnostic Math Mastery New Goal	Percent Go Math Diagnostic Math Actual Score
2022	2022	2022
61%	61%	93%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 4 (22-23 AY)		
Percent iReady* Diagnostic Math Mastery Pre-Pandemic Goal	Percent iReady* Diagnostic Math Mastery New Goal	Percent iReady* Diagnostic Math Actual Score
2023	2023	2023
64%	48%	64%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 5 (23-24 AY)		
Percent iReady* Diagnostic Math Mastery Pre-Pandemic Goal	Percent iReady* Diagnostic Math Mastery New Goal	Percent iReady* Diagnostic Math Actual Score
2024	2024	2024
66%	50%	59%
Face to Face A-F Accountability in Progress		

Early Childhood Progress Measure for Mathematics

Progress Measure 2.3: The percent of **1st grade students** that score "on track" on Go Math* EOY will increase from 53% to 67% by June 2024.

House Bill 3 YEAR 1 (19-20 AY)		
Percent Go Math Diagnostic Math Mastery Pre-Pandemic Goal	Percent Go Math Diagnostic Math Mastery New Goal	Percent Go Math Diagnostic Math Actual Score
2020	2020	2020
53%	N/A	NA
Face to Face August 2020 to March 2020 Remote Instruction March 2020 to May 2020 Students Did Not Test Online Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 2 (20-21 AY)		
Percent Go Math Diagnostic Math Mastery Pre-Pandemic Goal	Percent Go Math Diagnostic Math Mastery New Goal	Percent Go Math Diagnostic Math Actual Score
2021	2021	2021
58%	N/A	85%
Remote Instruction - Face to Face Minimal Some Students Tested Face to Face and Majority of Students Tested Remotely Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 3 (21-22 AY)		
Percent Go Math Diagnostic Math Mastery Pre-Pandemic Goal	Percent Go Math Diagnostic Math Mastery New Goal	Percent Go Math Diagnostic Math Actual Score
2022	2022	2022
61%	61%	73%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 4 (22-23 AY)		
Percent iReady* Diagnostic Math Mastery Pre-Pandemic Goal	Percent iReady* Diagnostic Math Mastery New Goal	Percent iReady* Diagnostic Math Actual Score
2023	2023	2023
64%	48%	48%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 5 (23-24 AY)		
Percent iReady* Diagnostic Math Mastery Pre-Pandemic Goal	Percent iReady* Diagnostic Math Mastery New Goal	Percent iReady* Diagnostic Math Actual Score
2024	2024	2024
67%	50%	48%
Face to Face A-F Accountability in Progress		

Early Childhood Progress Measure for Mathematics

Progress Measure 2.4: The percent of **2nd grade students** that score "on track" on Go Math* EOY will increase from 53% to 67% by June 2024.

House Bill 3 YEAR 1 (19-20 AY)		
Percent Go Math Diagnostic Math Mastery Pre-Pandemic Goal	Percent Go Math Diagnostic Math Mastery New Goal	Percent Go Math Diagnostic Math Actual Score
2020	2020	2020
53%	N/A	NA
Face to Face August 2020 to March 2020 Remote Instruction March 2020 to May 2020 Students Did Not Test Online Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 2 (20-21 AY)		
Percent Go Math Diagnostic Math Mastery Pre-Pandemic Goal	Percent Go Math Diagnostic Math Mastery New Goal	Percent Go Math Diagnostic Math Actual Score
2021	2021	2021
58%	N/A	87%
Remote Instruction - Face to Face Minimal Some Students Tested Face to Face and Majority of Students Tested Remotely Not Rated: Declared State of Disaster for Accountability Ratings		

House Bill 3 YEAR 3 (21-22 AY)		
Percent Go Math Diagnostic Math Mastery Pre-Pandemic Goal	Percent Go Math Diagnostic Math Mastery New Goal	Percent Go Math Diagnostic Math Actual Score
2022	2022	2022
61%	61%	79%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 4 (22-23 AY)		
Percent iReady* Diagnostic Math Mastery Pre-Pandemic Goal	Percent iReady* Diagnostic Math Mastery New Goal	Percent iReady* Diagnostic Math Actual Score
2023	2023	2023
64%	48%	50%
Face to Face A-F Accountability in Progress		

House Bill 3 YEAR 5 (23-24 AY)		
Percent iReady* Diagnostic Math Mastery Pre-Pandemic Goal	Percent iReady* Diagnostic Math Mastery New Goal	Percent iReady* Diagnostic Math Actual Score
2024	2024	2024
67%	50%	46%
Face to Face A-F Accountability in Progress		

House Bill (HB) 3 GOAL 3:
COLLEGE, CAREER, MILITARY READINESS (CCMR)

Texas Education Agency

2023-24 College, Career, and Military Readiness (CCMR) (TAPR)

MCALLEN ISD (108906) - HIDALGO COUNTY

Academic Year	State	Region 01	District	African American	Hispanic	White	American Indian	Asian	Pacific Islander	Two or More Races	Special Ed	Econ Disadv	EB/EL
College, Career, and Military Ready Graduates (Student Achievement)‡													
College, Career, or Military Ready (Annual Graduates)													
2022-23	76.3%	89.2%	94.5%	*	94.4%	98.2%	*	94.1%	-	*	100.0%	93.0%	88.8%
2021-22	70.0%	88.5%	86.2%	66.7%	85.8%	90.5%	*	95.8%	-	100.0%	95.9%	84.0%	78.4%

Class of 2023 number of students = 1,612

GOAL WAS MET!

Board Approved June 2020 (5 Years of Goals)
Goal 3 - College, Career, Military, Readiness
(Note: No Military Readiness points Seniors 2020, 2021, 2022)
(Note: No CTE Coherent Sequence Points 2020, 2021, 2022)
CCMR Board Outcome Goal
The percentage of graduates (all students) that meet the Criteria for CCMR will increase from 76% to 80% by August 2024

Prior to House Bill 3 (Effective Academic Year 19-20) District August 2018 Accountability –Earned A Seniors 2018 (17-18 AY)		
Goal	CCMR Component Score	CCMR Scaled %
N/A	2018	2018
N/A	76	94%
100 % Face to Face		

Prior to House Bill 3 (Effective Academic Year 19-20) District August 2019 Accountability –Earned A Seniors 2019 (18-19 AY)		
Goal	CCMR Component Score	CCMR Scaled %
N/A	2019	2019
N/A	80	94%
100 % Face to Face		

House Bill 3 YEAR 1 Seniors 2020 (19-20 AY)			
Pre-Pandemic Goal	New Goal	CCMR Component Score	CCMR Scaled %
2020	2020	2020	2020
76%	N/A	69	92%
Face to Face August 2020 to March 2020 Remote Instruction March 2020 to May 2020			
No A-F Accountability			

House Bill 3 YEAR 2 Seniors 2021 (20-21 AY) Board Approved 5 Year Goals Dec. 2020			
Pre-Pandemic Goal	New Goal	CCMR Component Score	CCMR Scaled %
2021	2021	2021	2021
78%	N/A	70	93%
Remote Instruction - Face to Face Minimal			
No A-F Accountability			

House Bill 3 YEAR 3 Seniors 2022 (21-22 AY)			
Pre-Pandemic Goal	New Goal	CCMR Graduates under Student Achievement	CCMR Scaled %
2022	2022	2022	2022
80%	76 = Component score 78 = Scaled	86.2	To be released after TEA resolution
Face to Face			
A-F Accountability in progress			

House Bill 3 YEAR 4 Seniors 2023 (22-23 AY)			
Pre-Pandemic Goal	New Goal	CCMR Graduates under Student Achievement	CCMR Scaled %
2023	2023	2023	2023
82%	88 = Component score ≥ 90 = Scaled	40 94.5*	To be released after TEA resolution
Face to Face			
A-F Accountability in progress			

House Bill 3 YEAR 5 Seniors 2024 (23-24 AY)			
Pre-Pandemic Goal	New Goal	CCMR Graduates under Student Achievement	CCMR Scaled %
2024	2024	2024	2024
84%	88 = Component score ≥ 90 = Scaled	Public Hearing for TAPR 2025**	Public Hearing for TAPR 2025**
Face to Face			
A-F Accountability in progress			

2023 – 2024*
District Accountability Overview

2024 McAllen ISD Rating Calculations (Preliminary)									
Domain 1		Domain 2A		*Domain 2B*		*Domain 3*		Overall Final Score	Overall Letter Grade
Student Achievement		Academic Growth		*Relative Performance*		*Closing the Gaps*			
Overall Scale Score	Letter Grade	Overall Scale Score	Letter Grade	*Overall Scale Score*	*Letter Grade*	*Overall Scale Score*	*Letter Grade*		
86	B	74	C	*89*	*B*	*88*	*B*	89	B

Note: The 2023 – 2024 District Accountability Rating has not been released at this time.
The calculations displayed in this chart is a prediction based on using preliminary accountability local data using proposed rules.

Dissemination of the McAllen ISD 2023-2024 Annual Report

The state prepared portions of the TAPR are available at:
https://tea.texas.gov/perfreport/tapr/index.html

The PEIMS Financial Standard reports of 2023-2024 Financial Actual Information at:
http://tea.texas.gov/financialstandardreports/

The District Accreditation Status report at:
http://tea.texas.gov/accredstatus/

The Texas Higher Education Coordinating Board report for 2021-2022 High School Graduates at:
http://www.txhighereddata.org/index.cfm?objectid=5BFD5120-D971-11E8-BB65050560100A9

The TAPR and the TAPR glossary are also available on the McAllen District website:
https://www.mcallenisd.org/page/texas-academic-performance-reports

Copies of the McAllen ISD District TAPR are also maintained at: Central Office, Every McAllen ISD Campus, Public Library, Chamber of Commerce.

NOTICE OF A PUBLIC MEETING AND
NOTICE OF PROPOSED CONTRACT FOR LEGAL SERVICES
UNDER TEXAS GOVERNMENT CODE § 2254.1036(a)(1)

Notice is hereby given that a meeting of the Board of Trustees of McAllen Independent School District will be held on January 14, 2025 for the purpose of considering and taking action on all matters on the agenda for the meeting, including approval of an agreement with the law firm Millin & Millin, PLLC as special counsel to perform all legal services necessary to recover damages, court costs, and penalties as provided in the Texas Insurance Code, the Texas Civil Practice and Remedies Code, and other Texas statutory and common law claims for breaches of contract, tort claims (including negligence, misrepresentations, and/or fraud), violations of the Texas Insurance Code, and common law bad faith on a contingency fee basis.

The purpose of the agreement is to pursue a recovery of insured but unpaid property damages and losses sustained by McAllen Independent School District as a result of the hailstorms and windstorms that struck the McAllen, Texas area in April 2023. By way of this agreement, McAllen Independent School District's desired outcome is to recover damages, court costs, penalties, and other relief under Texas statutory and common law in order to repair the damages from these storms.

Millin & Millin, PLLC is a Texas-based law firm with its office in McAllen specializing in representing institutional and commercial entities with regard to first-party insurance bad faith litigation, commercial litigation, and construction defect litigation and is fully qualified to represent McAllen Independent School District in this matter. Millin & Millin, PLLC regularly represents commercial owners and business entities in litigation, arbitration, and appraisal in matters of this type. John A. Millin IV and Gina K. Millin, both licensed to practice law for 25 years, began their respective careers in criminal law, working for the district attorney's offices of Harris County, Texas and Hidalgo County, Texas, respectively. They both transitioned to law firms in McAllen that focused on civil litigation, becoming specialists in the area of commercial litigation, construction litigation, and first party insurance litigation. They were among the first litigators in the Rio Grande Valley to specialize in first-party insurance property damage claims, having begun their practice in this area in 2000. They formed their own firm in 2014 and have continued to represent private, institutional, and commercial clients in these niche areas. The firm has decades of experience handing first party insurance litigation matters, beginning with claim damage evaluation, pre-litigation analysis and advice, insurance coverage, discovery, motion practice, mediation, litigation, arbitration, appraisal, and appeal. Mr. and Mrs. Millin collectively possess decades of experience handling complicated and high value commercial first party property damage litigation, arbitration, and appraisal, and the firm possesses the competence, specialized experience and resources to represent McAllen Independent School District in this matter.

Millin & Millin, PLLC has not previously represented McAllen Independent School District on a contingency fee arrangement. In 2014, Gina Millin was chosen by McAllen ISD to lead the Facilities Forecast Advisory Committee, which she did on a voluntary basis. The result of her work has provided Millin & Millin, PLLC with unmatched familiarity with McAllen ISD's school campuses and facilities. Millin & Millin, PLLC has represented, and continues to

represent, claimants with competence and professionalism for recovery of damages provided for under Texas statutory and common law.

The specialized legal services, advancement of expenses, and compensation on a contingent fee basis required by this agreement cannot be performed by the attorneys and supporting personnel of McAllen Independent School District, because the District does not currently employ attorneys who have specialized knowledge and experience regarding property insurance coverage analysis and legal remedies under Texas law on a contingent fee basis. In addition, the District does not have budgeted the financial resources necessary to compensate competent and experienced attorneys and staff regarding property insurance law as District employees or to reasonably compensate a firm in private practice with the necessary experience under a contract providing for payment on an hourly basis without contingency. Due to the complexity of the matter and expected difficulties in performing the legal work for this matter, the expected risk of no recovery, the expected expenses, including expert witness fees and other litigation costs, a reasonable hourly fee for a firm in private practice to prosecute this matter would exceed the amount for which the District would be able to adequately budget and expend financial resources. The District does not have the financial resources required to pay the additional significant costs of implementing appropriate infrastructure and technology necessary to fully and properly perform the needed legal services. The District also does not have the financial resources required to properly pursue its claims and causes of action, including to retain independent experts as testifying witnesses and to finance all costs of litigation through final resolution of the matter. Additionally, many law firms that handle large, complex matters strictly on an hourly basis have institutional clients, including insurance companies, large construction companies, and adjusting or third-party administrations; and it would be difficult to find a firm that does not have a conflict of interest that would hinder the firm's ability to effectively represent the District. The proposed law firm has certified that it has no such conflict of interest in representing McAllen ISD.

The legal services cannot be reasonably obtained from attorneys in private practice charging hourly fees without contingency because a contract to pay attorneys on an hourly basis without contingency would represent an additional and significant cost to McAllen Independent School District. Furthermore, the District would be responsible for payment of all costs and expenses of the litigation through appeals, including to retain independent experts as testifying witnesses and to finance all discovery expenses and other costs of litigation through final resolution of the matter. The District does not have the financial resources necessary to pay for these additional and significant expenses necessitated by the specialized insurance recovery matter.

Millin & Millin, PLLC will be compensated on a contingent fee basis. Entering into the proposed agreement is in the best interests of the residents of McAllen ISD and the municipalities that encompass it in Hidalgo County, Texas. The District has sustained significant damages to property fully insured with taxpayer monies and for which there exists a potential recovery from those insuring the damages. Millin & Millin, PLLC possesses the specialized skills, knowledge, experience, and financial and technological resources needed to competently and fully pursue the maximum potential recovery of the District's damages. Furthermore, the proposed agreement enables the District to pursue its legal remedies without diverting essential monies and resources from the ongoing needs and operations of its students, staff, and community at large. In addition,

the proposed agreement shifts the financial risk and burden of litigation costs and expenses to Millin & Millin, PLLC, with the District owing no such monies to the law firm unless and until it recovers monies. Moreover, Texas statutory and common law provide for penalty damages and for recovery of court costs, and for recovery of attorneys' fees for certain of the District's claims, including for breaches of contract and deceptive trade practices. Additionally, time is of the essence in the provision of these legal services. Damages and necessary repairs to McAllen ISD's buildings are currently preventing the use of many of those facilities and impairing the operations of the District. The vast majority of these damages remain unpaid by the insurance company. Further McAllen ISD requires legal counsel and related expert consultant services to further the documentation of damages prior to conducting repairs necessary to appropriately re-occupy the damaged facilities and fully open the McAllen facilities and operations.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Discussion and Possible Action for the Approval of Donations to Leonelo H. Gonzalez Elementary

REFERENCE: Goal 3 - Facility Priorities, Strategy 5: Partnerships with Business/Civic/Education

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
In accordance with Board Policy CDC (Local), "the Board delegates to the Superintendent the authority to accept unsolicited gifts on behalf of the District. However, any gift that the potential donor has expressly made conditional upon the District's use for a specified purpose, or any gift of real property, shall require Board approval."

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
The Parent Teacher Organization (PTO) at Gonzalez Elementary donated equipment in the form of front school entrance canopies and pavers /stones to improve the area for students during challenging weather.

LEGAL REVIEW:
None

BUDGETARY CONSIDERATIONS:
The donation has a total value of $52,500 ($38,500 - pavers/stones and $14,000 - canopies).

RECOMMENDED BOARD ACTION:
Administration recommends that the Board of Trustees approves the donations from the Gonzalez Elementary PTO to improve the front entrance of the school for students.

Attachment: ☐

SUBMITTED BY: _____

SUPERVISOR: Jeanette Nino (Jan 6, 2025 16:57 CST)

For further information contact:
Name: Jeanette C. Nino
Office: Associate Superintendent for Instructional Leadership
eMail: jeanette.nino@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 6, 2025 17:07 CST)

Superintendent of Schools Jan 6, 2025

Leonel H. Gonzalez Elementary Parent Teacher Organization (PTO) Donations

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Discussion and Possible Action on Affiliation Agreement No. 2025-174 Educational Experience for The University of Texas Rio Grande Valley (UTRGV) School Psychology Program Practicum

REFERENCE: Goal 1 - Student Achievement/Student Focus; Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

This Affiliation Agreement designates the responsibilities of the McAllen Independent School District ("District") and The University of Texas Rio Grande Valley ("University") for the purpose of providing supervised clinical education experiences for the University's Master Level Clinical Psychology students in the Department of Psychological Science of the College of Liberal Arts.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

University and District agree that this Clinical Affiliation Agreement is needed for completeness of the academic curriculum of university students and will help to supplement patient care by stimulating those staff members involved in student supervision.

LEGAL REVIEW:

Agreement has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

None

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Affiliation Agreement No. 2025-174 Educational Experience for The University of Texas Rio Grande Valley (UTRGV) School Psychology Program Practicum.

Attachment: ☑

SUBMITTED BY: Norma Cabrera (Jan 8, 2025 15:40 CST)

SUPERVISOR: Jeanette Nino (Jan 9, 2025 10:54 CST)

SUPERVISOR:

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 10, 2025 10:30 CST)

Superintendent of Schools

EDUCATIONAL EXPERIENCE AFFILIATION AGREEMENT FOR UTRGV SCHOOL PSYCHOLOGY PROGRAM PRACTICUM

THIS AGREEMENT is between The University of Texas Rio Grande Valley, ("University"), a component institution of The University of Texas System, ("System"), and McAllen Independent School District("Facility"), a Local Education Agency having its principal office at McAllen, State of Texas. This agreement sets forth the terms and conditions under which University shall assign graduate practicum students from the University School Psychology Program within the Department of Human Development & School Services of the College of Education & P-16 Integration to Facility as determined by Facility, to perform the below listed services.

Recitals

A. Facility operates facilities located at 2000 North 23rd Street in the City of McAllen, State of Texas, and therein provides educational services.

B. University provides academic courses aimed at training school psychologists and periodically desires to provide students in such courses with educational experience by utilizing appropriate facilities and personnel of third parties ("Program").

C. Facility desires to cooperate with University to establish and implement from time to time one or more Programs involving the students and personnel of University and the facilities and personnel of Facility.

Agreement

NOW, THEREFORE, in consideration of the mutual promises herein, University and Facility agree that the Program between them shall be covered by and subject to the following terms and conditions.

1. RESPONSIBILITY OF FACILITY. Except for acts to be performed by University pursuant to the provisions of this Agreement, Facility will furnish the premises, personnel, services, and all other items necessary for the educational experience specified in the Program, and in connection with such Program, Facility will:

a. comply with all applicable federal, state, and municipal laws, ordinances, rules, and regulations; comply with all applicable requirements of any accreditation authority; and certify such compliance upon request by University;

b. permit the authority responsible for accreditation of University's curriculum to inspect the facilities, services, and other items provided by Facility for purposes of the educational experience;

c. obtain and maintain all licenses required for Facility and assure that all Facility personnel are appropriately licensed.

d. assume sole responsibility for the quality of the care of Facility students.

e. provide orientation sessions to inform University students and personnel concerning the rules and regulations of Facility.

f. cooperate fully with the University in matters related to academic performance and student conduct related to the Program experience.

g. not have any obligation to pay the salaries or expenses of any student or University personnel pursuant to this Agreement.

h. provide access to emergency medical care, as available, for students and University personnel injured while participating in the program. The students or University personnel will be responsible for the cost of medical care provided; and

i. appoint a person to serve for Facility as liaison ("Facility Liaison") by the following procedure:

(1) Facility shall submit to University the name and professional and academic credentials of the person proposed as Facility Liaison in writing at least 30 days prior to the date the appointment is to become effective.

(2) University shall notify Facility of University's approval or disapproval of such person within 10 days after receipt of such notice.

(3) No person shall act as Facility Liaison without the prior written approval of University.

(4) In the event the Facility Liaison approved by University later becomes unacceptable and University so notifies Facility in writing, Facility will appoint another person in accordance with the procedure outlined in this paragraph 4.i.

2. RESPONSIBILITIES OF UNIVERSITY. University will:

a. furnish Facility with the names of the students assigned by University to participate in the Program;

b. assign only those students who have satisfactorily completed those portions of University curriculum that are prerequisite to Program participation; and designate a member of the University faculty ("University Representative") to coordinate the educational experience of students participating in the Program with the Facility Liaison. University shall give Facility written notice of the name of the University Representative.

d. develop criteria for the evaluation of the performance of University students participating in the Program and provide those criteria, with appropriate reporting

forms, to Facility personnel and University personnel who are responsible for supervising those students.

e. assign grades to students participating in the Program on the basis of the performance evaluations submitted in the reporting forms.

f. inform all University students and personnel participating in the program that they are required to comply with the rules and regulations of Facility while on premises and to comply with requirements of federal and state laws and regulations regarding the confidentiality of information in records maintained by Facility.

g. inform all University students that they are required to provide information requested by Facility related to University students participating in the Program unless prohibited by federal or state law. This includes information regarding the student's health such as proof of physical examination, immunization records, and PPD skin test/chest x-ray for TB done within the previous twelve months and completion of health questionnaires as required.

h. will not consider University personnel assigned to Facility pursuant to this Agreement as an agent or employee of Facility and will inform them that the authorized to be on the premises for the purpose of participating in the Program. Facility has no authority to dismiss University personnel/and or students, however, Facility may make recommendations to the University. Facility shall retain its full power to control the practice and operations of Facility. Facility reserves the right to refuse its facilities and services to any student or University personnel who does not meet the professional or other requirement of the Facility.

i. remove a student from the Program when Facility determines that the student has violated the rules and regulations of Facility; has disclosed information that is confidential by law; or has engaged in conduct that disrupts the activities carried on by Facility and threatens the safety of Facility personnel or students.

j. provide evidence that University personnel assigned to Facility have such licenses, permits or certificates as may be required by law.

k. require that all students have current liability (malpractice) insurance. Each student shall furnish Facility with documentation acceptable to Facility evidencing the required insurance coverage, including without limitation, if requested, certified copies of all such policies. A written notice of cancellation, non-renewal or any material changes in such coverage will be given to Facility at least ten (10) days in advance of any such action.

l. require the students to be properly attired when participating in the Program.

m. provide Worker's Compensation coverage required by law for University personnel assigned to Facility.

n. inform University students and personnel that they are responsible for their own transportation, meals, and health care while participating in the Program.

o. obtain written approval from Facility and University before any University related project papers, based on Facility data collected during the Program, are published; and

p. inform University personnel and students that they are required to cooperate fully with any claims investigation conducted by or on behalf of Facility.

3. RESPONSIBILITIES OF UNIVERSITY AND FACILITY. Facility Liaison and University Representative will design an educational experience in the Program for University students.

a. The duration of the Program and the educational experience provided will be consistent with the curriculum requirements of the Program and with the standards of the accrediting entity for the program or division for the University in which the students are enrolled.

b. The Program will be reviewed annually by the Facility Liaison and University Representative and, when appropriate, will be revised to meet the University curriculum requirements and the standards of the accrediting entity.

c. The educational experience for students in the Program will be in those areas that are an integral part of the services provided by Facility and University students will be under the direct supervision of the University personnel and/or Facility personnel who are licensed or otherwise qualified to perform such services. Students shall not be used to provide services in lieu of professional or non-professional staff.

d. The number of University receiving practicum training at Facility will be determined by the University and Facility, with due consideration given to Facility students available for participation in the Program.

e. Proper communication channels will be maintained when planning for practicum student experiences.

f. Facility will assign University Students to career-related tasks and activities as required in the University School Psychology Program. University will clarify such requirements so that Facility may assign appropriate tasks and activities. Such tasks and activities as assigned by Facility, in accordance with law, regulation, and accepted standards of care for practice in school psychology will include the following: *(a)* orientation to school settings; *(b)* learning the role of the Licensed Specialist in School Psychology (LSSP); *(c)* evaluation of psychological and academic difficulties; *(d)* consultation with parents and Facility authorized personnel; and *(e)* direct counseling and behavioral intervention services for eligible Facility students. The University Students will be informed that they shall, at all times, endeavor to meet the specified needs of Facility's programs as determined by Facility. In addition to other specified tasks and activities, the University student shall be permitted to gather data on eligible Facility students and, in appropriate cases, shall participate in conferences dealing with such Facility, where such conferences are not in conflict with law and are in conformity with the policies, rules, regulations and objectives of Facility. The University student shall share information with appropriate Facility personnel as required and shall maintain the appropriate confidentiality standards of Facility, as well as state and federal law. While performing assigned tasks and activities at Facility, the University student will be supervised by a University professor who is a Licensed Specialist in School Psychology (LSSP) and is qualified to provide psychological services in schools. A Facility LSSP will also be assigned, if necessary, to oversee the activities of the University student at the Facility. Facility and University will obtain consents from parents prior to University students undertaking any task or activities with Facility students.

4. **NOTICES.** All notices under this Agreement or a Program Agreement shall be in writing and delivered either by personal delivery or by United States certified mail, return receipt requested. Such notices shall be deemed given when received by such party's designated representative.

5. **ORAL REPRESENTATIONS.** No oral representations of any officer, agent, or employee of Facility, University, or System shall affect or modify any obligations of either party under this Agreement or any Program Agreement.

6. **AMENDMENT TO AGREEMENT.** No amendment to this Agreement shall be valid unless reduced to writing, signed by an authorized representative of each party.

7. **ASSIGNMENT.** Neither this Agreement nor a Program Agreement may be assigned by either party without prior written approval of the other party.

8. **PERFORMANCE.** A delay in or failure of performance of either party that is caused by occurrences beyond the control of either party shall not constitute default hereunder, or give rise to any claim for damages.

9. **TERM AND EFFECTIVE DATE.** This Agreement shall continue in effect for an initial period ending three (3) years after the date executed ("initial Term") unless terminated earlier as provided herein. After such initial Term, this Agreement may be renewed by written consent of the parties. Either party may terminate this Agreement by giving the other 180 days

prior written notice of intention to terminate. If such notice is given, this Agreement shall terminate: (a) at the end of such 180 days; or (b) when all students enrolled in the Program at the time such notice is given have completed their respective courses of study under the Program, whichever event occurs last.

10. **APPLICABLE LAW.** The validity, interpretation, performance, and enforcement of this Agreement and any Program Agreement shall be governed by the laws of the State of Texas. The University and Facility will comply with all applicable federal, state, and local laws, ordinances, and regulations in the performance of this Program Agreement including applicable safety regulations

11. **FERPA**. For purposes of this Agreement, pursuant to the Family Educational Rights and Privacy Act of 1974 (FERPA), the University hereby designates the Facility as a school official with a legitimate educational interest in the educational records of the Students who participate in the Program to the extent that access to the records are required by the Facility to carry out the Program. Facility agrees to maintain the confidentiality of the educational records in accordance with the provisions of FERPA. To the extent applicable, Facility designates University personnel and University students as a school official with a legitimate educational interest in the educational records of Facility students that are also protected by FERPA.

UNIVERSITY:	FACILITY:
By: _____	By: _____
Luis H. Zayas, Ph.D. Provost and Senior Vice President for Academic Affairs	Sofia M. Peña Board of Trustees, President
Date: _____	Date: _____

Approved as to form:
by: JOHNATHAN BALL (Jan 8, 2025 14:10 CST)
Johnathan Ball Staff Attorney

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2025-1020 Fine Arts Equipment, Supplies, & Other Related Products and Services

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 fine arts equipment, supplies, and other related products. 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' ("Board") approval.

Four hundred seventy-two (472) vendors were invited to submit proposals, and twenty-eight (28) vendors responded, including twelve (12) no bid responses and one (1) non-responsive vendor. The evaluation committee, comprised of Debra Loya, Director of Fine Arts; Lisa Saenz-Saldivar, Coordinator for Fine Arts; Jessica Riojas, Fine Arts Bookkeeper: Laura Williams, Director of Purchasing Services, Elizabeth Cabrera, Coordinator for Purchasing Services; and Krystal Mercado, Senior Buyer, evaluated the proposals. Administration is recommending that the fifteen (15) vendors listed on the attached list be awarded.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

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

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2025-1020 Fine Arts Equipment, Supplies, & Other Related Products and Services, and award vendors on the attached list, for a coterminous term through June 30, 2028.

Attachment: ☑

SUBMITTED BY: Debra Loya (Jan 8, 2025 08:40 CST)

SUPERVISOR: Alberto Canales (Jan 8, 2025 11:00 CST)

For further information contact:
Name: Ms. Debra Loya, Director of Fine Arts
Office: 956-618-6085
email: Debra.Thomas@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 8, 2025 14:42 CST)

Superintendent of Schools

RECOMMENDED VENDORS

Request for Proposal No. 2025-1020 Fine Arts Equipment, Supplies, & Other Related Products and Services

No.	Responding Supplier	City	State	Recommendation
1	ASAP Printing Solution (O'Conn LLC)	McAllen	TX	Qualified
2	Band Shoppe, Superior Cheer, Superior Team (Pearson Incorporated	Cynthiana	IN	Qualified
3	Hermes Music (Hermes Trading Co., Inc.)	Pharr	TX	Qualified
4	J.W. Pepper & Son, Inc.	Exton	PA	Qualified
5	Luck's Music Library	Madison Heights	MI	Qualified
6	Macie Publishing Company	Peapack	NJ	Qualified
7	McCormick's Group, LLC	Wheeling	IL	Qualified
8	Music and Arts (Guitar Center Stores, Inc.)	Federick	MD	Qualified
9	Music in Motion, Inc.	Plano	TX	Qualified
10	Practicing Musician	Shoreline	WA	Qualified
11	Richards Fence/Backyards Unlimited, LLC	San Juan	TX	Qualified
12	Sweet Pipes, LLC	Port Orange	FL	Qualified
13	Texas Motion Sports, LLC	Richardson	TX	Qualified
14	The Tuba Exchange (NC Brass LLC)	Durham	NC	Qualified
15	Wenger Corporation	Owatonna	MN	Qualified

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2024-1023 Catering, Entertainment, Field Trips, Fundraising, Food, Restaurants, and Rentals (Round 10)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The McAllen Independent School District solicited proposals for catering, entertainment, field trips, fundraising, food, restaurants, and rentals. 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' ("Board") approval. Fifty-nine (59) vendors were previously awarded through this RFP.

Three hundred eighty-four (384) vendors were invited to submit proposals, and fifteen (15) vendors responded, including eight (8) no-bid responses, one (1) non-responsive vendor, and two (2) previously awarded vendors (with no changes). The evaluation committee, comprised of Laura Williams, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Krystal Mercado, Senior Buyer evaluated the proposals. Administration is recommending that the four (4) vendors listed on the attached list be awarded for a total of sixty-three (63) vendors, on this RFP.

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. 2024-1023 Catering, Entertainment, Field Trips, Fundraising, Food, Restaurants, and Rentals (Round 10), and award vendors on the attached list, for a coterminous term through June 30, 2027.

Attachment: ☑

SUBMITTED BY: Laura Williams

SUPERVISOR: Laura 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 (Jan 8, 2025 09:21 CST)

Superintendent of Schools

RECOMMNDED VENDORS

Request for Proposal No. 2024-1023 Catering, Entertainment, Field Trips, Fundraising, Food, Restaurants, and Rentals (Round 10)

No.	Responding Supplier	City	State	Recommendation
1	All American Balloons (Cheryl Lankford)	Arlington	TX	Qualified
2	Chuck E. Cheese (CEC Entertainment, LLC)	Irving	TX	Qualified
3	Sky High Rentals (Eric Galvan)	Weslaco	TX	Qualified
4	Suerte Bar and Grill Uptown, LLC	McAllen	TX	Qualified

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Report Regarding the Extension of Agreement No. 2024-254 City of McAllen Community Development Block Grant Funding for the Track Lighting Project at Dorothea Brown Middle School

REFERENCE: Goal 1 - Facility Priorities, Strategy 5 - Partnerships with Business/Civic/Educational Organizations

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

On November 13, 2023, the Board of Trustees approved Agreement No. 2024-254 City of McAllen Community Development Grant ("CDBG") Funding for the Track Lighting Project at Dorothea Brown Middle School.

On February 26, 2024, the Board of Trustees approved Amended Agreement No. 2024-254 City of McAllen Community Development Block Grant Funding for the Track Lighting Project at Dorothea Brown Middle School to revise timelines.

On September 24, 2024, the Board of Trustees approved extension to Agreement No. 2024-254 City of McAllen Community Development Block Grant Funding for the Track Lighting Project at Dorothea Brown Middle School until December 20, 2024.

On December 5, 2024, McAllen Independent School District requested an extension from the City of McAllen for Agreement No. 2024-254 City of McAllen Community Development Block Grant Funding for the Track Lighting Project at Dorothea Brown Middle School until March 31, 2025, due to the contractor pending receipt of light poles to finish the installation. McAllen Independent School District received the approval to the extension on December 9, 2024.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

This item is for informational purposes only.

LEGAL REVIEW:

None

BUDGETARY CONSIDERATIONS:

None

RECOMMENDED BOARD ACTION:

This item is for informational purposes only.

Attachment: ☑

SUBMITTED BY: _____ **SUPERVISOR:** _____

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 (Jan 8, 2025 17:02 CST)

Superintendent of Schools

CITY OF MCALLEN
GRANT ADMINSTRATION DEPARTMENT
COMMUNITY DEVELOPMENT DIVISION

AMENDMENT TO BASIC AGREEMENT

MISD – Brown Middle School Track Lighting
FY 2023-2024

Whereas, **CITY** and **DISTRICT** have executed a Basic Agreement for the use of CDBG funds; and

Whereas, **DISTRICT** has requested from **CITY** an amendment to the Basic Agreement; and

Whereas, **CITY** and **DISTRICT** are agreeable to the request to extend the period of performance from December 20, 2024 to March 31, 2025.

Whereas, **CITY** standards that govern methods to amend HUD-funded programs, adopted in the Citizen Participation Plan, have been completed;

Therefore, it is hereby agreed as follows:

I. The **CITY** authorizes the request via a [ ] substantial [√] non-substantial [√] program and/or [√] budget amendment

II. All of the remaining terms of the Basic Agreement that are not in conflict with this Amendment shall remain in full force and effect for the duration of the Basic Agreement

III. This document is to be retained with the Basic Agreement for the time necessary to meet the established Record Retention period

Any questions should be directed to the Grant Administration – Community Development staff by phone at (956) 681-1030 or via email at cdbg@mcallen.net

Julia D. Lash
Director of Grant Administration

12-9-2024
Date

CITY OF MCALLEN
GRANT ADMINSTRATION DEPARTMENT
COMMUNITY DEVELOPMENT DIVISION

AMENDMENT TO BASIC AGREEMENT

MISD – Brown Middle School Track Lighting
FY 2023-2024

Whereas, **CITY** and **DISTRICT** have executed a Basic Agreement for the use of CDBG funds; and

Whereas, **DISTRICT** has requested from **CITY** an amendment to the Basic Agreement; and

Whereas, **CITY** and **DISTRICT** are agreeable to the request to extend the period of performance from September 30, 2024 to December 20, 2024.

Whereas, **CITY** standards that govern methods to amend HUD-funded programs, adopted in the Citizen Participation Plan, have been completed;

Therefore, it is hereby agreed as follows:

I. The **CITY** authorizes the request via a [ ] substantial [√] non-substantial [√] program and/or [√] budget amendment

II. All of the remaining terms of the Basic Agreement that are not in conflict with this Amendment shall remain in full force and effect for the duration of the Basic Agreement

III. This document is to be retained with the Basic Agreement for the time necessary to meet the established Record Retention period

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Any questions should be directed to the Grant Administration – Community Development staff by phone at (956) 681-1030 or via email at cdbg@mcallen.net

Julia D. Lash
Director of Grant Administration

8/30/2024
Date

McAllen Independent School District

by: Sofia Merced Pena (Sep 25, 2024 12:04 CDT)
Sofia M. Peña

Approved as to form:

by: JOHNATHAN BALL (Sep 18, 2024 10:59 CDT)
Johnathan Ball. Staff Attorney

CITY OF McALLEN

JAVIER VILLALOBOS, Mayor
J. OMAR QUINTANILLA, Mayor Pro Tem and Commissioner District 3
TONY AGUIRRE JR., Commissioner District 1
JOAQUIN "J.J." ZAMORA, Commissioner District 2
RODOLFO "RUDY" CASTILLO, Commissioner District 4
VICTOR "SEBY" HADDAD, Commissioner District 5
PEPE CABEZA DE VACA, Commissioner District 6

ROEL "ROY" RODRIGUEZ, P.E., City Manager

March 28, 2024

Debbie C. Aliseda, School Board President
McAllen Independent School District
4309 Warrior Drive, Suite B
McAllen, TX 78501

RE: FY 2023-2024 Agreement

Dear Ms. Aliseda:

Enclosed please find an executed FY 2023-2024 Agreement with the City of McAllen for the McAllen ISD Brown Middle School Track Lighting. The agreement is in effect for the period of October 1, 2023 until September 30, 2024. All reimbursements must be dated on or after October 1, 2023.

Further, please note that HUD regulations stipulate that we provide you with the Catalog of Federal Domestic Assistance (CFDA) number for the Community Development Block Grant program. Such number is 14.218. Please provide this number to your auditor.

Should you have any questions, please call me at (956) 681-1030.

Sincerely,

Julia D. Lash
Director of Grant Administration

JDL/cg

P. O. BOX 220 · McALLEN, TEXAS 78505-0220 · (956) 681-1000 · FAX (956) 681-1010 · www.mcallen.net

STATE OF TEXAS }
COUNTY OF HIDALGO }
CITY OF MCALLEN }

BASIC AGREEMENT

This Agreement made and entered into on this the 1st day of October 2023, by and between the City of McAllen, a political subdivision of the State of Texas, hereinafter referred to as **"CITY"**, and McAllen Independent School District, hereinafter referred to as **"DISTRICT"**.

WITNESSETH

WHEREAS, **DISTRICT** desires to carry out eligible activities as described in the attached **EXHIBIT A: STATEMENT OF WORK**, of this Agreement, and permitted by Title I of the Housing and Community Development Act of 1992 (1992 Act) pursuant to the U. S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program Entitlement Grant Regulations and covered in 24 CFR Part 570 and activities deemed as eligible under 24 CFR Subpart C.

WHEREAS, the **CITY** proposes to contract with **DISTRICT** in order that the eligible activities described in **EXHIBIT A: STATEMENT OF WORK** can be carried out for the benefit of low and moderate income residents in the **CITY's** jurisdiction and said activities will meet a National Objective as noted in 24 CFR Part 570.200(a)(1), 570.200(a)(2) and 570.201-.209

NOW, THEREFORE, KNOW BY THESE PRESENTS: That for and in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration which abide by 24 CFR Part 570.503 Agreement with Subrecipients, the **CITY** and the **DISTRICT** do mutually agree as follows:

SECTION I
RULES AND REGULATIONS

DISTRICT agrees to cooperate with the **CITY** in respect to the implementation of CDBG activities to be carried out by **DISTRICT** pursuant to 24 CFR Part 570, 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards) and other rules, regulations and decisions as may be made by HUD or any other federal or state agency that may legally exercise its jurisdiction over expenditures of CDBG program funds.

DISTRICT agrees to act as intermediary in the provision of assistance to private for-profit businesses, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is appropriate to carry out an economic development project.

Information may be found at www.ecfr.gov.

SECTION II
STATEMENT OF WORK

DISTRICT agrees to perform services as outlined in **EXHIBIT A: STATEMENT OF WORK** for and in consideration of payment in the amount of One Hundred and Seventy Five Thousand Dollars ($175,000) and as delineated in **EXHIBIT B: GRANT BUDGET/PROJECT MILESTONES.**

DISTRICT agrees to notify **CITY**, in writing, of any changes in its Statement of Work, or Grant Budget. **DISTRICT** shall obtain approval, in writing, from **CITY** prior to commencing work on any changes made to the **EXHIBITS A-B.**

Time for performance for this Agreement shall be for a period of twelve (12) months beginning October 1, 2023, and ending September 30, 2024, provided however obligations which specifically or by implication are to be performed after September 30, 2024 shall continue to be enforced after such date. **CITY** shall not be liable for costs incurred or performances rendered by **DISTRICT** before commencement of this Agreement or after termination of this Agreement. Allowable costs will only be reimbursed for expenses incurred during the period of performance described in 24 CFR Part 570.503 and 2 CFR Part 200.309 (Period of Performance).

Statement of Work inclusive of schedule, milestones and budget and/or their modification adhere to requirements so enumerated in 24 CFR Part 570.502, 570.503(b)(1) and 2 CFR Part 200.308.

SECTION III
RECORDS AND REPORTS

DISTRICT agrees to establish and maintain records and reports for a minimum of three years following the submission of the final report and agrees to make those records and reports available to the **CITY**, HUD, and any other local, state or federal agency or authority that may exercise jurisdiction over CDBG funds. Records include but are not limited to documentation that establishes that the service is designated for the benefit of low- and moderate-income persons who reside within the corporate limits of City.

DISTRICT must remit to **CITY** a Monthly Activity Report by the 25th of each month.

DISTRICT must remit all expenditure requests for payment no later than 30 days after September 30, 2024. Request for reimbursement submitted after October 30, 2024 may not be paid and **DISTRICT** shall forfeit to **CITY** all unspent and non-requested funds. However, if **DISTRICT** demonstrates that delays or departure from the schedule is due to circumstances beyond its control, **CITY** and **DISTRICT** may amend time of performance.

DISTRICT is required to maintain an active registration in the System of Awards Management (SAM) for the duration of this agreement. Further, **CITY** may require

information necessary to complete the Federal Funding Accountability and Transparency Act (FFATA) or any other Grant specific report to be furnished by **DISTRICT** as detailed in 2 CFR Part 200.300 (Statutory and National Policy Requirements).

Notwithstanding 2 CFR 200.337, **CITY** and **DISTRICT** recipients shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable State and local laws regarding privacy and obligations of confidentiality in accordance with 24 CFR Part 570.508.

DISTRICT and **CITY** shall comply with 2 CFR Part 200.82 regarding Protected Personally Identifiable Information

Records, Record Keeping, Retention and Reports adhere to requirements so enumerated in 24 CFR Part 570.502, 570.502(a)(7), 570.503(b)(2), 570.506 and 570.507.

SECTION IV
MONITORING VISITS

DISTRICT shall attend an orientation prior to the first draw of funds.

CITY shall provide a technical assistance seminar, if requested, and will follow **DISTRICT's** monitoring schedule as detailed in the Consolidated Plan and Strategy.

CITY will notify **DISTRICT** no less than one week in advance of on-site monitoring visits to assure compliance with applicable Federal requirements and that performance goals are being achieved as per 2 CFR Parts 200.301 (Performance Measurement) and Part 328 (Monitoring and Reporting Program Performance) as well as 24 CFR Part 570.501(b), .502 and 503 (Grant Administration).

Subsequent to each monitoring visit, **CITY** shall provide **DISTRICT** with a written report of the monitor's determinations. If the monitoring report notes deficiencies in **DISTRICT's** performance under the terms of this Agreement, the monitoring report shall also include requirements for the timely correction of such deficiencies by **DISTRICT**.

Failure by **DISTRICT** to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, as provided in Section VIII – Suspension and Termination.

In addition, **DISTRICT** shall give **CITY**, HUD, Inspector General, the Comptroller General of the United States, and any of their duly authorized representatives, unobstructed and full access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by **DISTRICT** pertaining to this Agreement as provided in 2 CFR Part 200.336 (Access to Records).

SECTION V
COMPENSATION, METHOD OF PAYMENT, AND PROGRAM INCOME

DISTRICT agrees to follow administrative directions from the **CITY** regarding documenting and processing payment requests as determined during orientation and monitoring visits. All necessary documentation such as canceled checks, paid invoices and time and attendance records, which include case numbers or other identification of beneficiaries, must be submitted with each request for payment. **CITY** may request additional documentation of expenditures from **DISTRICT**, as deemed necessary by **CITY** or facilitated under 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards and 24 CFR Part 570.502 – Applicability of Uniform Administrative Requirements.

DISTRICT and **CITY** agree that, if applicable, program income generated from the use of CDBG funds shall be retained by the **DISTRICT**. If the activity is partially assisted with CDBG funds, the **DISTRICT** agrees to pro-rate the gross income to reflect the percent of CDBG funds assisted in the activity. If generated, **DISTRICT** is to provide to the **CITY** an account of program income on a monthly basis. Program income determinations are found at 24 CFR Part 570.500(a), 570.503(b)(3), 570.504 and 2 CFR Part 200.307

CITY is then required to report all CDBG program income earned, retained, and expended. The **DISTRICT** shall be allowed to use program income for the same or similar activities as generated the program income. Failure of the **DISTRICT** to report program income as required shall cause the **CITY** to require all program income to be returned to the **CITY**.

DISTRICT and **CITY** agree that all unused CDBG funds will be returned to **CITY** at the end or termination of this agreement.

SECTION VI
RELIGIOUS AND POLITICAL ACTIVITIES

DISTRICT and **CITY** agree that none of the funds expended or activities undertaken shall be used in support of any sectarian, religious or political activity, nor shall any building or structure funded under this Agreement be used for sectarian or religious activities in accordance with 24 CFR Part 570.200(j) and .207 – General Policies and Ineligible Activities, respectively.

SECTION VII
AUDIT REQUIREMENTS AND FINANCIAL MANAGEMENT

DISTRICT agrees to comply with the applicable requirements and standards as set forth in 2 CFR Part 200.501 (Audit Requirements). Audits shall be conducted annually in accordance with 2 CFR Part 504 (Frequency of Audits). Applicability of audit requirements to CDBG program is noted in 24 CFR Part 570.502(a) and .610.

DISTRICT agrees to furnish **CITY** a Financial Management letter covering the period of this Agreement that includes detailed receipts and disbursement of payments to **DISTRICT** hereunder.

However, if **DISTRICT** expends Seven Hundred Fifty Thousand Dollars ($750,000) or more in federal funds, **DISTRICT** must, within nine (9) months, supply **CITY** with an audit of revenues and expenditures conducted by a Certified Public Accountant and compliant with 2 CFR Part 200.514 (Scope of Audit).

DISTRICT acknowledges that a Financial Audit shall be provided to **CITY** at the expense of the **DISTRICT.** Audit shall be available to **CITY**, and any and all applicable federal agencies, and be of unrestricted access, as listed in 2 CFR Part 200.336 (Access to Records).

If the **DISTRICT** expends less than $750,000 per year in cumulative federal awards, then they are exempt from Part 200.501 for that year; however, records must be available for review or audit by appropriate officials of the federal agency, pass-through entities, non-Federal Agency (**CITY)** and the General Accounting Office.

For the exempt **DISTRICT**, a 990 Tax Return (Return of Organization Exempt From Income Tax), and Financial Statements are required for the most recent fiscal year. Further, **DISTRICT** agrees to cooperate with **CITY** relating to any inquiries regarding the audit.

It is understood that **CITY** and **DISTRICT** have a fiduciary responsibility to meet Financial Management standards and practices so noted in 2 CFR Part 200.302 and as may be applicable under 24 CFR Part 570.502 and 570.610.

SECTION VIII
SUSPENSION AND TERMINATION

DISTRICT understands that this Agreement may be suspended or terminated, in accordance with 2 CFR Part 200.339 (A)(4) (Termination), if the **DISTRICT** materially fails to comply with the provisions of this Agreement, the provisions so listed in **EXHIBITS A – C** or Program Management Standards recognized under 24 CFR Part 570.502, 503(b)(4) and .610.

If **DISTRICT** fails to fulfill in a timely and proper manner its obligations under this Agreement, or **DISTRICT** violates the Agreements or any stipulations of this Agreement, then the **CITY** shall provide **DISTRICT** written notification of such non-performance. **AGENCY** is required to expend within a 90-day period; such non-performance may be the basis for immediate termination of this Agreement. Should any breach of Agreement relate to a violation of federal law or regulation that results in HUD demanding reimbursement from the **CITY, DISTRICT** or its successor, the **CITY** will terminate Agreement and seek reimbursement of all funds from **DISTRICT**.

DISTRICT shall not be relieved of the liability to the **CITY** for damages sustained by the **CITY** by virtue of any breach of this Agreement by **DISTRICT.** Further, **CITY** may withhold any payments to **DISTRICT** for violations of federal regulations. Should the **CITY** become aware of any activity by **DISTRICT,** which would jeopardize the **CITY'S** position with HUD, or which would cause a payback of federal funds, then **CITY** may take appropriate action including injunctive relief against **DISTRICT** to prevent the aforesaid transaction. Failure of the **CITY** to exercise any right shall in no way constitute a waiver by **CITY** to otherwise demand payment or seek any other relief in law or in equity to which it may be justly entitled.

It is expressly agreed that this Agreement may not be amended except upon the joint action of both the **CITY** and **DISTRICT**.

Except in cases of Termination of Grant for Convenience (24 CFR Part 570.509(e)) or Termination for Cause (570.509(f)), **CITY** will conform to grant closeout procedures noted in 570.509(a-d)

SECTION IX
ASSETS

DISTRICT shall not purchase any item or asset unless so permitted by the **CITY** and such procurement shall be done in the form and manner prescribed by **CITY. CITY** shall own all equipment purchased by **DISTRICT** utilizing CDBG funds and furnished to **DISTRICT** under this agreement until the equipment's useful life has expired. Assets may include equipment as defined in 2CFR Part 200.33.

Any asset acquired or improved in part or in whole with CDBG funds in excess of $25,000 must be used in an activity that meets one of the national objectives listed in 24 CFR Part 570.208 for a period of five (5) years after the submission of the final report or a longer period if so determined by the **CITY**.

CITY's written approval must be obtained prior to the disposition of any asset improved or acquired in part or in whole with CDBG funds by **DISTRICT. CITY** shall be reimbursed the full amount of the disposed value of the asset if the asset is sold.

CITY may, at its option, request that such asset be transferred to **CITY** if the asset is no longer being used to meet one of the national objectives or in any case where the **DISTRICT** no longer provides services shown on **EXHIBIT A: STATEMENT OF WORK.**

Purchases of equipment of two thousand five hundred dollars ($2,500) or more in value will be labeled with a numbered **CITY** CDBG tag.

Reversion of Assets and its applicability is addressed in 24 CFR Part 570.502, 570.503 and 570.505. Furthermore, Real Property requirements are noted in 24 CFR Part 570.502, 570.503(b)(7), 570.505 and 2 CFR Part 200.311.

SECTION X
INDEMNITY CLAUSE

DISTRICT agrees to hold **CITY** harmless from, and indemnify **CITY** from and defend **CITY** against any and all claims brought against **CITY** by employees or officers of **DISTRICT** or brought by any third person arising in any manner directly or indirectly from **DISTRICT** programs, activities or events conducted pursuant to this Agreement.

SECTION XI
PROCUREMENT

DISTRICT agrees to follow the rules of the **CITY** on the procurement of services, supplies or non-real property in relation to CDBG-funded projects. The legal standards that will apply include the Procurement Standards of the City of McAllen, 2 CFR Part 200.317-.326 (Procurement Standards) and 24 CFR Part 570.502, as applicable. In such case as **DISTRICT** has developed procurement standards governing its operation, **DISTRICT** is required to follow the stricter of **DISTRICT's** or **CITY's** procurement procedures.

CITY's traditional procurement procedures are as follows: For purchases up to $999.99, **DISTRICT** must provide invoice or receipt and cancelled check. For purchases of $1,000 but not exceeding $49,999.99, **DISTRICT** must provide a minimum of three quotes on vendor letterhead, invoice or receipt and cancelled check. For purchases of $50,000 or more, **DISTRICT** must use the competitive sealed bid procedure.

DISTRICT is advised to contact **CITY** for assistance in connection with competitive bidding procedures. **DISTRICT** must advertise no less than twice in a newspaper of general circulation. Advertisements must be separated by no less than seven calendar days. Sealed bids must be opened no less than eight calendar days after the second advertisement and bids shall only be awarded by **DISTRICT's** governing board, where applicable.

Non-traditional procurement, such as use of buy board, co-ops, or unit pricing, may be allowed when open and fair competition can be demonstrated. Such methods shall be acceptable when **CITY's** written approval is obtained in advance of award selection.

SECTION XII
CONFLICT OF INTEREST

DISTRICT covenants that neither members of its organization or staff members who exercise influence on the decision-making process presently has or will have any interest, direct or indirect, with any person, corporation, company or association that is hired to carry out any of the activities so listed in **EXHIBIT A: STATEMENT OF WORK.** Such requirement is listed in 2 CFR Parts 200.112 (Conflict of Interest) and 200.318(c)(1) (General Procurement Standards) and 24 CFR Part 570.611.

DISTRICT agrees that no person who is an elected official, officer, director, employee, consultant, or agent of the **DISTRICT**'s organization or the **CITY**'s organization shall gain any interest in any corporation, company, or association that is hired to carry out any of the activities so listed in **EXHIBIT A: STATEMENT OF WORK** during their tenure.

No **CITY** employee, elected official, consultant and/or agent shall solicit nor accept gratuities, favors, or anything of monetary value from any person, corporation, company, or association that has been hired or expects to be hired to perform any of the activities so described in **EXHIBIT A: STATEMENT OF WORK**.

DISTRICT is responsible for repayment of funds associated with any Conflict of Interest that may occur either knowingly or unknowingly.

SECTION XIII
LEGAL ACTION AND VENUE

DISTRICT agrees to notify the **CITY** when a problem arises that may lead to legal action or claim against the **DISTRICT**. **DISTRICT** agrees to furnish to **CITY** any information with respect to such action or claim. **DISTRICT** agrees not to take any action with respect to any legal action or claim sought against the **DISTRICT** without the advice and consent of **CITY.**

Venue and jurisdiction of any suit, right or cause of action arising under or in connection with this Agreement shall lie exclusively in Hidalgo County.

SECTION XIV
MISCELLANEOUS BASIC ELEMENTS

Compliance with Laws and Regulations. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to local, state or federal law or regulation, as provided for in 24 CFR Part 570.

Antidiscrimination/Affirmative Action and EEO. This Agreement serves to maintain and enforce Antidiscrimination Laws, Affirmative Action and Equal Employment Opportunity regulations located in 24 CFR Part 8, 570.601, 570.602 and 570.607, Section 504 of Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, 41 CFR Part 60, 12 U.S.C 1701u and Executive Orders 11063, 11246 and 12086.

Environmental Standards. CITY shall maintain responsibility of ensuring Environmental Review is complete in accordance with 24 CFR Part 570.202, 503, 604, Part 58, 42 U.S.C 4001 et seq., and Section 104(g) of the Housing and Community Development Act prior to Agreement ratification. Notwithstanding activities listed in Exhibit A – Statement of Work, **CITY** shall not relinquish, nor shall **DISTRICT**, incur expenses prior to completion of Environmental Review Record.

Grant Closeout Procedures. **DISTRICT** shall provide timely and accurate financial and performance data such as to allow **CITY** to complete its assessment of the fiscal year. Procedures for closeout are noted in 24 CFR Part 570.509.

Other Program Requirements. Citations for Other Program Requirements are provided in 24 CFR Part 570.503(b)(5), 570.600-603, and 570.605-614.

SECTION XV
MISCELLANEOUS PROVISIONS

Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

No Waiver. No waiver by **CITY** of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

Entire Agreement. This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by **CITY** and **DISTRICT**, and not otherwise.

Texas Law to Apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

Notice. Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by electronic mail, or (iii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or (iv) sent by facsimile or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith.

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the Unites States mail.

Reports and Notices shall be made to:

CITY OF McALLEN
Julia D. Lash, Director
Grant Administration Department
P.O. Box 220
McAllen, TX 78505-0220
Phone: (956) 681-1030

McALLEN INDEPENTDENT SCHOOL DISTRICT

Name of Signatory: Debbie Crane Aliseda
Title of Signatory: Board President
Address: 2000 N. 23rd st.
City, State, Zip: McAllen, TX 78501
Phone: 956-618-6000

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

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

Assignment. This Agreement shall not be assignable by **DISTRICT**. **CITY** may assign this Agreement without the consent of **DISTRICT**.

Headings. The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

Gender and Number. All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

Authority to Execute. The execution and performance of this Agreement by **CITY** and **DISTRICT** have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of **CITY** and **DISTRICT** in accordance with its terms.

SECTION XVI
ENUMERATION OF CONTRACT DOCUMENTS

This Agreement shall be performed in accordance with, and subject to, the provisions of all documents enumerated herein, or which may be attached hereto by written mutual consent of the contracting parties at any future date and are hereby made a part of this Agreement unless otherwise provided for.

To comply with 24 CFR Part 270.503, the Agreement document so enumerated is:

(1) EXHIBIT A: STATEMENT OF WORK
(2) EXHIBIT B: GRANT BUDGET/PROJECT MILESTONES
(3) EXHIBIT C: 2 CFR PART 200–UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

SECTION XVI
EFFECTIVE DATE

The effective date of this agreement shall be the 1st day of October 2023, which follows the ordinance approved by the City Commission, and shall terminate on the 30th day of September 2024.

IN WITNESS THEREOF, **CITY** and **DISTRICT** have executed two (2) conformed copies of this Contract as of the date first above written.

CITY OF McALLEN

By: _____
Javier Villalobos, Mayor

Date: 3/27/2024

ATTEST:

By: _____
Perla Lara, City Secretary

McAllen Independent School District

By: Debbie C Aliseda

Printed Name: Debbie C Aliseda

Title: President

Date: 4/4/24

APPROVED AS TO FORM:

By: Isaac J Tawil
Isaac J. Tawil, City Attorney

EXHIBIT A
STATEMENT OF WORK

Services

CDBG funds will be used for a track lighting project.

Beneficiaries

CDBG funds will benefit the City of McAllen residents and students at Dorothea Brown Middle School.

Location

Services will be located at 2700 S. Ware Road, McAllen, Texas 78503.

Other Funding Sources

- N/A

Performance Measurement

- Provide lighting to extend hours for citizens of McAllen to be able to use walking track during evening and weekend hours
- Extend physical activities for students at Dorothea Brown Middle School

EXHIBIT B
GRANT BUDGET/PROJECT MILESTONES

Type of Expenditure	Amount
Lighting System	$175,000
TOTAL	**$ 175,000**

Timeline	Accomplishment	
Month of:	**Funds Expended**	**Beneficiaries Served**
December 2023	0%	0%
April 2024	30%	30%
June 2024	50%	50%
No later than September 30, 2024	100%	100%

EXHIBIT C

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart A—ACRONYMS AND DEFINITIONS

ACRONYMS

Subpart B—GENERAL PROVISIONS

Subpart C—PRE-FEDERAL AWARD REQUIREMENTS AND CONTENTS OF FEDERAL AWARDS

Subpart D—POST FEDERAL AWARD REQUIREMENTS

STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT

PROPERTY STANDARDS

PROCUREMENT STANDARDS

PERFORMANCE AND FINANCIAL MONITORING AND REPORTING

SUBRECIPIENT MONITORING AND MANAGEMENT

RECORD RETENTION AND ACCESS

REMEDIES FOR NONCOMPLIANCE

CLOSEOUT

POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES

COLLECTION OF AMOUNTS DUE

Subpart E—COST PRINCIPLES

GENERAL PROVISIONS

BASIC CONSIDERATIONS

GENERAL PROVISIONS FOR SELECTED ITEMS OF COST

EXHIBIT C - Continued

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart F—AUDIT REQUIREMENTS

GENERAL

AUDITS

AUDITEES

FEDERAL AGENCIES

AUDITORS

MANAGEMENT DECISIONS

Appendix	Appendix I to Part 200—Full Text of Notice of Funding Opportunity
Appendix	Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards
Appendix	Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)
Appendix	Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations
Appendix	Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans
Appendix	Appendix VI to Part 200—Public Assistance Cost Allocation Plans
Appendix	Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals
Appendix	Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E—Cost Principles of Part 200
Appendix	Appendix IX to Part 200—Hospital Cost Principles
Appendix	Appendix X to Part 200—Data Collection Form (Form SF-SAC)
Appendix	Appendix XI to Part 200—Compliance Supplement
Appendix	Appendix XII to Part 200—Award Term and Condition for Recipient Integrity and Performance Matters

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: December 10, 2024

SUBJECT: Report Regarding Career Technical Education Department

REFERENCE: Goal 1: Students Achievement/Student Focus

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The Career Technical Education Program will be providing the department annual update.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
McAllen ISD's Career Technical Education program is working proactively working to ensure that all students are afforded rigorous academic instruction and leadership development with relevant career-readiness skills that lead to high-wage, in-demand career and post-secondary opportunities. McAllen ISD's CTE Program works closely with the community to establish opportunities for students and CTE staff to ensure that students are college and career ready in their chosen program of study.

LEGAL REVIEW: None required.

BUDGETARY CONSIDERATIONS: No required

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

Attachment: ☑

SUBMITTED BY: LEO SAENZ (Dec 4, 2024 09:15 CST)

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Leo Saenz
Office: 956-632-5181
eMail: leo.saenz@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Dec 4, 2024 11:13 CST)

Superintendent of Schools Dec 4, 2024

Preparing the Workforce of Tomorrow

McALLEN ISD
CTE | Career Technical Education

McALLEN ISD CTE Career Technical Education

CAREER TECHNICAL EDUCATION DEPARTMENT

2024-2025

Leo Saenz, Director - Career Technical Education
David Lyons, Coordinator - Career Technical Education
Diana Pena, Coordinator - Career Technical Education
Monica Pena, Coordinator - Career Technical Education

22 PROGRAMS OF STUDY

13 CAREER CLUSTERS

Agriculture, Food and Natural Resources

- Animal Science
- Agriculture Technology and Mechanical Systems

Architecture and Construction

- HVAC and Sheet Metal

Arts, Audio Visual Technology and Communications

- Graphic Design and Interactive Media
- Digital Communications

Business, Marketing, and Finance

- Accounting and Financial Services
- Business Management
- Entrepreneurship
- Marketing and Sales

Education and Training

- Teaching and Training

Health Science

- Exercise Science, Wellness and Restoration
- Diagnostic & Therapeutic Services

Hospitality and Tourism

- Culinary Arts

Human Services

- Family and Community Services
- Cosmetology and Personal Care Services

Information Technology

- Programming and Software Development

Law and Public Service

- Fire Science
- Law Enforcement

Manufacturing

- Welding

Engineering

- Engineering Foundations

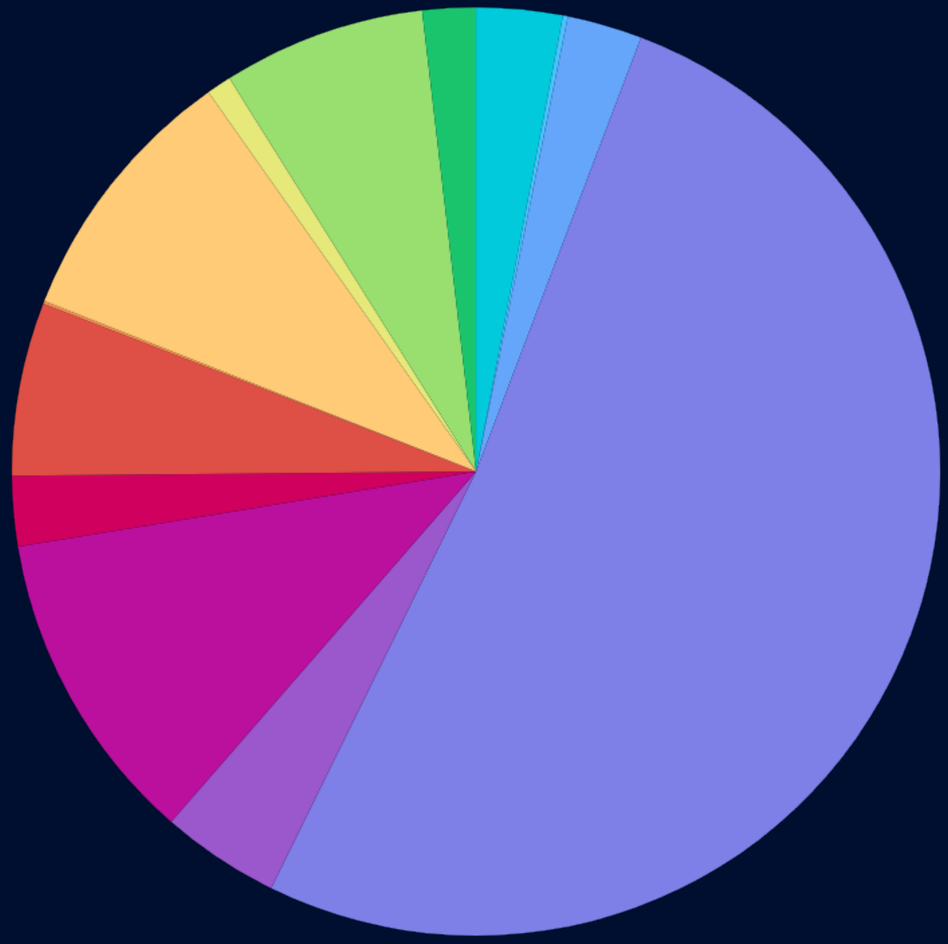
Transportation, Distribution, and Logistics

- Automotive Collision and Repair
- Aviation (Pilots)

BY THE NUMBERS

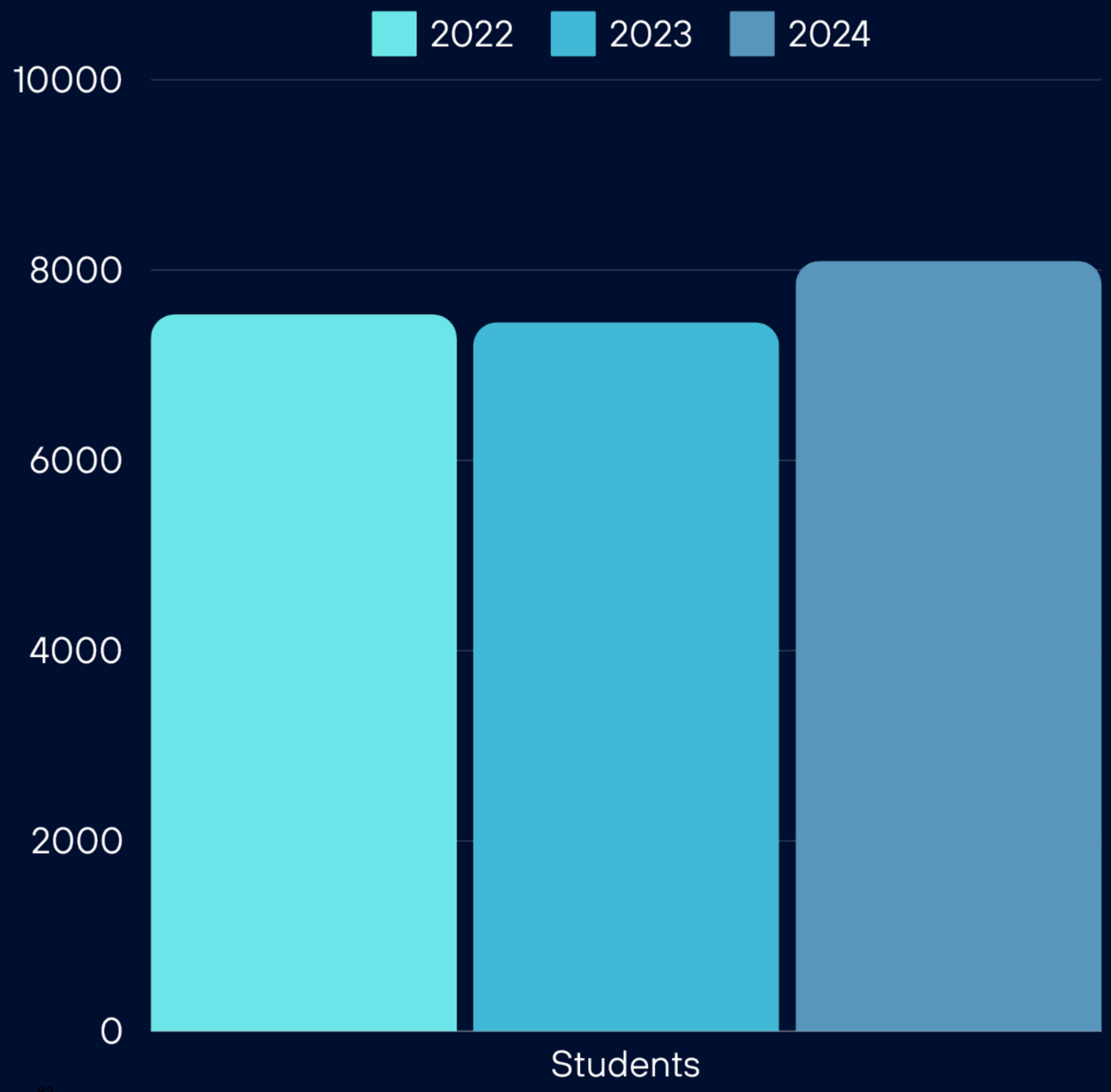
84% of all HS students are in CTE

- Agriculture, Food, and Natural Resources 3.0%
- Architecture and Construction 0.2%
- Arts, Audio Visual Technology and Communications 2.6%
- Business, Marketing, and Finance 51.5%
- Education and Training 4.1%
- Health Science 11.0%
- Hospitality and Tourism 2.4%
- Human Services 6.0%
- Information Technology 0.1%
- Law and Public Service 9.2%
- Manufacturing 0.9%
- Engineering 7.1%
- Transportation, Distribution, and Logistics 1.9%



BY THE NUMBERS

Students taking CTE courses.



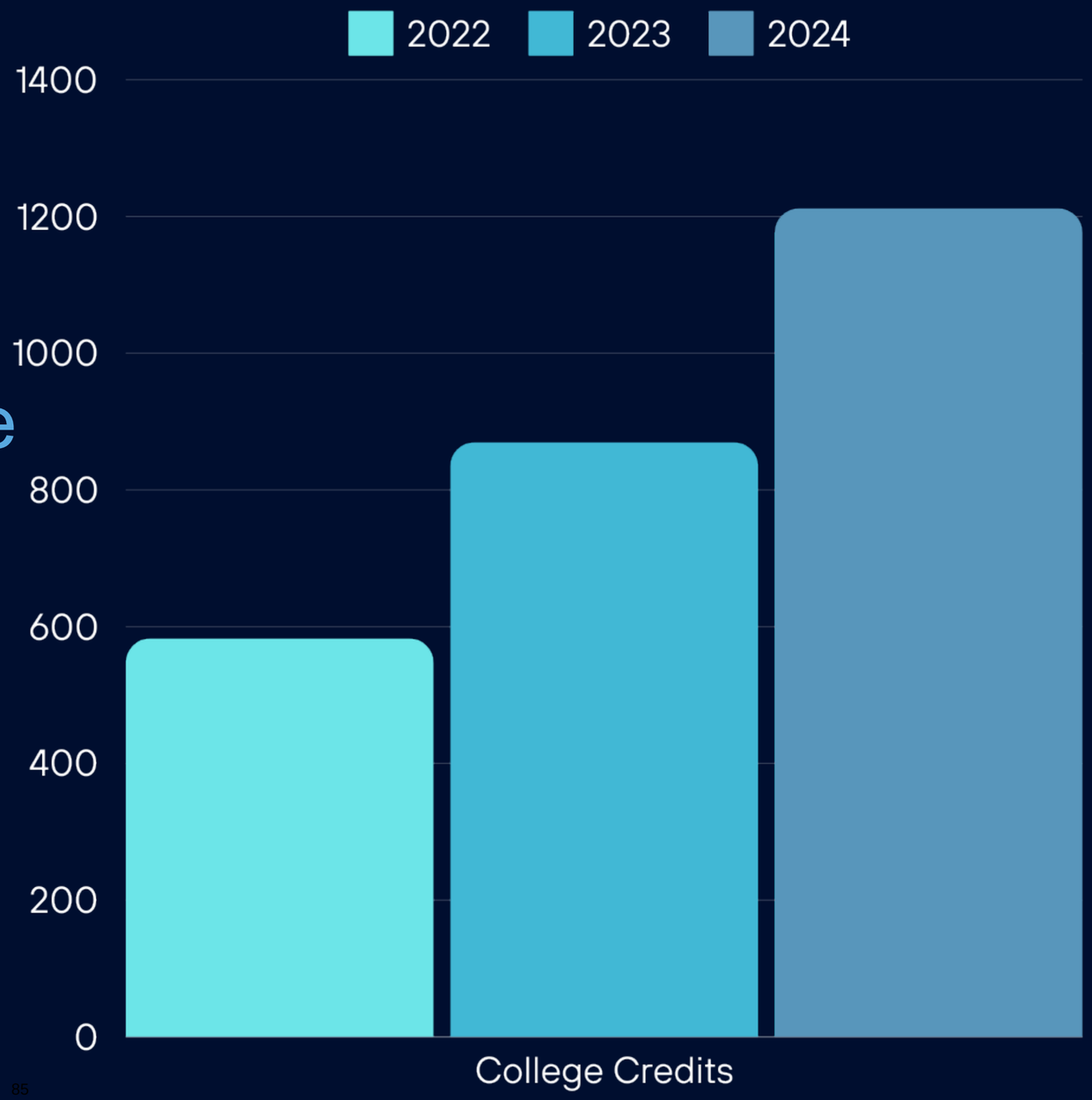
BY THE NUMBERS

TEA Approved Industry-Based Certifications.

BY THE NUMBERS

CTE Students are earning more

College Credits.



CTE ADVISORY COMMITTEE

PARTNERSHIPS MATTER

OVER 60 COMMUNITY LEADERS/MEMBERS PARTICIPATED

INCUBATOR = BYSNESS BOYS & GIRLS CLUB

The Boys in Girls Club of McAllen has partnered with our INCUBATOR students to mentor middle schoolers in the world of entrepreneurship! This collaboration kicked off late November and will run through December/January.

Preparing the Workforce of Tomorrow

Career Ready College Ready Military Ready

THANK YOU

Questions?

Preparing the Workforce of Tomorrow

McALLEN ISD
CTE | Career Technical Education

McALLEN ISD CTE Career Technical Education

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2024-2025

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- Teaching and Training

Health Science

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- Diagnostic & Therapeutic Services

Hospitality and Tourism

- Culinary Arts

Human Services

- Family and Community Services
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Information Technology

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Law and Public Service

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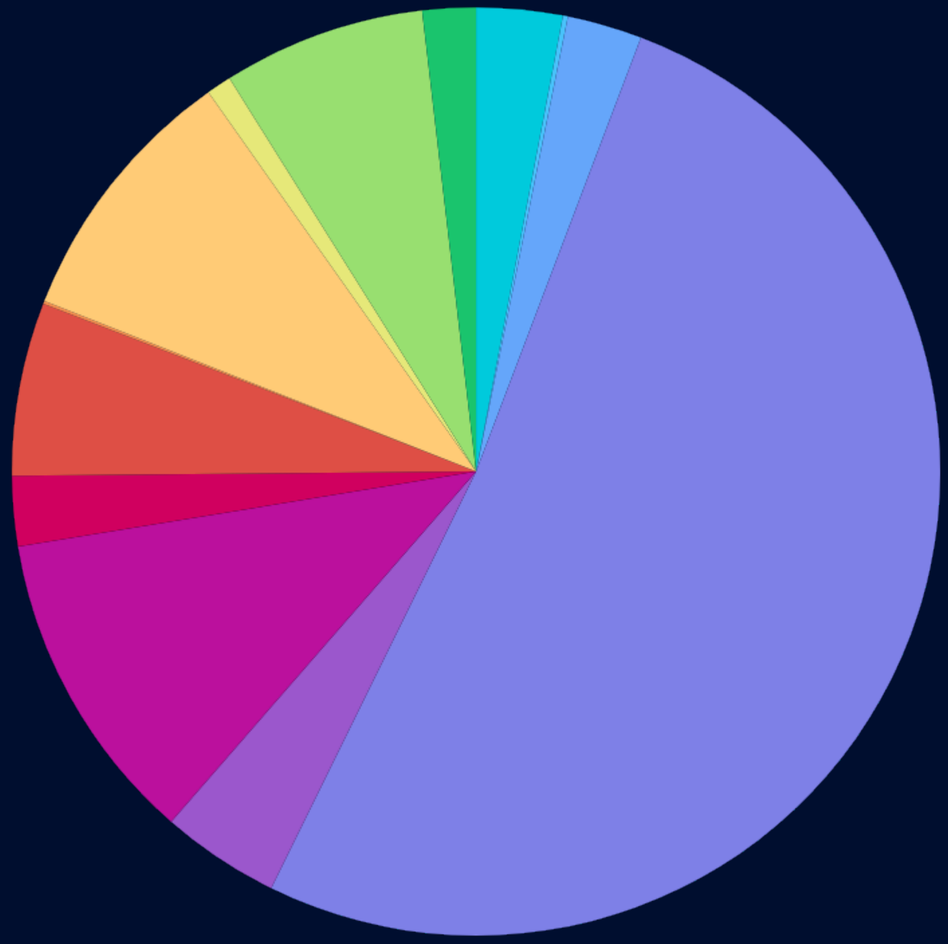

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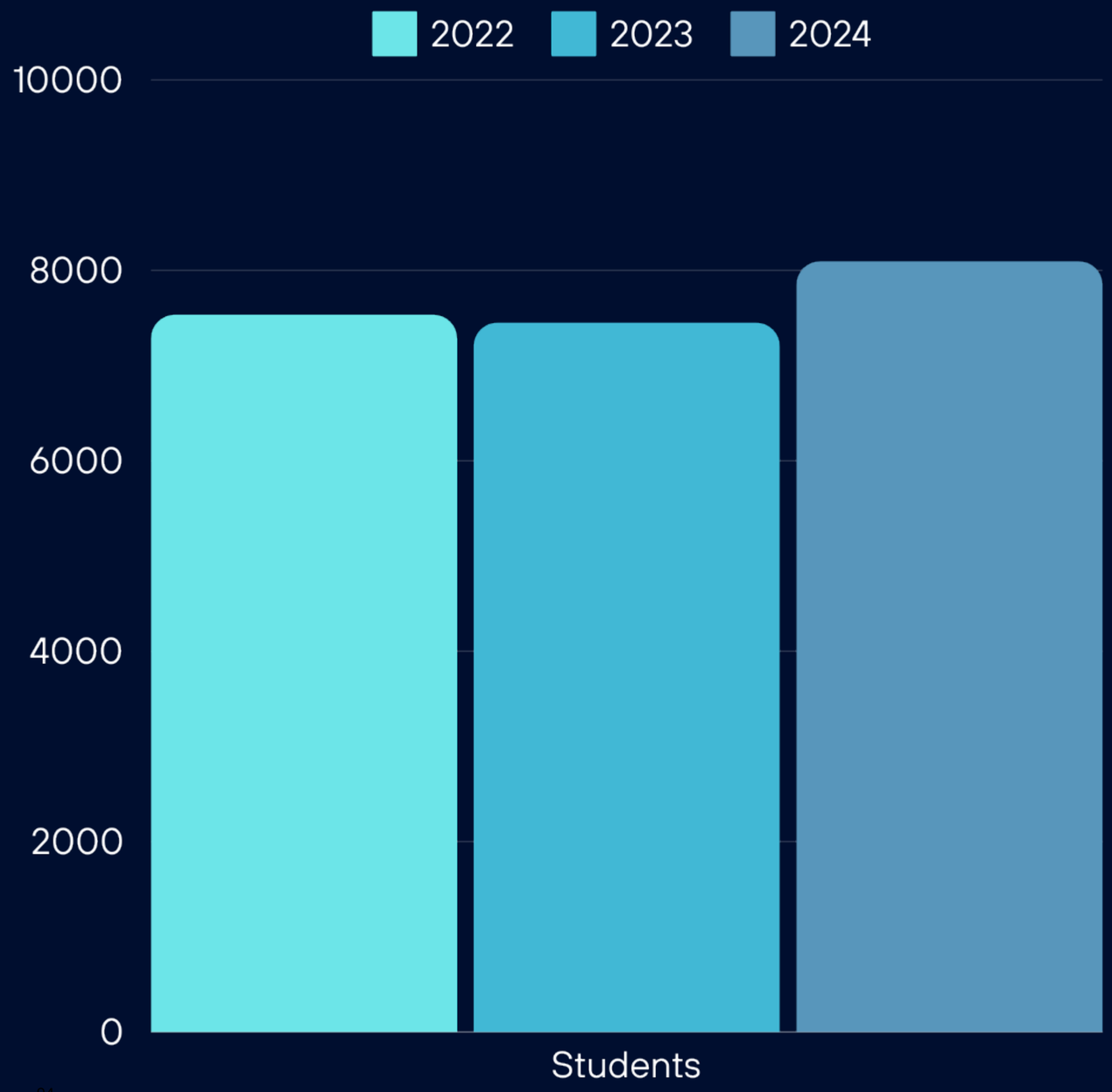

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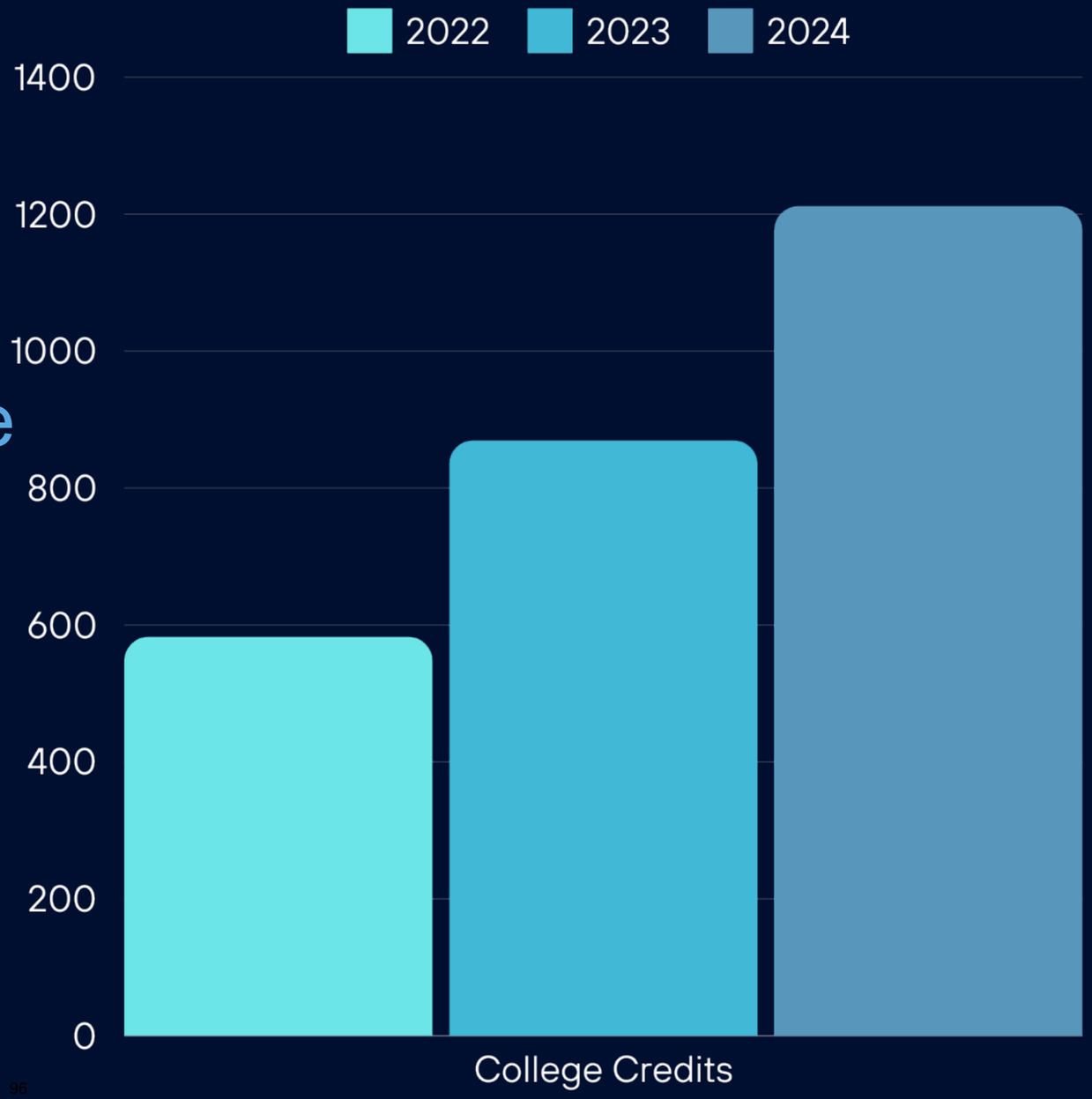

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Preparing the Workforce of Tomorrow

McALLEN ISD

CTE

Career Ready College Ready Military Ready

THANK YOU

Questions?

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Report Regarding Partnership Agreement No. 2025-210 Texas Regional Pathways Network with Region One Education Service Center

REFERENCE: Goal 1 – Financial Priorities; Strategy 5 - Partnerships With Business/Civic/Education Organizations

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Texas faces a significant challenge in helping students achieve college and career readiness, earn postsecondary degrees and credentials, and enter careers aligned with current and future workforce needs. Regional efforts that engage cross-sector stakeholders in developing high-quality career and education pathways are a critically important strategy for addressing this challenge. These pathways provide opportunities for students to acquire dual credit, earn industry-based certifications, post-secondary credentials, complete work-based learning opportunities aligned to targeted industries, and receive effective advising support to successfully navigate pathways

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

This partnership agreement outlines the roles and responsibilities required of key members of the Texas Regional Pathways Network (TRPN) regional pathways team. By entering into a partnership with Region One the District is committing to fulfill the roles and responsibilities necessary to implement, in partnership, high-quality career and education pathway activities and interventions over the span of the grant period.

LEGAL REVIEW:

Partnership agreement was approved by legal counsel.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

The Report Regarding Partnership Agreement No. 2025-210 Texas Regional Pathways Network with Region One Education Service Center is submitted for information purposes only, no action is required.

Attachment: ☑

SUBMITTED BY: LEO SAENZ (Jan 7, 2025 09:09 CST)

SUPERVISOR: Jeanette Nino (Jan 8, 2025 08:59 CST)

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Leo Saenz, Career Technical Education Director
Office: (956) 632-5181
Email: leo.saenz@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 8, 2025 14:39 CST)

Superintendent of Schools

Texas Regional Pathways Network (TRPN) Partnership Agreement

This partnership agreement outlines the roles and responsibilities required of key members of Texas Regional Pathways Network (TRPN) regional pathways team. By signing this document, the identified organizations commit to fulfilling the roles and responsibilities necessary to implement, in partnership, high-quality career and education pathway activities and interventions over the span of the grant period.

Overview of the Program

Texas faces a significant challenge in helping students achieve college and career readiness, earn postsecondary degrees and credentials, and enter careers aligned with current and future workforce needs. Regional efforts that engage cross-sector stakeholders in developing high-quality career and education pathways are a critically important strategy for addressing this challenge. These pathways provide opportunities for students to acquire dual credit, earn industry-based certifications, post-secondary credentials, complete work-based learning opportunities aligned to targeted industries, and receive effective advising support to successfully navigate pathways

The purpose of this grant is to assist workforce development regions with providing high quality career and education pathways that are aligned to the targeted industry identified in this grant project. Regions in the Texas Regional Pathways Network commit to developing pathways that include the seven key components of high-quality career and education pathways:

1. Cross-sector partnerships
2. Alignment with high wage, in-demand labor market information
3. Credentials and degrees with value in the labor market
4. Links between secondary and postsecondary education with multiple entry and exit points
5. Integration of rigorous academics and career-focused learning
6. Effective advising
7. Continuum of work-based learning experiences

Regional Partnership Agreement

The regional pathways team consists of specific partner organizations, including:

- A pathways team facilitator who will convene all stakeholders and coordinate the implementation of grant activities;
- A grant administrator (the designated grantee LEA) who will also serve as the fiscal agent;
- A minimum of two employers from the targeted industry;
- A minimum of three local education agencies (LEAs) offering programs of study aligned to the targeted industry;
- A minimum of one public institution of higher education offering programs aligned to the targeted industry; and
- A minimum of one workforce development board
- A minimum of one regional education service center.

The roles and responsibilities that each organization on a regional team agrees to fulfill are outlined below.

The **pathways team facilitator** agrees to the following:

- Convene a regional pathways team, composed of representatives from all key partner organizations, that is responsible for implementation of high-quality career and education pathways aligned to the targeted industry. Develop a communication strategy to foster a collaborative team environment and communicate information to all members of the pathways team in a timely manner.
- Coordinate efforts among stakeholders to broker and aggregate work-based learning opportunities aligned to the targeted industry. The regional pathways team, with facilitation from the pathways team facilitator, is responsible for planning and executing at least one work-based learning experience for students across all partner districts.
- Coordinate with the grant administrator to track and monitor all grant activities and collect data related to work-based learning, CTE program of study enrollment, credential and dual credit attainment, postsecondary enrollment, and employment outcomes aligned to the targeted industry. Coordinate with grant administrator on all performance reporting requirements.
- Lead the planning for sustainability of the regional pathways work, including leading the fiscal mapping exercise.
- Coordinate with the assigned coach and meet frequently with the assigned coach throughout the project.

The **grant administrator** agrees to the following:

- Financial Management
    - Disburse and/or manage funds in ways that (1) comply with Perkins V and TEA requirements and (2) are consistent with the submitted budget.
    - Ensure spending is accounted for and on schedule. Provide timely spending updates to the assigned coach or TEA upon request.
    - Ensure spending is equitable across all partners and is aligned to regional pathways.
- Grant Management
    - Monitor the participation of all members of the regional pathways team to ensure each entity is complying with the roles and responsibilities as outlined in this agreement.
    - Establish metrics for success in consultation with pathways team facilitator, report on progress, and hold participants accountable.
    - Collaborate with the pathways team facilitator to track and monitor all grant activities and collect data related to work-based learning, CTE program of study enrollment, credential and dual credit attainment, postsecondary enrollment, and employment outcomes aligned to the targeted industry.
    - Complete and submit all performance reporting requirements in collaboration with the pathways team facilitator.

Employers agree to the following:

- Represent their industry by actively participating on the regional pathways team. This includes, but is not limited to, engaging in the process of reverse mapping pathways from industry demand to postsecondary to K-12, providing consistent and timely feedback on credentials that have value in the labor market, providing consistent and timely feedback on equipment and other investments to

ensure alignment to the targeted industry, and supporting curriculum development to align to industry standards.

- Support the regional pathways team in identifying and recruiting additional employer partners within the industry to participate in work-based learning or other grant activities.
- Participate in and offer WBL activities and experiences (such as mock interviews, job shadowing, and internships) designed to expand the boundaries of the classroom and prepare students for future career opportunities. Activities and experiences begin as early as pre-kindergarten and continue through postsecondary education.

Local education agencies (LEAs) agree to the following:

- Actively participate on the regional pathways team contributing and performing duties that are consistent with membership on that team.
- Provide students with access to at least one program of study that is aligned to the targeted industry.
- Ensure that programs of study include advanced academics (such as dual credit, early college, AP, and/or IB) and are consistent with the state's approved programs of study.
- Provide participating teachers and school counselors with training opportunities to support high-quality career and education pathways.
- Collaborate with the higher education partner(s) to create pathways with multiple entry and exit points that begin in high school and lead to postsecondary options, starting with industry-based certifications and progressing to level 1 and 2 certificates, associate's degrees, and bachelor's degrees. Bridge programs and formal transfer and articulation agreements help to ensure that secondary and postsecondary pathways are seamlessly connected.
- Support school counselors in the planning and execution of an individual student planning system aligned to the Effective Advising Framework (EAF), to support all students in navigating their career and education pathway.
- Develop a data sharing agreement to share program-level outcomes with grant administrator and pathways team facilitator to support performance reporting requirements.

The **public institution(s) of higher education** agree(s) to the following:

- Actively participate in the regional pathways team, contributing and performing duties that are consistent with membership on the team.
- Engage in the process of reverse mapping pathways from industry to postsecondary to K-12 to ensure that students develop the skills and competencies they need to succeed in careers.
- Provide a seamless student experience for students at partner districts to support the transition from secondary program of study to postsecondary education and training. For example, executing grant activities that prevent summer melt, supporting FAFSA completions, ensuring dual credits transfer directly into a program related to the student's career and education pathway.
- Collaborate with LEAs to ensure secondary and postsecondary training alignment into the targeted industry. Provide the LEA with opportunities to engage in postsecondary programs, such as participation on the IHE's Advisory Committee.
- Coordinate with the pathways team facilitator on a sustainability strategy and extend career and education pathways to serve postsecondary students.

The **education service center (ESC)** agrees to the following:

- Actively participate in the regional pathways team, contributing and performing duties that are consistent with membership on the team.
- Participate in efforts to align and coordinate activities across participating LEAs as described in the LEA partnership requirements above.
- Provide data gathering and analysis support to pathways team facilitator, grant administrator, and participating LEAs to support performance reporting requirements.
- Coordinate with the pathways team facilitator on a sustainability strategy, leveraging funds and services available to the ESC.

The **workforce development board** agrees to the following:

- Actively participate in the regional pathways team, contributing and performing duties that are consistent with membership on the team.
- Participate in coordinated employer engagement efforts and support building connections between industry and education partners.
- Provide local labor market information and analysis to inform the development, design and implementation of the pathway(s) aligned to the targeted industry.
- Coordinate with the pathways team facilitator on a sustainability strategy, leveraging WIOA and other workforce development dollars to support opportunity youth and at-risk students to and through career and education pathways.

Terms and Length of the Memorandum of Understanding

By signing below, the partner organizations agree to review this memorandum of understanding by November 22, 2024, make modifications to its terms, if necessary, and execute the ultimate memorandum of understanding covering a one-year period from March 1, 2025 to February 28, 2026.

Signature		Date
Bobbie Gonzalez (Nov 6, 2024 15:42 CST)	Bobbie Sue Gonzalez Pathways Team Facilitator-Region One	11/06/2024
	Melissa Lopez Grant Administrator- Region One	11/06/2024
RENE GUTIERREZ (Dec 13, 2024 08:12 CST)	Dr. Rene Gutierrez Employer 1 McAllen ISD	Dec 13, 2024
	Dr. Michelle DeWitt Employer 2 Lyford CISD	Dec 9, 2024
RENE GUTIERREZ (Dec 13, 2024 08:12 CST)	Dr. Rene Gutierrez LEA 1 McAllen ISD	Dec 13, 2024
	Dr. Michelle DeWitt LEA 2 Lyford CISD	Dec 9, 2024
Gonzalo Salazar (Dec 10, 2024 16:14 CST)	Dr. Gonzalo Salazar LEA 3 & Employer 3: Los Fresnos CISD	Dec 10, 2024
	Dr. James Jupp Public Institution of Higher Education-UTRGV	Dec 9, 2024
Jesus Rodriguez (Dec 10, 2024 10:42 CST)	Dr. Jesus Roberto Rodriguez Public Institution of Higher Education-TSC	Dec 10, 2024
	Dr. Ricardo Solis Public Institution of Higher Education-STC	11/12/2024

Francisco Almaraz Francisco Almaraz (Nov 6, 2024 16:14 CST) Signature	Francisco Almaraz Workforce Development Board- Lower Rio	11/06/2024 Date
Rafael Vela Rafael Vela (Nov 6, 2024 16:36 CST) Signature	Rafael Vela Workforce Development Board-Cameron	11/06/2024 Date

Grant Name	Texas Education and Advancement for Career Hires (T.E.A.C.H)
Term of Grant	February 1, 2025 - August 31, 2026
Grant Amount	Up to $80,000 for one year
Grant Contact	Leo Saenz
Purpose and Use of Funds	The T.E.A.C.H. Project (Teacher Education and Advancement for Career Hires) is a comprehensive, multi-tiered initiative that expands opportunities for students and educators to engage deeply within the education and training industry, providing targeted pathways for development and professional growth in-demand job opportunities. The mission is to collaborate with stakeholders to restore the value and recognition of the teaching profession by developing a dynamic Education and Training Program of Study. With grant funding, we will initiate awareness campaigns, expand career exploration opportunities, and create targeted pathways in K-12 schools that channel students into the education and training program. Through work-based learning experiences and exposure to teaching, we aim to inspire and equip the next generation of educators who are ready to lead, teach, and impact future generations.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Report Regarding the 2025-2026 School Calendar

REFERENCE: Goal 1: Student Achievement/Student Focus

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The LEAD Professional Learning Committee developed three academic calendars that meet the requirements set forth by Texas Education Code Sec. 25.084.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
The LEAD Professional Learning Committee met to discuss calendar options which were presented to the LEAD General Assembly for discussion and feedback. During the LEAD General Assembly meeting, the assembly provided feedback on three draft calendars. After the LEAD General Assembly discussion and feedback, these are the three calendars. Administration will give an overview of the process and voting window to select the 2025-2026 school calendar.

LEGAL REVIEW:
None required.

BUDGETARY CONSIDERATIONS:
None required.

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

Attachment: ☑

SUBMITTED BY: Patricia Pena

SUPERVISOR: Rosalba De Hoyos

For further information contact:
Name: Patricia Pena
Office: 956-632-8414
eMail: patricia.pena2@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 8, 2025 09:24 CST)

Superintendent of Schools Jan 7, 2025

MCALLEN ISD

WE ARE ALL IN!

JANUARY 2025 REPORT REGARDING CALENDAR COMMITTEE GOALS & TIMELINE

Calendar Committee Timeline

November 6 , 2024

SHARE A GOOGLE SURVEY TO GATHER FEEDBACK FOR THE 2025-26 ACADEMIC CALENDAR.

November LEAD Calendar Committee Meeting

CREATE AND FINALIZE THREE 2025-26 INSTRUCTIONAL CALENDAR DRAFTS

November 20, 2024 LEAD Meeting

PRESENT THE THREE 2025-26 INSTRUCTIONAL CALENDAR DRAFTS TO THE LEAD GENERAL ASSEMBLY FOR FURTHER FEEDBACK, REVIEW, AND APPROVAL.

JANUARY BOARD REPORT 2025

BOARD REPORT: PROVIDE A BOARD REPORNT DETAILING THE CALENDAR DEVELOPMENT PROCESS AND CALENDAR DRAFTS FOR THE 2025-26 DISTRICT INSTRUCTIONAL CALENDAR

January 17, 2025 –February 3, 2025

SHARE THREE CALENDAR DRAFTS FOR VOTING AND DETERMINATION OF A FINAL CALENDAR. VOTING IS OPEN ALL MCALLEN ISD STAFF AND PARENTS/GUARDIANS.

February 11, 2025

BOARD APPROVAL: PRESENT THE FINAL 2025-26 CALENDAR DRAFT FOR BOARD APPROVAL

CALENDAR COMMITTEE GOALS

- To provide McAllen ISD stakeholders **viable academic calendar options** to consider and vote on for the upcoming school year.
- To develop calendar options that are **responsive to the needs** of students and the McAllen ISD community.
- To ensure **adherence** to Texas Education Code and local requirements.
- To present a calendar for board approval that **aligns with McAllen ISD's Vision, Mission and Goals** .

WHAT GUIDES THE DEVELOPMENT OF MCALLEN ISD'S ANNUAL INSTRUCTIONAL CALENDAR?

Local Goals and Guidelines

State Laws and Guidelines

MCALLEN ISD'S APPROACHES TO LEADERSHIP AND LEARNING GOALS

Academic Calendar Goals

- **Student Achievement**
  - Establish a School Start Date that maximizes student learning opportunities
  - Create a calendar that minimizes learning gaps
- **Financial Priorities**
  - Maximize access to revenue sources to increase compensation (ADSY)
  - Set a School Start Date that maximizes student recruitment/retainment efforts
- **People Development**
  - Allow multiple opportunities for meaningful professional learning and planning

How does our current calendar align to McAllen ISD's Approaches to Leadership and Learning ?

EARLY START DATE

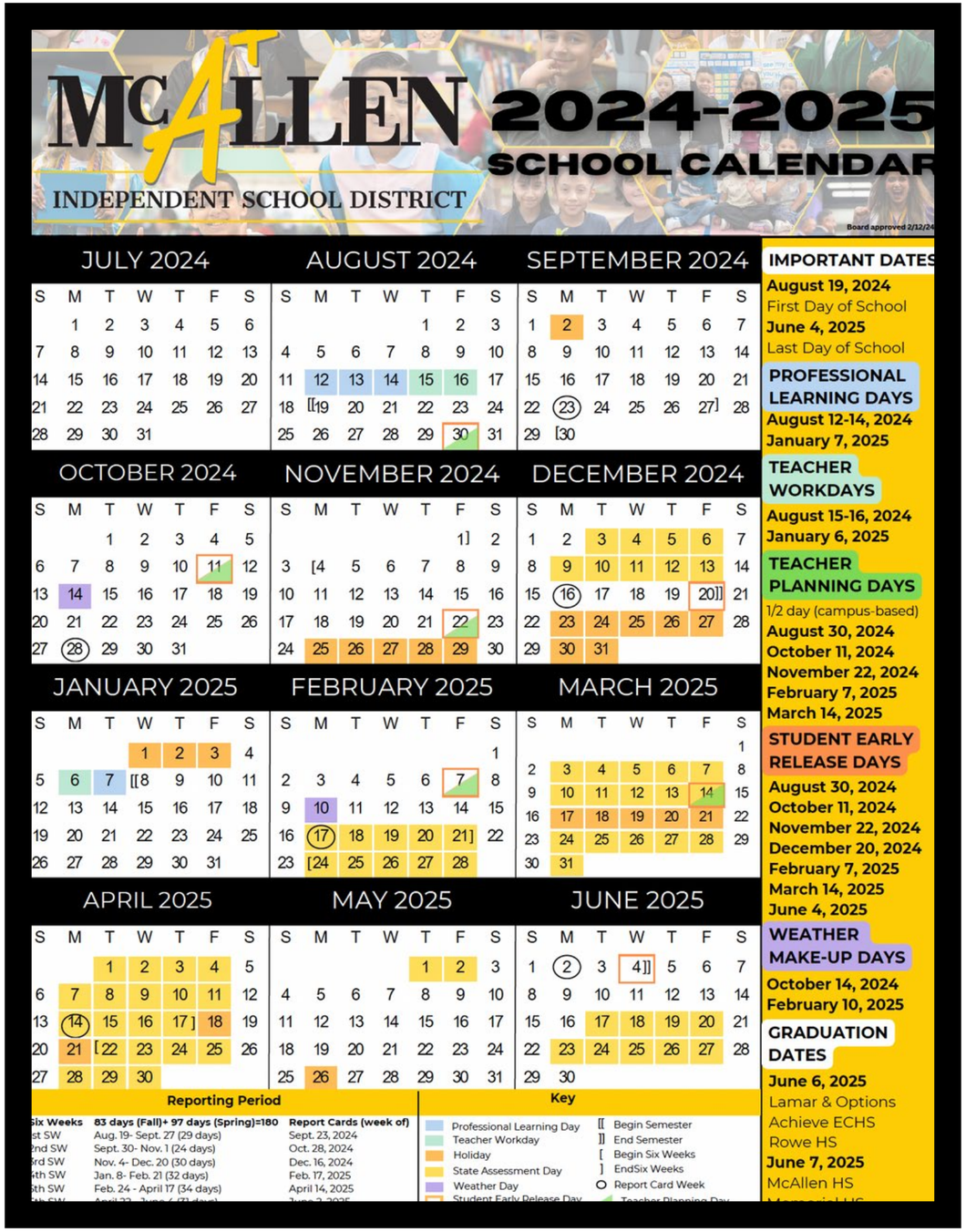
The calendar committee was asked to develop calendar options that included an early start date to remain competetive with other school districts in Texas.

INCREASED FUNDING: ADSY CALENDAR

The current calendar meets the requirements for Additional Days School Year Calendar (180 instructional days). This allows the district to generate extra revenue for after school tutoring and Saturday school.

ADDITIONAL BREAKS AND TEACHER PLANNING SCHEDULED

This calendar has a holiday/break scheduled at least once a month. There are also half-day teacher planning days scheduled throughout the year.



How can a District Adjust the School Start Date

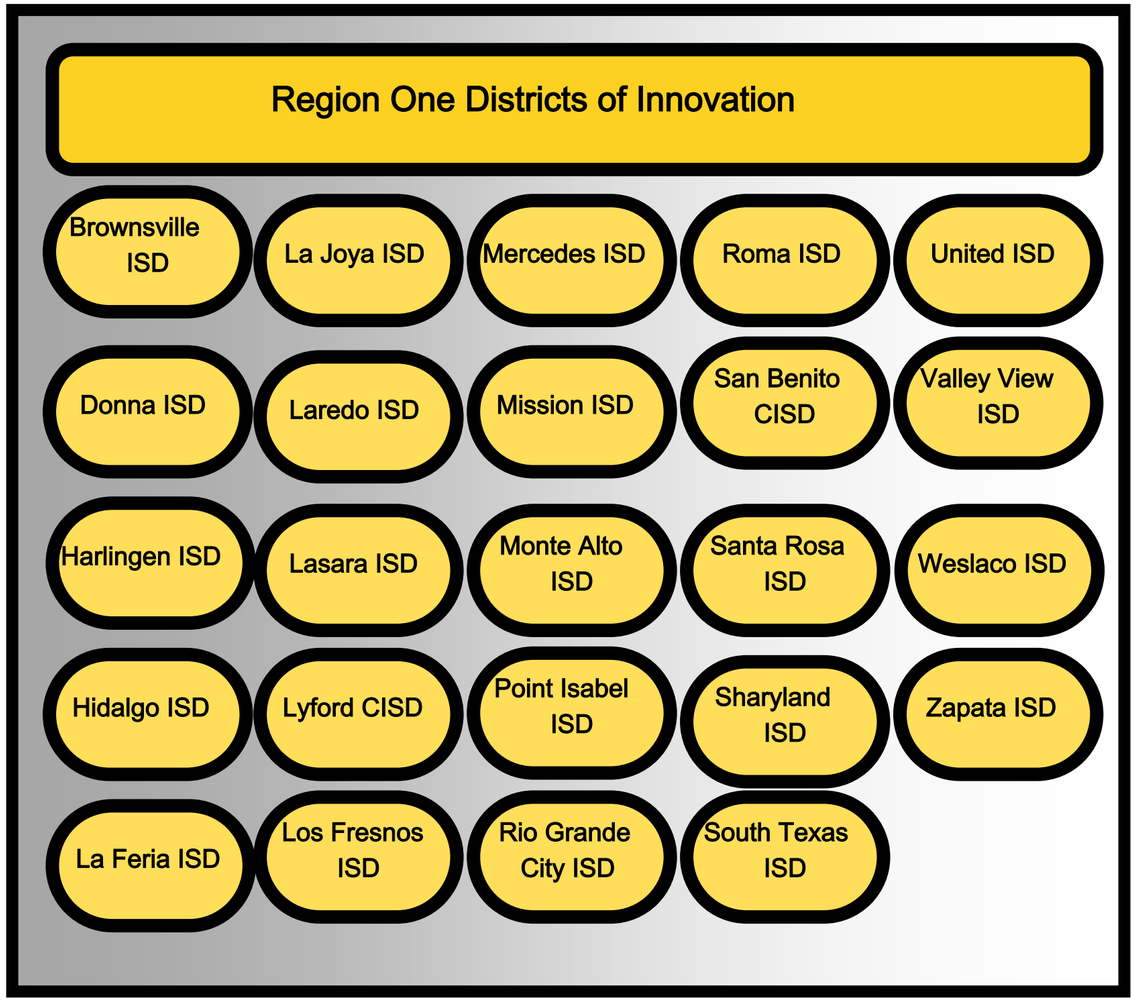
According to Texas Education Code, a school district may not begin instruction before the fourth Monday in August unless…

- The school district operates an eleven-month calendar.

or….

- The school district is designated as a District of Innovation.

What is a District of Innovation?
Why do Districts Choose this Designation?



- A District of Innovation designation gives districts the ability to claim exemptions from Texas Education Code. Some common exmptions include:
  - School start/calendar changes
  - Teacher certification requirements
  - Educator appraisal requirements
  - Probationary contract periods
  - Teacher contract days
- DOI Designation available for any district rated at least a C
- The Designation is granted after a formal approval process that includes a resolution from Board of Trustees, public hearings, and input from designated stakeholder committees. The designation is for five years.
- Currently, there are 987 Districts of Innovation in Texas out of 1207 public school districts (82% of public schools in Texas)

What is an 11 - month calendar? Why do districts choose this option?

Districts choose the 11-month calendar option, not to increase the total number of days of instruction, but instead to obtain the **flexibility to restructure their academic calendars** to meet local education needs. - (TEA Guidance)

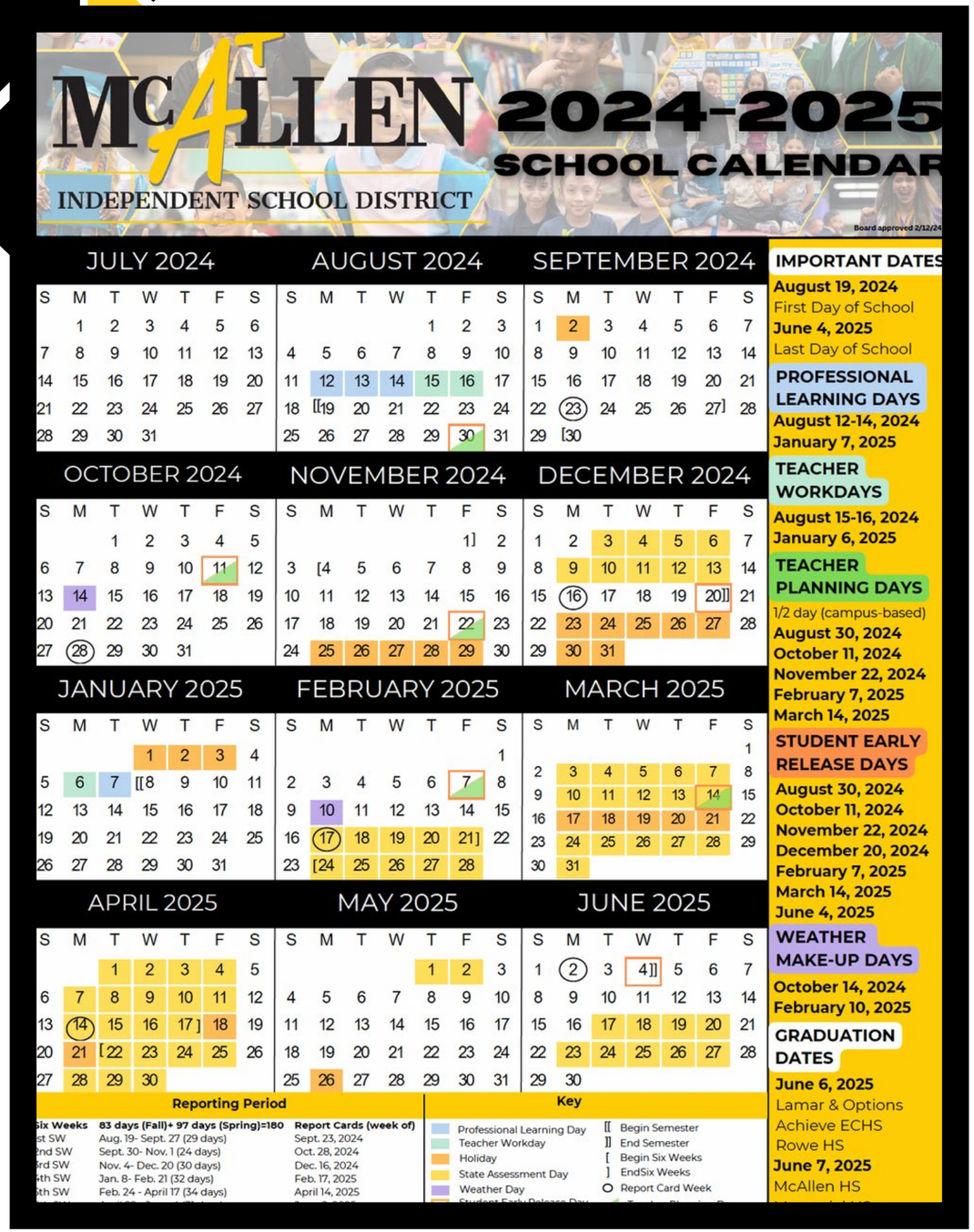
Sec. 25.0811. FIRST DAY OF INSTRUCTION. (a) Except as provided by this section, **a school district may not begin instruction for students for a school year before the fourth Monday in August.**

UNLESS.....

A school district **may:**
(1) begin instruction for students for a school year before the fourth Monday in August **if the district operates a year - round system** under Section 25.084...(A year-round system is an 11-month calendar)

ACCORDING TO 2024-25 STUDENT ATTENDANCE ACCOUNTING HANDBOOK (P 290), A "YEAR-ROUND EDUCATION PROGRAM, IS A PROGRAM THAT OPERATES SCHOOL DURING A PORTION OF , AT A MINIMUM 11 CALENDAR MONTHS...[AUGUST - JUNE]

Resources: Texas Education Code,
2024 Attendance Reporting Handbook
TEA guidance on Year-Round Education Overview



2024 - 25 Calendar Summary

McAllen ISD adopted an 11 - month calendar for the 2024 - 25 school year to allow flexible options for the first day of instruction.

The 11- month calendar ALSO affords McAllen ISD the opportunity to access more funding through ADSY: Additional Days School Year Funding.

ADSY additional day funding only applies to elementary schools.

This financial opportunity aligns with McAllen ISD's Financial Priorities goal to increase teacher compensation.

MCALLEN ISD
WE ARE ALL IN!

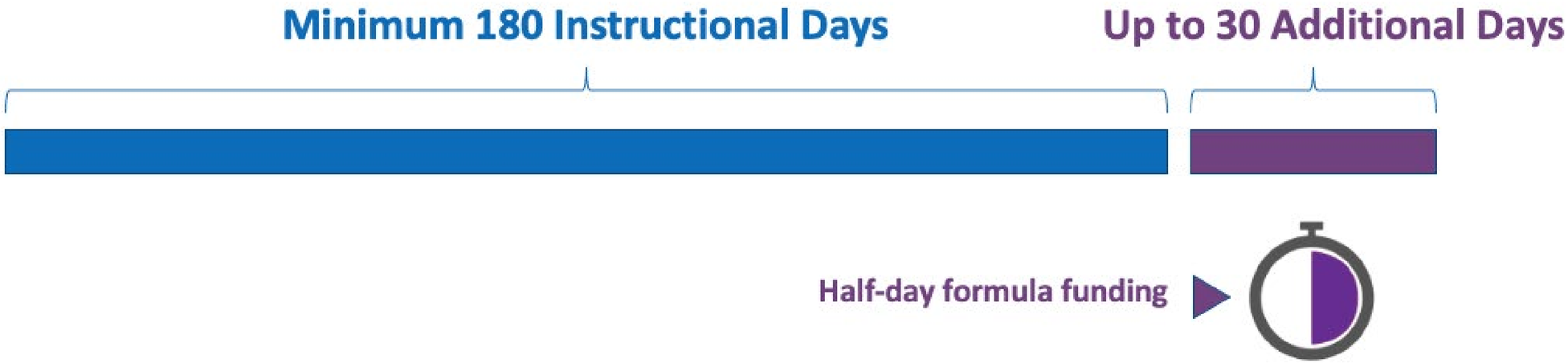
What is the Additional Days School Year (ADSY) District Designation?

- ADSY provides funding added by House Bill 3 for districts that add up to 30 instructional days to any of their **elementary schools.**
- Additional school Days are intended to mitigate summer learning loss and **improve student achievement.**
- The 30 additional days can be added to an elementary calendar through targeted enrichment such as a **summer learning program or Saturday tutorials** .
- ADSY funds provide districts an additional revenue source that creates opportunities for **enhanced funding** for teacher compensation and additional student learning opportunities.

Additional School Days Provides Additional Funding

HB 3: Additional Days for Elementary

HB 3 adds **half-day formula funding** for school systems that want to add instructional days (beyond a minimum 180 days, **up to 210 days**) to any of their elementary schools (grades **PK-5**).



Sample Financial Impact Scenario

An elementary campus could utilize additional funding similar to the scenario below.

Per Student Funding for 30 additional days at ~$25 per half day*

$750

x 15 students
(assume 5% absences)

Classroom Level Funding

$10,680

Subset of funds could be teacher pay increases

$5,340

x 34 classrooms
(assumes 525 students)

School Level Funding

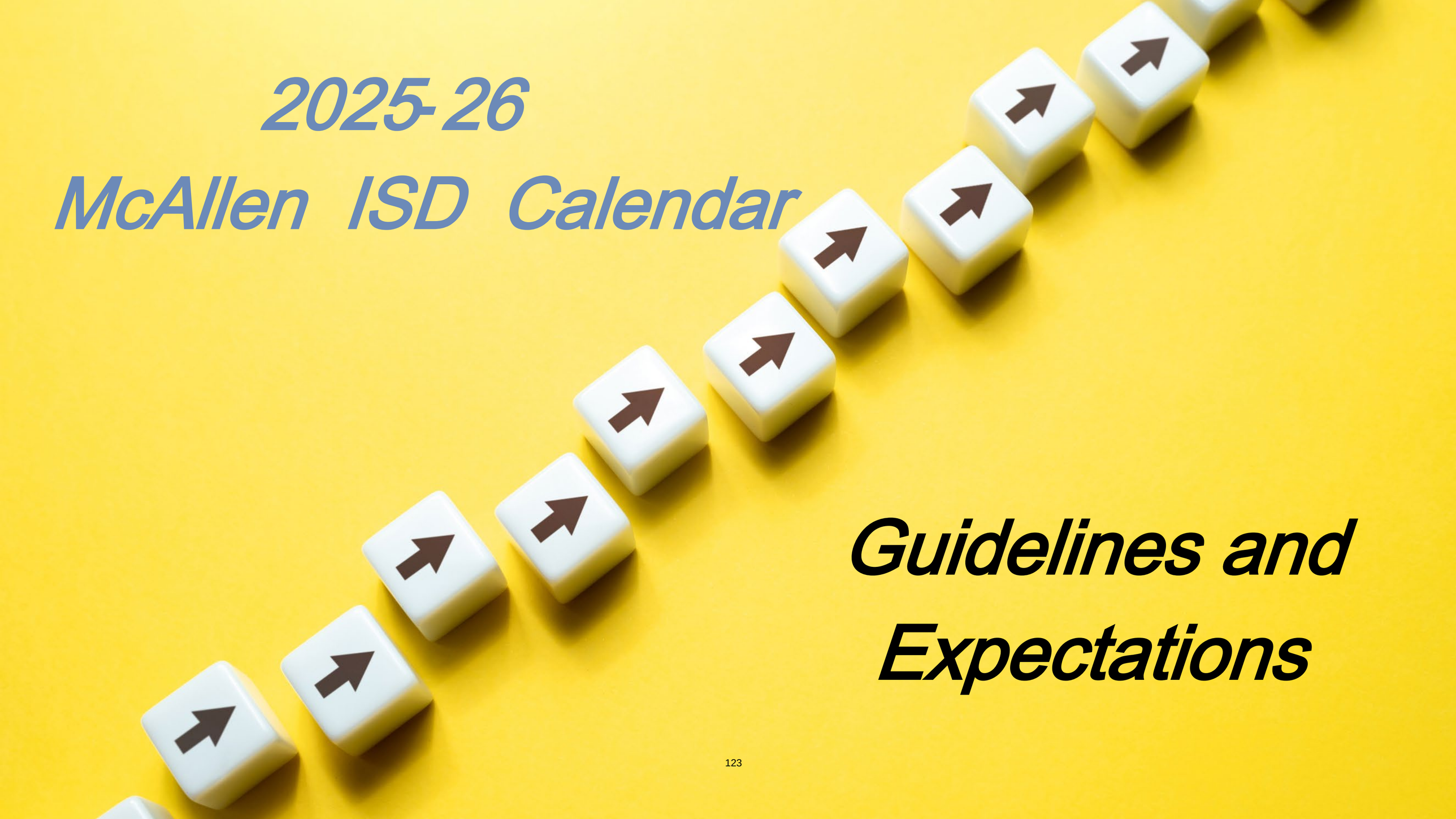
$374,000

Teacher Salaries
Assumes at least 50%
$187K

School Operations
(e.g., transportation, food, admin, etc.)
$187K

*State average ADA funding for half day

2025-26 McAllen ISD Calendar



Guidelines and Expectations

Align to McAllen ISD Goals

- Retain the flexibility to adjust the school start date to prioritize student learning and support recruitment and retainment efforts
- Continue accessing additional funds afforded through ADSY
- Ensure opportunities for teacher planning

Adhere to Texas Education Code

- **Adjusting the School Start Date:**
  - According to Texas Education Code, a school district may not begin instruction before the fourth Monday in August unless…
    - The school district operates an **11 month calendar (Aug - June)**
- **Teacher Contract Days:**
  - Sec. 21.401. (a) A contract between a school district and an educator must be for a minimum of 10 months' service…an educator employed under a 10-month contract must provide a minimum of **187 days of service.**
- **Holidays:**
  - Sec. 25.081. OPERATION OF SCHOOLS: (g) A school district may not provide student instruction on **Memorial Day.**

Adhere to Texas Education Code

- **Required Instructional Minutes:**
  - Sec. 25.081. OPERATION OF SCHOOLS: for each school year each school district must operate for **at least 75,600 minutes**
- **Required Number of Instructional Days for ADSY Allotment:**
  - Sec. 48.0051. INCENTIVE FOR ADDITIONAL INSTRUCTIONAL DAYS: provides the minimum number of minutes of operational … over at least **180 days of instruction** ; and
- **Bad Weather Make Up Days:**
  - According to the attendance handbook, a school district should plan for **two weather make up days** to avoid asking for a school closure waiver in case of bad weather.

Consider Stakeholder Feedback

WE WANT YOUR FEEDBACK

544 responses

View in Sheets

Accepting responses

Summary | Question | Individual

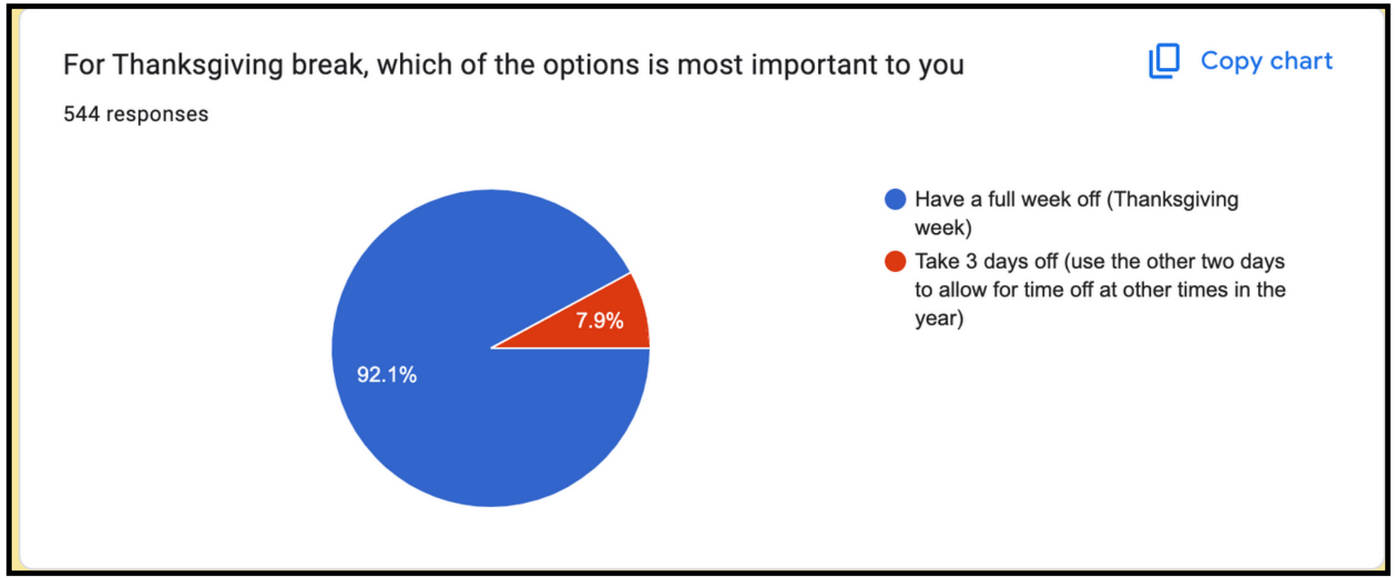
Which of the following best describes your role at McAllen ISD?

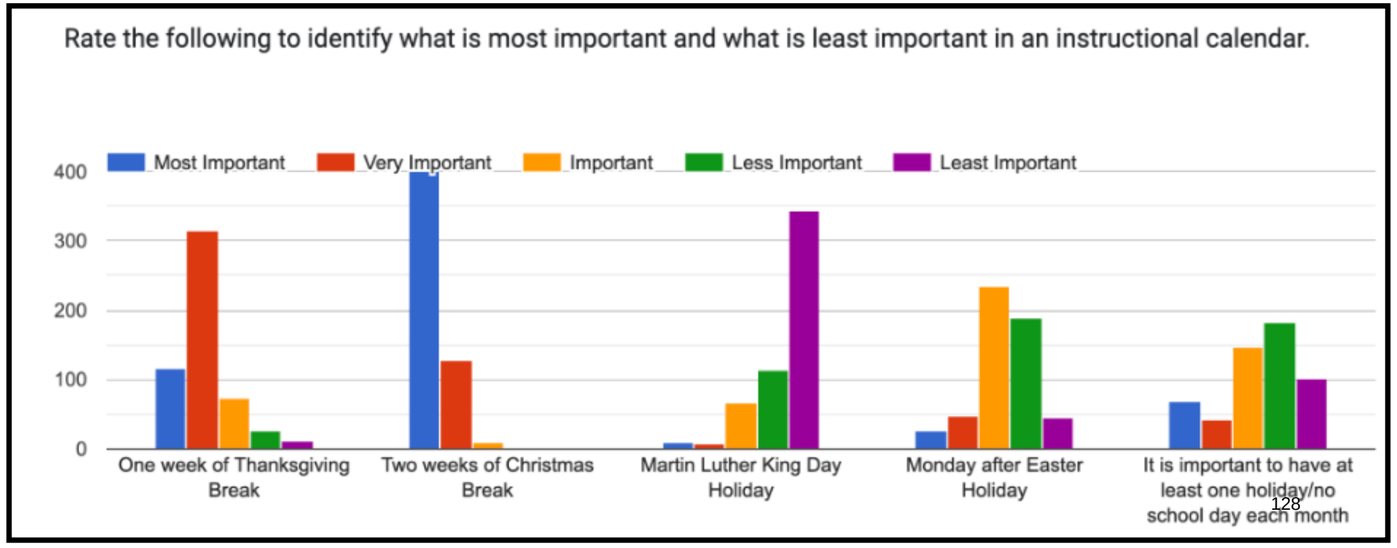
Copy chart

544 responses

McALLEN ISD
WE ARE ALL IN!

Consider Stakeholder Feedback: Holidays

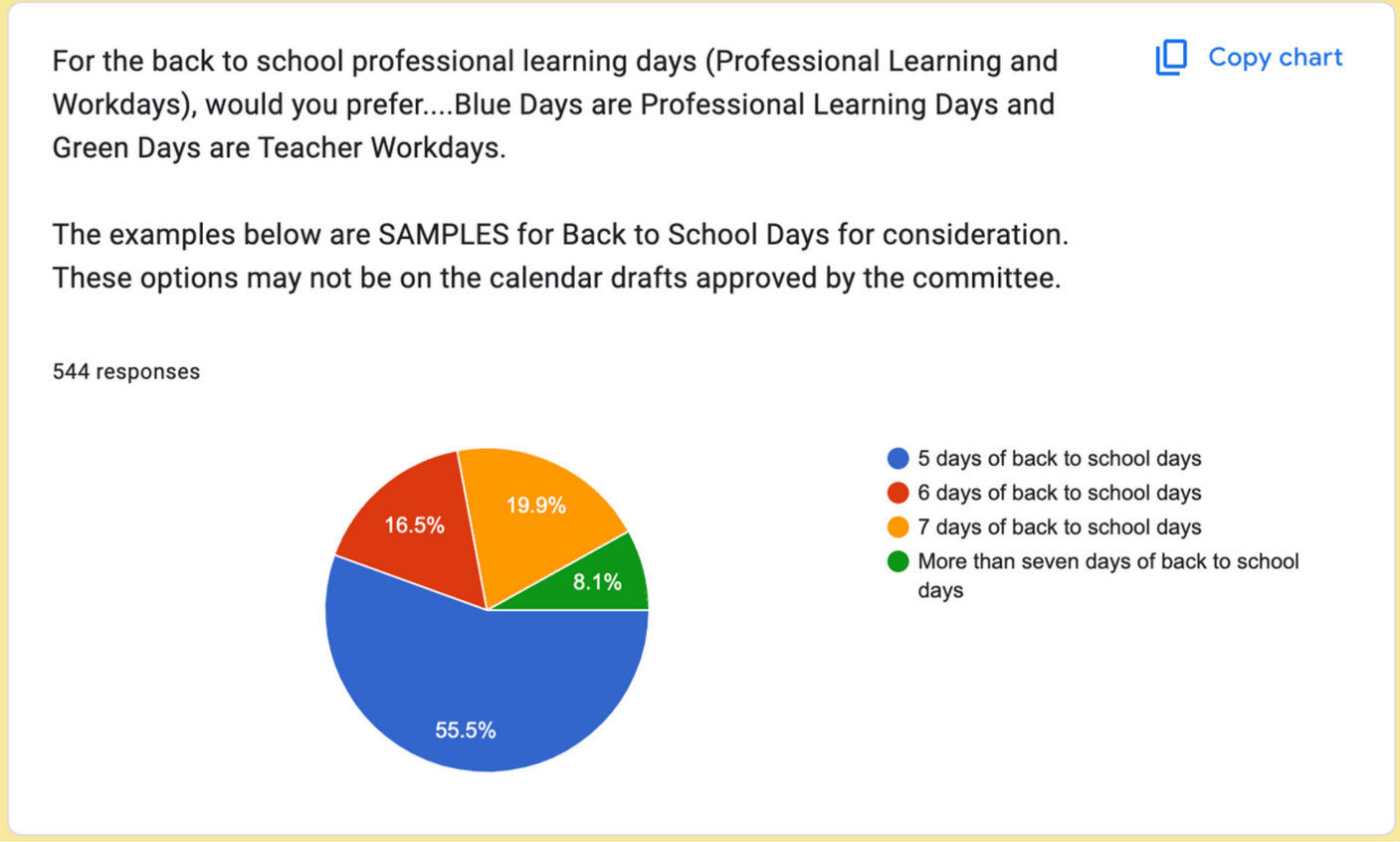




Based on the survey results and feedback in the open - ended questions, staff was most interested in having the calendar include a week - long November/Thanksgiving break and two full weeks in Christmas.

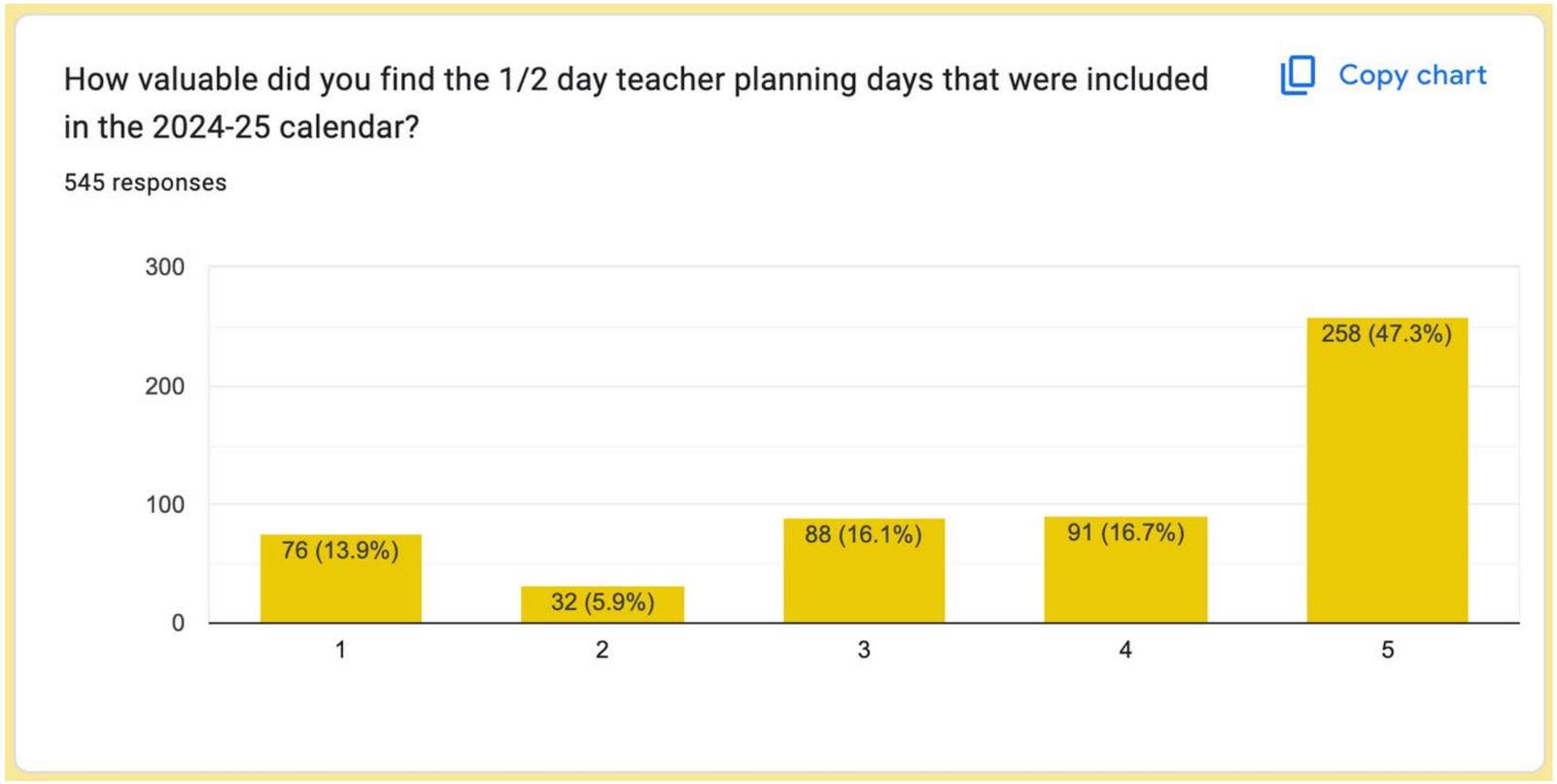
Many staff members mentioned these longer breaks were essential for preventing teacher burnout and ensuring time to recharge.

Consider Stakeholder Feedback: Back to School Days



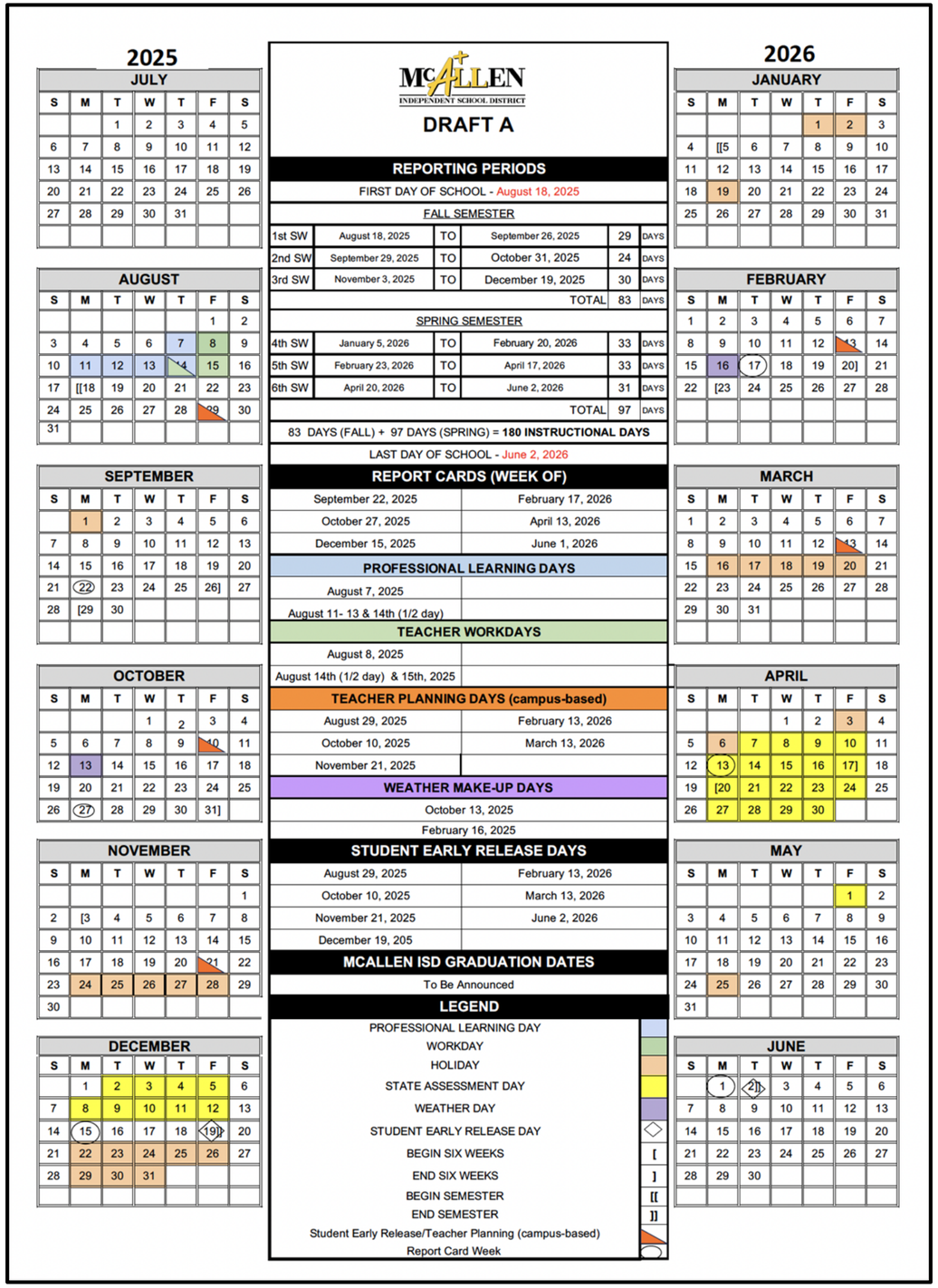
While the majority of respondents said they wanted only five days of back to school preparation days, about 44% stated that they wanted to see more than five days of back to school days included on a calendar draft.

Consider Stakeholder Feedback: Regarding the 1/2 Day Planning Days



The majority of respondents felt that the 1/2 day planning days were valuable.

In the comment section, the vast majority of comments stated that these planning days could be improved by eliminating meetings and allowing uninterrupted planning.



2025

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DECEMBER

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MCALLEN INDEPENDENT SCHOOL DISTRICT

DRAFT A

REPORTING PERIODS

FIRST DAY OF SCHOOL - August 18, 2025

FALL SEMESTER

1st SW	August 18, 2025	TO	September 26, 2025	29	DAYS
2nd SW	September 29, 2025	TO	October 31, 2025	24	DAYS
3rd SW	November 3, 2025	TO	December 19, 2025	30	DAYS
			TOTAL	83	DAYS

SPRING SEMESTER

4th SW	January 5, 2026	TO	February 20, 2026	33	DAYS
5th SW	February 23, 2026	TO	April 17, 2026	33	DAYS
6th SW	April 20, 2026	TO	June 2, 2026	31	DAYS
			TOTAL	97	DAYS

83 DAYS (FALL) + 97 DAYS (SPRING) = **180 INSTRUCTIONAL DAYS**

LAST DAY OF SCHOOL - June 2, 2026

REPORT CARDS (WEEK OF)

September 22, 2025	February 17, 2026
October 27, 2025	April 13, 2026
December 15, 2025	June 1, 2026

PROFESSIONAL LEARNING DAYS

August 7, 2025	
August 11- 13 & 14th (1/2 day)	

TEACHER WORKDAYS

August 8, 2025	
August 14th (1/2 day) & 15th, 2025	

TEACHER PLANNING DAYS (campus-based)

August 29, 2025	February 13, 2026
October 10, 2025	March 13, 2026
November 21, 2025	

WEATHER MAKE-UP DAYS

October 13, 2025

February 16, 2025

STUDENT EARLY RELEASE DAYS

August 29, 2025	February 13, 2026
October 10, 2025	March 13, 2026
November 21, 2025	June 2, 2026
December 19, 205	

MCALLEN ISD GRADUATION DATES

To Be Announced

LEGEND

PROFESSIONAL LEARNING DAY	
WORKDAY	
HOLIDAY	
STATE ASSESSMENT DAY	
WEATHER DAY	
STUDENT EARLY RELEASE DAY	◇
BEGIN SIX WEEKS	[
END SIX WEEKS	]
BEGIN SEMESTER	[[
END SEMESTER	]]
Student Early Release/Teacher Planning (campus-based)	
Report Card Week	◯

2026

JANUARY

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FEBRUARY

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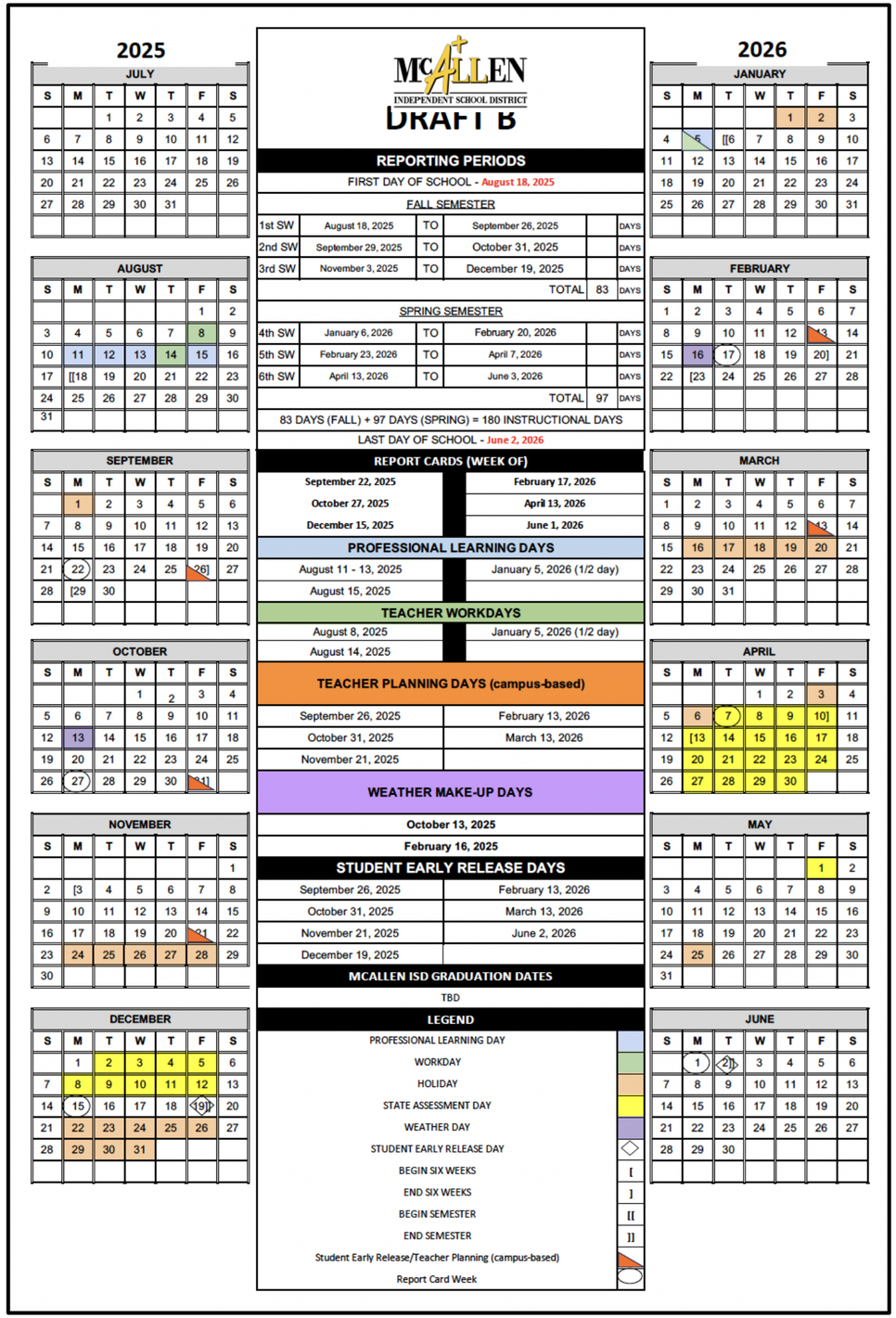
DRAFT A:

- TEACHER START DATE IS THURSDAY, AUGUST 7, 2025
- STUDENT START DATE IS AUGUST 18, 2025
- LAST DAY OF SCHOOL: JUNE 2, 2026

- 4.5 PROFESSIONAL LEARNING DAYS AT BOY
- 2.5 WORKDAYS AT BOY
- NO PROFESSIONAL LEARNING DAYS OR WORKDAYS SECOND SEMESTER
- HALF-DAY PLANNING DAYS ARE CONNECTED TO NO SCHOOL DAY



2025

JULY

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SEPTEMBER

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OCTOBER

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McALLEN INDEPENDENT SCHOOL DISTRICT

DRAFT B

REPORTING PERIODS

FIRST DAY OF SCHOOL - August 18, 2025

FALL SEMESTER

1st SW	August 18, 2025	TO	September 26, 2025		DAYS
2nd SW	September 29, 2025	TO	October 31, 2025		DAYS
3rd SW	November 3, 2025	TO	December 19, 2025		DAYS
			TOTAL	83	DAYS

SPRING SEMESTER

4th SW	January 6, 2026	TO	February 20, 2026		DAYS
5th SW	February 23, 2026	TO	April 7, 2026		DAYS
6th SW	April 13, 2026	TO	June 3, 2026		DAYS
			TOTAL	97	DAYS

83 DAYS (FALL) + 97 DAYS (SPRING) = 180 INSTRUCTIONAL DAYS

LAST DAY OF SCHOOL - June 2, 2026

REPORT CARDS (WEEK OF)

September 22, 2025	February 17, 2026
October 27, 2025	April 13, 2026
December 15, 2025	June 1, 2026

PROFESSIONAL LEARNING DAYS

August 11 - 13, 2025	January 5, 2026 (1/2 day)
August 15, 2025	

TEACHER WORKDAYS

August 8, 2025	January 5, 2026 (1/2 day)
August 14, 2025	

TEACHER PLANNING DAYS (campus-based)

September 26, 2025	February 13, 2026
October 31, 2025	March 13, 2026
November 21, 2025	

WEATHER MAKE-UP DAYS

October 13, 2025

February 16, 2025

STUDENT EARLY RELEASE DAYS

September 26, 2025	February 13, 2026
October 31, 2025	March 13, 2026
November 21, 2025	June 2, 2026
December 19, 2025	

MCALLEN ISD GRADUATION DATES

TBD

LEGEND

PROFESSIONAL LEARNING DAY	
WORKDAY	
HOLIDAY	
STATE ASSESSMENT DAY	
WEATHER DAY	
STUDENT EARLY RELEASE DAY	◇
BEGIN SIX WEEKS	[
END SIX WEEKS	]
BEGIN SEMESTER	[[
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Student Early Release/Teacher Planning (campus-based)	
Report Card Week	

2026

JANUARY

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FEBRUARY

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MARCH

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JUNE

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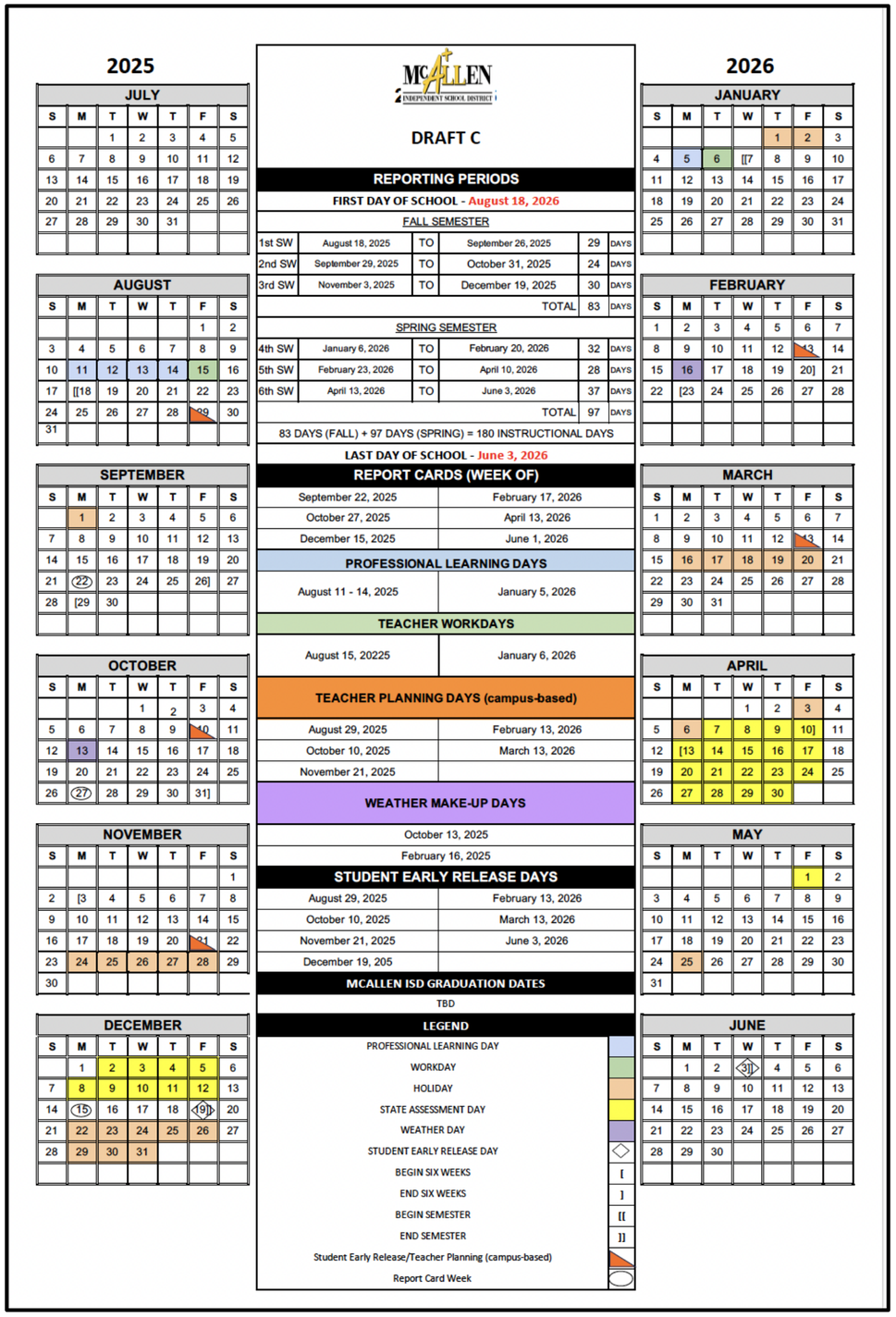
DRAFT B:

- TEACHER START DATE IS THURSDAY, AUGUST 8, 2025
- STUDENT START DATE IS AUGUST 18, 2025
- LAST DAY OF SCHOOL: JUNE 2, 2026

- 4 PROFESSIONAL LEARNING DAYS AT BOY
- 2 WORKDAYS AT BOY
- SECOND SEMESTER:
  - ½ DAY PROFESSIONAL LEARNING DAY
  - ½ DAY WORKDAY
- HALF-DAY PLANNING DAYS ARE CONNECTED TO END OF THE GRADING PERIOD/PROGRESS REPORTS



2025

JULY

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AUGUST

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SEPTEMBER

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OCTOBER

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MCALLEN INDEPENDENT SCHOOL DISTRICT

DRAFT C

REPORTING PERIODS

FIRST DAY OF SCHOOL - August 18, 2026

FALL SEMESTER

1st SW	August 18, 2025	TO	September 26, 2025	29	DAYS
2nd SW	September 29, 2025	TO	October 31, 2025	24	DAYS
3rd SW	November 3, 2025	TO	December 19, 2025	30	DAYS
			TOTAL	83	DAYS

SPRING SEMESTER

4th SW	January 6, 2026	TO	February 20, 2026	32	DAYS
5th SW	February 23, 2026	TO	April 10, 2026	28	DAYS
6th SW	April 13, 2026	TO	June 3, 2026	37	DAYS
			TOTAL	97	DAYS

83 DAYS (FALL) + 97 DAYS (SPRING) = 180 INSTRUCTIONAL DAYS

LAST DAY OF SCHOOL - June 3, 2026

REPORT CARDS (WEEK OF)

September 22, 2025	February 17, 2026
October 27, 2025	April 13, 2026
December 15, 2025	June 1, 2026

PROFESSIONAL LEARNING DAYS

August 11 - 14, 2025	January 5, 2026

TEACHER WORKDAYS

August 15, 20225	January 6, 2026

TEACHER PLANNING DAYS (campus-based)

August 29, 2025	February 13, 2026
October 10, 2025	March 13, 2026
November 21, 2025	

WEATHER MAKE-UP DAYS

October 13, 2025

February 16, 2025

STUDENT EARLY RELEASE DAYS

August 29, 2025	February 13, 2026
October 10, 2025	March 13, 2026
November 21, 2025	June 3, 2026
December 19, 205	

MCALLEN ISD GRADUATION DATES

TBD

LEGEND

PROFESSIONAL LEARNING DAY	
WORKDAY	
HOLIDAY	
STATE ASSESSMENT DAY	
WEATHER DAY	
STUDENT EARLY RELEASE DAY	◇
BEGIN SIX WEEKS	[
END SIX WEEKS	]
BEGIN SEMESTER	[[
END SEMESTER	]]
Student Early Release/Teacher Planning (campus-based)	
Report Card Week	⬭

2026

JANUARY

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FEBRUARY

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MARCH

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APRIL

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MAY

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31						

JUNE

S	M	T	W	T	F	S
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14	15	16	17	18	19	20
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DRAFT C:

- TEACHER START DATE IS THURSDAY, AUGUST 11, 2025
- STUDENT START DATE IS AUGUST 18, 2025
- LAST DAY OF SCHOOL: JUNE 3, 2026

- 4 PROFESSIONAL LEARNING DAYS AT BOY
- 1 WORKDAY AT BOY
- SECOND SEMESTER:
  - 1 DAY PROFESSIONAL LEARNING DAY
  - 1 DAY WORKDAY
- HALF-DAY PLANNING DAYS ARE CONNECTED TO NO SCHOOL DAY

MCALLEN ISD

WE ARE ALL IN!

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Discussion and Possible Action on the Advanced Course List for UIL "No Pass - No Play" 2024-2025 with Amended Language Regarding Core Courses Taught Solely by College and University Staff

REFERENCE: Goal 1: Student Achievement/Student Focus

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION: Current Board policy, FM (Local), Exemptions from No Pass, No Play Rule": The principal shall grant an exemption to the 'no pass, no play' rule that would normally require a suspension from extracurricular activities when a student receives a grade below 70 in a course or subject under the following conditions:
1. The class has been identified as an honors course, in accordance with state rules;
2. The student's grade in the course is not below 65;
3. The student submits to the principal a written request for the exemption on a form provided by the District; and
4. No other exemption from the 'no pass, no play' rule has been approved for the student in the same semester.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS: Based on the language of TAC §74.30, the following courses are identified as honors classes and, as such, eligible for exemption as noted in section §33.081 of the Texas Education Code:
1) all College Board Advanced Placement (AP) Course or International Baccalaureate (IB) courses in all disciplines and; 2) College/high school concurrent enrollment classes (that are included in the "Community College General Academic Course Guide Manual (Part One) in the subject areas of English Language Arts, Mathematics, Science, Social Studies, Economics or Language other than English (levels IV -VII). *Districts may identify additional honors courses only in the subject areas of English language arts, mathematics, science, social studies, economics, or a language other than English as eligible for exemption. The McAllen ISD list of courses eligible for U.I.L. waiver has been updated and is being submitted for approval. Addition to the waiver is the advanced high school courses taken by middle school students including English I, Biology, Pre-AP/ MYP Algebra, Geometry and Precalculus.
3) College courses not for high school credit or core college dual enrollment courses solely taught by S.T.C., U.T.R.G.V., U.T.R.G.V. Collegiate Academy or other collegiate staff who are not McAllen ISD teachers are exempt from FM (Local).

LEGAL REVIEW: None

BUDGETARY CONSIDERATIONS: None

RECOMMENDED BOARD ACTION: That the MISD Board of Trustees approve the amended language to the Advanced Course List for UIL "No Pass No Play" Exemption for 2024-2025, regarding courses taught solely by college and university staff.

Attachment: ☑

SUBMITTED BY: Karen Nitsch(Adv Academics) **SUPERVISOR:** Rosalba De Hoyos

For further information contact:
Name: Karen Nitsch
Office: 956.618.6059
eMail: karen.nitsch@mcallenisd.ne

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 8, 2025 14:40 CST)

Superintendent of Schools Jan 8, 2025

2024-2025
Advanced Course List for UIL
"No Pass-No Play"

The principal shall grant an exemption to the 'no pass, no play' rule that would normally require a suspension from extracurricular activities when a student receives a grade below 70 in a course or subject under the following conditions:

1. The class has been identified as an honors course, in accordance with state rules;
2. The student's grade in the course is not below 65;
3. The student submits to the principal a written request for the exemption on a form provided by the District; and
4. No other exemption from the 'no pass, no play' rule has been approved for the student in the same semester.

The following advanced courses are eligible for exemption for extracurricular activity participation:

- All College Board Advanced Placement Courses in all disciplines.
- All International Baccalaureate Courses in all disciplines
- Dual Credit Courses in English, LOTE, Math, Science, and Social Studies only.
- Pre-AP and IB MYP Courses in English, LOTE, Math, Science, and Social Studies only.

Language Arts	Math	Science
English 1 Pre-AP/MYP Year 4	Algebra 1 Pre-AP/MYP	Biology Pre-AP/MYP
English 2 Pre-AP/MYP Year 5	Geometry Pre-AP/MYP	Chemistry Pre-AP/MYP
AP English 3 (Language and Composition)	Algebra 2 Pre-AP/MYP	Physics Honors/MYP
AP English 4 (Literature and Composition)	Pre-Calculus MYP	Anatomy and Physiology
IB English Language Studies HL Yr 1 and Yr 2	AP Pre-Calculus	AP Physics 1
	AP Calculus AB	AP Biology
	AP Calculus BC	AP Chemistry
	AP Statistics	AP Environmental Science
	IB Mathematics Applications and Interpretations SL Year 1 and Year 2	IB Biology SL Year 1 and Year 2
	IB Mathematics Applications and Interpretations HL	IB Biology HL
Languages Other Than English	IB Mathematics Analysis and Approaches SL Year 1 and Year 2	IB Chemistry SL Year 1 and Year 2
Spanish Acquisition MYP Year 4	IB Mathematics Analysis and Approaches HL	IB Chemistry HL
Spanish Lang & Lit MYP Year 4	Middle School Algebra I Pre-AP/MYP	IB Physics SL Year 1 and Year 2
Spanish Acquisition MYP Year 5	Middle School Geometry Pre-AP/MYP	IB Physics HL
Spanish Lang & Lit MYP Year 5	AP Computer Science A	IB Environmental Systems and Societies SL
AP Spanish Language 3	**Social Studies**	Astronomy
AP Spanish Literature 4	AP Human Geography	
IB Spanish "B" SL Year 1 and Year 2	World Geography Honors	**Fine Arts**
IB Spanish "B" HL Year 2	AP World History: Modern	AP Studio Art: Drawing
IB Spanish Language and Literature SL Y1 and Y2	AP European History	AP Studio Art: 2-D Design
	AP U.S. History	AP Studio Art: 3-D Design
Non – Core Advanced Course	AP U.S. Government and Politics	AP Music Theory
IB Theory of Knowledge Year 1 and Year 2	AP Research Methods/Psychology	AP Art History
AP Seminar	AP Psychology	IB Visual Arts SL Year 1 and Year 2
AP Research	AP Macroeconomics /AP Microeconomics	IB Visual Arts HL Year 2
AP Computer Science Principles	IB Psychology SL Year 1 and Year 2	IB Theatre Arts SL Year 1 and Year 2
IB Computer Science	IB Psychology HL Year 2	IB Theatre Arts HL Year 2
	IB History of the Americas HL Year 1 and Year 2	

High School College Dual Enrollment Classes that are included in the "Community College General Academic Course Guide Manual (Part One)". English Language Arts, Mathematics, Science, Social Studies, Languages other than English through STC, UTRGV and UT OnRamps taught by McAllen ISD teachers.

All Dual enrollment classes taught by STC, UTRGV, UTRGV Collegiate Academy professors and staff are exempt from this policy.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Discussion and Possible Action of Additions/ Revisions/ Deletions of Local Policies Resulting from the TASB Policy Review Session-2nd Reading

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Administrators with the assistance of TASB Policy Service Division conducted a Policy Review Session on July 23-24, 2024.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Additions/revisions/deletions of local policies resulting from the Policy Review Session conducted on July 23-24, 2024, with drafts prepared by TASB Policy Service (see attached list).

Please be advised that Policy DH (Local) will be discussed at a later time during the upcoming discussion of Policy Update 124.

LEGAL REVIEW:

None.

BUDGETARY CONSIDERATIONS:

Budgeted.

RECOMMENDED BOARD ACTION:

Administration is recommending the Board of Trustees approve the Additions/Revisions/Deletions of Local Policies Resulting from the TASB Policy Review Session of July 23-24, 2024.

Attachment: ☑

SUBMITTED BY: Alberto Canales (Jan 9, 2025 16:20 CST)

SUPERVISOR:

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 10, 2025 13:03 CST)

Superintendent of Schools

PROPOSED REVISIONS

Membership	The Board shall consist of seven members.
Method of Election	Election of Board members shall be by place.
Election Date	General election of Board members shall be on the May uniform election date.
Terms and Election Schedule	Board members shall be elected for four-year terms, with elections conducted biennially, as follows:
Places 1, 2, 4, and 5	The election for places 1, 2, 4, and 5 shall be held in ~~2019, 2023,~~ 2027, 2031, 2035 and in four-year intervals thereafter.
Places 3, 6, and 7	The election for places 3, 6, and 7 shall be held in ~~2021,~~ 2025, 2029, 2033, and in four-year intervals thereafter.
Method of Voting	To be elected, a candidate must receive more votes than any other candidate for the place.
Plurality	

PROPOSED REVISIONS

Expense Reimbursement

An amount for Board member travel expenses shall be approved in the budget each year.

Prior Approval

A Board member shall be reimbursed for reasonable, allowable expenses incurred in carrying out Board business only at the Board's request and for reasonable, allowable expenses incurred while attending meetings and conventions as an official representative of the Board. ~~so long as the Board has taken action to authorize the travel expenses in advance. The Board may also approve reimbursement of travel expenses when a Board member travels without prior approval if the Board considers the travel to have been necessary.~~

Travel Expenses

Payment for authorized and documented travel expenses shall be made in accordance with legal requirements by either of the following two methods:

1. Reimbursement, not to exceed the allowable rates, for use of a personal car or commercial transportation plus parking, taxi fares, lodging, meals, and other incidental expenses.
2. Advancement of a set amount for use of a personal car or commercial transportation plus parking, taxi fares, lodging, meals, and other incidental expenses. Any excess over actual allowable expenses shall be refunded to the District.

Accounting records shall accurately reflect that no state or federal funds were used to reimburse travel expenses beyond those authorized for state employees.

Documentation Required

For any authorized expense incurred, the Board member shall submit a statement, with receipts to the extent feasible, documenting actual expenses and in accordance with procedures applicable to employee expense reimbursement.

PROPOSED REVISIONS

Board Officers

The Board shall elect a President, a Vice President, a Secretary, and an Assistant Secretary who shall be members of the Board. The Board may assign a District employee to provide clerical assistance to the Board. Officers shall be elected by majority vote of the members present and voting.

Vacancy

A vacancy among officers of the Board shall be filled by majority action of the Board.

Term and Duties

Board officers shall serve for a term of one year or until a successor is elected. Officers may succeed themselves in office. Each officer shall perform any legal duties of the office and other duties as required by action of the Board.

President

In addition to the duties required by law, the President of the Board shall:

1. Preside at all Board meetings unless unable to attend.
2. Have the right to discuss, make motions and resolutions, and vote on all matters coming before the Board.

Vice President

The Vice President of the Board shall:

1. Act in the capacity and perform the duties of the President of the Board in the event of the absence or incapacity of the President.
2. Become President only upon being elected to the position.

Secretary

The Secretary of the Board shall:

1. Ensure that an accurate record is kept of the proceedings of each Board meeting.
2. Ensure that notices of Board meetings are posted and sent as required by law.
3. In the absence of the President and Vice President, call the meeting to order and act as presiding officer.
4. Sign or countersign documents as directed by action of the Board.

~~Assistant Secretary~~

~~The Assistant Secretary of the Board shall:~~

~~1. In the absence of the President, Vice President, and Secretary, call the meeting to order and act as presiding officer.~~

~~2. Act in the capacity of and perform the duties of the Secretary in the event of the absence or incapacity of the Secretary.~~

PROPOSED POLICY

In-House Counsel

The Board shall employ an attorney or attorneys, as necessary, to serve as the District's in-house counsel and representative in matters requiring legal services. The District shall establish protocols for channeling staff requests for legal advice from the in-house counsel.

Outside Counsel

The Board shall have final authority to retain outside counsel. In consultation with the Superintendent, the District's in-house counsel may make recommendations to the Board regarding retention of an attorney or attorneys to represent the District in legal matters. ~~, as necessary, to serve as the District's legal counsel and representative in matters requiring legal services.~~ Services to be performed and reasonable fees and expenses to be paid by the District to outside counsel shall be set forth in writing between the Board and the attorney or attorneys.

When seeking advice or information from the District's outside counsel, ~~Individual~~ individual Board members shall channel ~~legal~~ inquiries through the District's in-house counsel, Superintendent, ~~or~~ Board President, or Board's designee as appropriate~~, when seeking advice or information from the District's legal counsel~~.

A staff request for legal advice from the District's ~~legal~~ outside counsel must be submitted through the District's in-house counsel or Superintendent.

Report of Legal Advice

Advice from legal counsel shall be reported to the Board upon request of the Board or when deemed necessary by the District's in-house counsel, Superintendent, ~~or~~ Board President or Board's designee.

PROPOSED REVISIONS

(see page 1)

Meeting Place and Time

The notice for a Board meeting shall reflect the date, time, and location of the meeting.

Regular Meetings

Regular meetings of the Board shall normally be held on the second and fourth Tuesdays of each month at 5:30 p.m. When determined necessary and for the convenience of Board members, the Board President may change the date, time, or location of a regular meeting with proper notice.

Special, Workshop or Emergency Meetings

The Board President shall call special meetings at the Board President's discretion or on request by two members of the Board.

The Board President shall call a workshop at the Board President's discretion or on request by two members of the Board. A workshop does not require a quorum of the Board to be present as no action shall be taken.

The Board President shall call an emergency meeting when it is determined by the Board President or two members of the Board that an emergency or urgent public necessity, as defined by law, warrants the meeting.

Agenda

Deadline

The deadline for submitting items for inclusion on the agenda is the ninth calendar day before regular meetings and the third calendar day before special meetings.

Preparation

In consultation with the Board President, the Superintendent shall prepare the agenda for all Board meetings. ~~Any~~ Two Board members may request that a subject be included on the agenda for a meeting, and the Superintendent shall include on the preliminary agenda of the meeting all topics that have been timely submitted by a Board member.

Before the official agenda is finalized for any meeting, the Superintendent shall consult the Board President to ensure that the agenda and the topics included meet with the Board President's approval. In reviewing the preliminary agenda, the Board President shall ensure that any topics the Board or individual Board members have requested to be addressed are either on that agenda or scheduled for deliberation at the next regular Board meeting. The Board President shall not have authority to remove from the agenda a subject requested by a Board member without that Board member's specific authorization.

Notice to Members Members of the Board shall be given notice of regular and special meetings at least 72 hours prior to the scheduled time of the meeting and at least one hour prior to the time of an emergency meeting.

Closed Meeting Notice of all meetings shall provide for the possibility of a closed meeting during an open meeting, in accordance with law.

The Board may conduct a closed meeting when the agenda subject is one that may properly be discussed in closed meeting. [See BEC]

Order of Business The order of business for regular Board meetings shall be as set out in the agenda accompanying the notice of the meeting. At the meeting, the order in which posted agenda items are taken may be changed by consensus of Board members.

Rules of Order The Board shall observe the parliamentary procedures as found in *Robert's Rules of Order, Newly Revised*, except as otherwise provided in Board procedural rules or by law. Procedural rules may be suspended at any Board meeting by majority vote of the members present.

Voting Voting shall be by voice vote or show of hands, as directed by the Board President. Any member may abstain from voting, and a member's vote or failure to vote shall be recorded upon that member's request. [See BDAA(LOCAL) for the Board President's voting rights]

Consent Agenda When the agenda is prepared, the Board President shall determine items, if any, that qualify to be placed on the consent agenda. A consent agenda shall include items of a routine and/or recurring nature grouped together under one action item. For each item listed as part of a consent agenda, the Board shall be furnished with background material. All such items shall be acted upon by one vote without separate discussion, unless a Board member requests that an item be withdrawn for individual consideration. The remaining items shall be adopted under a single motion and vote.

Minutes Board action shall be carefully recorded by the Board Secretary or clerk; when approved, these minutes shall serve as the legal record of official Board actions. The written minutes of all meetings shall be approved by vote of the Board and signed by the Board President and the Board Secretary.

The official minutes of the Board shall be retained on file in the office of the Superintendent and shall be available for examination during regular office hours.

Discussions and Limitation

Discussions shall be addressed to the Board President and then the entire membership. Discussion shall be directed solely to the business currently under deliberation, and the Board President shall halt discussion that does not apply to the business before the Board.

The Board President shall also halt discussion if the Board has agreed to a time limitation for discussion of an item, and that time limit has expired. Aside from these limitations, the Board President shall not interfere with debate so long as members wish to address themselves to an item under consideration.

PROPOSED REVISIONS

Within the context of current law, the District shall be guided by Board-adopted written policies that are given appropriate distribution and are accessible to staff members, parents, students, and community residents.

Organization

Legally referenced policies contain provisions from federal and state statutes and regulations, case law, and other legal authority that together form the framework for local decision making and implementation. These policies are binding on the District until the cited provisions are repealed, revised, or superseded by legislative, regulatory, or judicial action.

Legally referenced policies are not adopted by the Board.

At each policy code the legally referenced policy and the Board-adopted local policy must be read together to further a full understanding of a topic.

Terms

The terms “Trustee” and “Board member” are used interchangeably in the local policy manual. Both terms are intended to reflect all the duties and obligations of the office.

[See AB for District name terminology.]

Harmony with Law

Newly enacted law is applicable when effective. No policy or regulation, or any portion thereof, shall be operative if it is found to be in conflict with applicable law.

Severability

If any portion of a policy or its application to any person or circumstance is found to be invalid, that invalidity shall not affect other provisions or applications of policy that can be given effect without the invalid provision or application; and to this end the provisions of this policy manual are declared to be severable.

Policy Development

Policies and policy amendments may be initiated by the Superintendent, Board members, school personnel, or community citizens, but generally shall be recommended for the Board’s consideration by the Superintendent.

Official Policy Manual

The Board shall designate one copy of the local policy manual as the official policy manual of the District. The official copy shall be kept in the central administration office, and the Superintendent shall be responsible for its accuracy and integrity and shall maintain a historical record of the District’s policy manual.

Adoption and Amendment

~~Local~~Proposed local policies ~~may be adopted~~ or ~~amended by a majority of~~amendments introduced and recommended to the Board at ~~any regular or special~~ one meeting~~, provided that Board members have had advance written notice of the proposed change and~~

~~that it has been placed on the agenda for such~~ shall not be adopted until a subsequent meeting. Emergency adoption, however, may occur in one meeting if special circumstances demand an immediate response.

Local policies become effective upon Board adoption or at a future date designated by the Board at the time of adoption.

TASB Localized Updates

After Board review of legally referenced policies and adoption of local policies, the new material shall be incorporated into the official policy manual and into other localized policy manuals maintained by the District. If discrepancies occur between different copies of the manual, the version contained in the official policy manual shall be regarded as authoritative.

PROPOSED REVISIONS

~~**Evaluation Instrument**~~

~~The instrument used to evaluate the Superintendent shall be based on the Superintendent's job description [see BJA(LOCAL)] and performance goals and shall be adopted by the Board.~~

Written Evaluation

The Board shall prepare a written evaluation of the Superintendent at annual or more frequent intervals.

The Board shall furnish the Superintendent with a copy of the completed evaluation and shall discuss its conclusions with the Superintendent in closed meeting, unless the Superintendent requests that the discussion be open.

~~Objectives~~

~~The Board shall strive to accomplish the following objectives in conducting the Superintendent's written evaluation:~~

~~1. Clarify to the Superintendent his or her role, as seen by the Board.~~

~~2. Clarify to Board members the Superintendent's role, according to the Board's written criteria, as expressed in the Superintendent's job description and the District's goals and objectives.~~

~~3. Foster an early understanding among new Board members of the evaluation process and the Superintendent's current performance objectives and priorities.~~

~~4. Develop and sustain a harmonious working relationship between the Board and the Superintendent.~~

~~5. Ensure administrative leadership for excellence in the District.~~

Informal Evaluation

The Board may at any time conduct and communicate oral evaluations to augment its written evaluations.

PROPOSED POLICY

Leaders in Education Assembly for the District of McAllen

In compliance with law, the District shall establish the Leaders in Education Assembly for the District of McAllen (committee) to advise the Board or its designee in establishing and reviewing the District improvement plan [see BQ], as well as the District's educational goals, performance objectives, and major District-wide classroom instructional programs.

The committee shall approve District-wide staff development. [See DMA]

Board's Designee

The Superintendent shall serve as the Board's designee and shall regularly consult with the committee.

Meetings

The chairperson of the committee shall set its agenda and shall schedule at least two meetings per year, including the public meeting required by law.

Communications

The Superintendent shall ensure that the District-level committee establishes communication strategies to periodically obtain broad-based community, parent, and staff input and provide information to those persons regarding the recommendations of the committee.

Composition

The committee shall be composed of members who shall represent campus-based professional staff, District-level professional staff, parents, businesses, and the community. When practicable, professional staff representation shall include a representative with the primary responsibility for educating students with disabilities. For purposes of this policy, District-level professional staff shall be defined as professionals who have responsibilities at more than one campus, including, but not limited to, central office staff.

Selected Representatives

Parent, community member, and business representatives shall be selected in accordance with this policy and administrative regulations.

Parents

The committee shall include at least two parents of students currently enrolled in the District. The Superintendent shall, through various channels, inform all parents of District students about the committee's duties and composition and shall solicit volunteers.

Community Members

The committee shall include at least two community members selected by a process that provides for adequate representation of the community's diversity. The Superintendent shall use several methods of communication to ensure that community residents are informed of the committee and are provided the opportunity to participate and shall solicit volunteers. Community representatives must reside in the District.

Business Representatives

The committee shall include at least two business representatives selected by a process that provides for adequate representation of the community's diversity. The Superintendent shall use several methods of communication to ensure that area businesses are informed of the committee and are provided the opportunity to participate and shall solicit volunteers. Business representatives need not reside in nor operate businesses in the District.

Professional Staff Elections

Professional staff representatives shall be nominated and elected in accordance with this policy and administrative regulations.

Classroom teacher representatives shall comprise at least two-thirds of the total professional staff representation on the committee and shall be nominated and elected by classroom teachers assigned to each respective campus.

At least one campus-based nonteaching professional representative shall be nominated and elected by the campus-based nonteaching professional staff.

At least one District-level professional representative, other than the Superintendent, shall be nominated and elected by the District-level professional staff.

An employee's affiliation or lack of affiliation with any organization or association shall not be a factor in either the nomination or election of the employee to the committee. [See DGA]

A nominee must consent before the person's name may appear on a ballot. Election of the committee shall be held at a time determined by the Board or its designee.

Terms

All representatives shall serve staggered two-year terms and shall be limited to two consecutive terms on the committee.

Vacancy

A vacancy during a term shall be filled for the remainder of the term by election or selection as appropriate for the category.

PROPOSED POLICY

Campus Site-Based Decision-Making Committee

In compliance with law, each campus shall establish a campus-level committee to ensure that effective planning and site-based decision-making occur to direct and support the improvement of student performance for all students. The committees shall assist the principal, as the Board's designee, in establishing and reviewing the goals, performance objectives, and major classroom instructional programs of each campus.

Each committee shall assist with the development, evaluation, and revision of the respective campus improvement plan and shall approve campus staff development needs identified in the campus improvement plan [see BQ and DMA].

Meetings

The principal shall be responsible for the agenda and shall schedule at least two meetings per year, including the public meeting required by law.

Communications

The principal shall ensure that the campus-level committee establishes communication strategies to periodically obtain broad-based community, parent, and staff input and provide information to those persons regarding the recommendations of the committee.

Composition

The committee shall be composed of members who shall represent campus-based professional staff, District-level professional staff, parents, businesses, and the community. When practicable, professional staff representation shall include a representative with the primary responsibility for educating students with disabilities. For purposes of this policy, District-level professional staff shall be defined as professionals who have responsibilities at more than one campus, including, but not limited to, central office staff.

Selected Representatives

Parent, community member, and business representatives shall be selected in accordance with this policy and administrative regulations.

Parents

The committee shall include at least two parents of students currently enrolled in the District. The principal shall, through various channels, inform all parents of campus students about the committee's duties and composition and shall solicit volunteers.

Community Members

The committee shall include at least two community members selected by a process that provides for adequate representation of the community's diversity. The principal shall use several methods of communication to ensure that community residents are informed of the committee and are provided the opportunity to participate and shall solicit volunteers. Community representatives must reside in the District.

Business Representatives

The committee shall include at least two business representatives selected by a process that provides for adequate representation of the community's diversity. The principal shall use several methods of communication to ensure that area businesses are informed of the committee and are provided the opportunity to participate and shall solicit volunteers. Business representatives do not need to reside in or operate businesses in the District.

Professional Staff Elections

Professional staff representatives shall be nominated and elected in accordance with this policy and administrative regulations.

Classroom teacher representatives shall comprise at least two-thirds of the professional staff representation on the committee and shall be nominated and elected by all professional staff assigned to the campus.

At least one campus-based nonteaching professional representative shall be nominated and elected by all professional staff assigned to the campus.

At least one District-level professional representative shall be nominated and elected by District-level professional staff.

An employee's affiliation or lack of affiliation with any organization or association shall not be a factor in either the nomination or election of the employee to the committee. [See DGA]

A nominee must consent before the person's name may appear on the ballot. Election of the committee shall be held at a time determined by the Board or its designee.

Terms

All representatives shall serve staggered two-year terms and shall not be limited as to the number of consecutive terms they may serve on the committee.

Vacancy

A vacancy during a term shall be filled for the remainder of the term by election or selection as appropriate for the category.

PROPOSED REVISIONS

Note: For purposes of this policy, the terms "gift" and "donation" have the same meaning.

Unsolicited Gifts

Authority to Accept

The Board delegates to the Superintendent the authority to accept unsolicited gifts on behalf of the District. However, any gift with a cost or market value of $10,000 or more, any gift that the potential donor has expressly made conditional upon the District's use for a specified purpose, or any gift of real property, shall require Board approval.

Once accepted, a gift becomes the sole property of the District.

Criteria for Acceptance

The District shall not accept any gift that would violate or conflict with policies of or actions by the Board or with federal or state law.

Before the Superintendent accepts a gift or recommends acceptance of a gift to the Board, as applicable, the Superintendent shall consider whether the gift:

1. Has a purpose consistent with the District's educational philosophy, goals, and objectives;
2. Places any restrictions on a campus or District program;
3. Would support a program that the Board may be unable or unwilling to continue when the donation of funds is exhausted;
4. Would result in ancillary or ongoing costs for the District;
5. Requires employment of additional personnel;
6. Requires or implies the endorsement of a specific business or product [see GKB for advertising opportunities];
7. Would result in inequitable funding, equipment, or resources among District schools or programs;
8. Obligates the District or a campus to engage in specific actions; or
9. Affects the physical structure of a building or would require extensive maintenance on the part of the District.

~~No donation shall be used to alter or modify any District-owned property or facility without prior approval from the Superintendent or designee.~~

Solicitations

An employee who solicits gifts on behalf of the District or for use in the fulfillment of his or her professional responsibilities shall comply

with relevant state and federal law and any District administrative regulations.

All donations solicited on behalf of the District, including solicitations in the name of the District or a campus, or donations solicited using District or campus resources, become the sole property of the District.

Web-Based Solicitations

An employee may solicit web-based donations of money or items for use by the employee in fulfilling his or her professional responsibilities or for the District's use, including "crowdfunding." However, an employee shall obtain prior approval from the employee's supervisor before using the name or image of the District, a campus, or any student.

PROPOSED REVISIONS

(see page 2)

Fiscal Year

The District shall operate on a fiscal year beginning July 1 and ending June 30.

Budget Planning

Budget planning shall be an integral part of overall program planning so that the budget effectively reflects the District's programs and activities and provides the resources to implement them. In the budget planning process, general educational goals, specific program goals, and alternatives for achieving program goals shall be considered, as well as input from the District- and campus-level planning and decision-making committees. Budget planning and evaluation are continuous processes and shall be a part of each month's activities.

Budget Meeting

The annual public meeting to discuss the proposed budget and tax rate shall be conducted as follows:

1. The Board President shall request at the beginning of the meeting that all persons who desire to speak on the proposed budget and/or tax rate sign up on the sheet provided.
2. Prior to the beginning of the meeting, the Board may establish time limits for speakers.
3. Speakers shall confine their remarks to the appropriation of funds as contained in the proposed budget and/or the tax rate.
4. No officer or employee of the District shall be required to respond to questions from speakers at the meeting.

Authorized Expenditures

The adopted budget provides authority to expend funds for the purposes indicated and in accordance with state law, Board policy, and the District's approved purchasing procedures. The expenditure of funds shall be under the direction of the Superintendent or designee who shall ensure that funds are expended in accordance with the adopted budget.

Budget Amendments

The Board shall amend the budget when a change is made increasing any one of the functional spending categories or increasing revenue object accounts and other resources.

Fund Balance

The District shall strive to maintain a balance in the general fund that closely approximates the optimum fund balance amount prescribed by TEA, as reported in the annual financial and compliance report.

Fund balances shall be comprised of several components, as prescribed by GASB Statement 54:

- Nonspendable fund balance;
- Restricted fund balance;
- Committed fund balance;
- Assigned fund balance; and
- Unassigned fund balance.

By resolution, the Board may commit a portion of the fund balance for a specific purpose. The committed portion of the fund balance should be spent for the purposes specified; however, the commitment may be amended by the Board at any time.

~~The Superintendent or designee shall be authorized to assign a portion of the fund balance as may be required to meet the financial needs of the District.~~

PROPOSED REVISIONS

Food Donation

The Superintendent shall be authorized to develop regulations for the District to donate or otherwise dispose of leftover food in accordance with law.

~~**Limitations on Food and Beverage Fundraising**~~

~~All food and beverages that are made available for sale through any fundraising activity, whether on or off campus, shall meet federal and state guidelines [see also FFA], with the exception of:~~

~~1. Items sold at six events annually designated to occur after the end of a school day or on a weekend; and~~

~~2. Concessions at extracurricular activities.~~

~~**Classroom Celebrations**~~

~~The District shall only allow a campus to offer and sell store-bought food and beverages to students at classroom celebrations on the last Friday before the winter break and on a second celebration day to be determined by the campus principal and reported to the assistant superintendent for instructional leadership or designee. No party shall be allowed to replace established meal services and meal times.~~

~~During the approved classroom celebrations, all campuses shall:~~

~~1. Comply with requirements established by the health departments of Hidalgo County and the City of McAllen;~~

~~1. Be aware of medical conditions and food allergens; and~~

~~2.~~1. ~~Take any necessary precautions, including staff training.~~

PROPOSED REVISIONS

The Superintendent shall oversee the performance of records management functions prescribed by state and federal law:

- Records administrator, as prescribed by Local Government Code 176.001 and 176.0065. [See BBFA]
- Officer for public information, as prescribed by Government Code 552.201–.205. [See GBAA]
- Public information coordinator, as prescribed by Government Code 552.012. [See BBD]

Local Government Records Act

The term "local government record" shall pertain to all items identified as such by the Local Government Records Act.

"Local Government Record"

Records Management Officer

The ~~Superintendent~~ director for student operations shall serve as and perform the duties of the District's records management officer as prescribed by Local Government Code 203.023 and shall administer the District's records management program pertaining to local government records in compliance with the Local Government Records Act.

Notification

The records management officer shall file his or her name with the Texas State Library and Archives Commission (TSLAC) within 30 days of assuming the position.

Electronic Records

The records management officer shall develop procedures for the management of electronic records that comply with the District's records control schedules and meet the minimum components required by law.

The procedures shall:

1. Specify the objectives of the electronic records management program;
2. Identify the responsibilities of employees who create, receive, or maintain electronic records;
3. Ensure the maintenance of electronic records until the expiration of the applicable retention period and final disposition; and
4. Ensure that electronic records that must be protected from unauthorized use or disclosure are appropriately protected as required by law, regulation, or other applicable requirements.

Records Control Schedules	The records management officer shall file with the TSLAC a written declaration that the District has adopted records control schedules that comply with records retention schedules issued by the TSLAC as provided by law.
Website Postings	The District's records management program shall address the length of time records will be posted on the District's website when the law does not specify a posting period.
Records Destruction Practices	All local government records shall be considered District property and any unauthorized destruction or removal shall be prohibited. The District shall follow its records control schedules, records management program, and all applicable laws regarding records destruction. However, the District shall preserve records, including electronically stored information, and suspend routine record destruction practices where appropriate and in accordance with procedures developed by the records management officer. Such procedures shall describe the circumstances under which local government records scheduled for destruction must be retained. Notification shall be given to appropriate staff when routine record destruction practices must be suspended and when they may be resumed.
Training	The records management officer shall receive appropriate training regarding the Local Government Records Act and shall ensure that custodians of records, as defined by law, and other applicable District staff are trained on the District's records management program, including this policy and corresponding procedures.

PROPOSED REVISIONS

(See page 2)

Note: For Board member use of District technology resources, see BBI. For student use of personal electronic devices, see FNCE.

For purposes of this policy, "technology resources" means electronic communication systems and electronic equipment.

Availability of Access

Access to the District's technology resources, including the internet, shall be made available to students and employees primarily for instructional and administrative purposes and in accordance with administrative regulations.

Limited Personal Use

Limited personal use of the District's technology resources shall be permitted if the use:

1. Imposes no tangible cost on the District;
2. Does not unduly burden the District's technology resources; and
3. Has no adverse effect on an employee's job performance or on a student's academic performance.

Use by Members of the Public

Access to the District's technology resources, including the internet, shall be made available to members of the public, in accordance with administrative regulations. Such use shall be permitted so long as the use:

1. Imposes no tangible cost on the District; and
2. Does not unduly burden the District's technology resources.

Acceptable Use

The Superintendent shall develop and implement administrative regulations, guidelines, and user agreements consistent with the purposes and mission of the District and with law and policy.

Access to the District's technology resources is a privilege, not a right. All users shall be required to acknowledge receipt and understanding of all administrative regulations governing use of the District's technology resources and shall agree in writing to allow monitoring of their use and to comply with such regulations and guidelines. Noncompliance may result in suspension of access or termination of privileges and other disciplinary action consistent with District policies. [See DH, FN series, FO series, and the Student Code of Conduct] Violations of law may result in criminal prosecution as well as disciplinary action by the District.

Artificial Intelligence

Employees and students shall be permitted to explore artificial intelligence (AI) and implement its use in and out of the classroom in accordance with policy and administrative regulations. The use of AI shall only be as a support tool to enhance student outcomes and shall never take the place of teacher and student decision-making. Any use of AI must comply with law, policy, and administrative regulations relating to student and employee privacy and data security.

A student shall only use AI tools with teacher permission and shall be expected to produce original work and properly credit sources, including AI tools used in creating the work. [See Academic Dishonesty at EIA(LOCAL)] Students who use AI tools to deceptively harm, bully, or harass others shall be disciplined in accordance with the Student Code of Conduct and policy. [See FFH, FFI, and the FO series]

Internet Safety

The Superintendent shall develop and implement an internet safety plan to:

1. Control students' access to inappropriate materials, as well as to materials that are harmful to minors;
2. Ensure student safety and security when using electronic communications;
3. Prevent unauthorized access, including hacking and other unlawful activities;
4. Restrict unauthorized disclosure, use, and dissemination of personally identifiable information regarding students; and
5. Educate students about cyberbullying awareness and response and about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms.

Filtering

Each District computer with internet access and the District's network systems shall have filtering devices or software that blocks access to visual depictions that are obscene, pornographic, inappropriate for students, or harmful to minors, as defined by the federal Children's Internet Protection Act and as determined by the Superintendent.

The Superintendent shall enforce the use of such filtering devices. Upon approval from the Superintendent, an administrator, supervisor, or other authorized person may disable the filtering device for bona fide research or other lawful purpose.

Monitored Use

Electronic mail transmissions and other use of the District's technology resources by students, employees, and members of the public shall not be considered private. Designated District staff shall be authorized to monitor the District's technology resources at any time to ensure appropriate use.

Disclaimer of Liability

The District shall not be liable for users' inappropriate use of the District's technology resources, violations of copyright restrictions or other laws, users' mistakes or negligence, and costs incurred by users. The District shall not be responsible for ensuring the availability of the District's technology resources or the accuracy, age appropriateness, or usability of any information found on the internet.

Record Retention

A District employee shall retain electronic records, whether created or maintained using the District's technology resources or using personal technology resources, in accordance with the District's record management program. [See CPC]

Electronically Signed Documents

At the District's discretion, the District may make certain transactions available online, including student admissions documents, student grade and performance information, contracts for goods and services, and employment documents.

To the extent the District offers transactions electronically, the District may accept electronic signatures in accordance with this policy.

When accepting electronically signed documents or digital signatures, the District shall comply with rules adopted by the Department of Information Resources, to the extent practicable, to:

- Authenticate a digital signature for a written electronic communication sent to the District;
- Maintain all records as required by law;
- Ensure that records are created and maintained in a secure environment;
- Maintain appropriate internal controls on the use of electronic signatures;
- Implement means of confirming transactions; and
- Train staff on related procedures as necessary.

DELETE POLICY

Trustees and Employees

The District shall purchase insurance as provided in CRB(LEGAL) to fund the cost of litigation to protect the District, its employees, and Trustees who are exposed to individual liability by virtue of their official duties. [See CRB(LEGAL)]

Tort Claims

In addition, the District shall purchase insurance to protect the District and employees from liability under the Tort Claims Act. [See CRB(LEGAL)]

PROPOSED REVISIONS

Specifications

The Superintendent ~~or designee~~ shall ensure that detailed specifications are prepared for any construction project for which competitive bids are sought.

Bid Process

All bids shall be submitted in sealed envelopes, plainly marked with the name of the bid and the time of the bid opening. Bids shall be opened at the time specified. All interested parties shall be invited to attend the bid opening. Any bid may be withdrawn prior to the scheduled time for opening. Bids received after the specified time shall not be considered.

Safety Record

If the District considers the safety record of bidders in determining to whom to award a contract, the safety record shall be defined as a bidder's OSHA (Occupational Safety and Health Administration) inspection logs for the last three years, a loss analysis from the bidder's insurance carrier, and a loss history covering all lines of insurance coverage carried by the bidder.

PROPOSED REVISIONS

Specifications

The Superintendent ~~or designee~~ shall prepare a request for proposals for any construction project for which competitive sealed proposals are sought.

Process

All proposals shall be submitted in sealed envelopes, plainly marked with the name of the proposal and the time of the deadline for submission. Proposals shall be opened at the time specified. All offerors shall be invited to attend the proposal opening. Changes in the content of a proposal, and in prices, may be negotiated after proposals are opened.

Withdrawal and Late Proposals

Any proposal may be withdrawn prior to the scheduled time for opening. Proposals received after the specified time shall not be considered.

Proposal Acceptance

The District may reject any and all proposals.

Safety Record

If the safety record of offerors is considered in selecting a proposal, the record shall be defined as an offeror's OSHA (Occupational Safety and Health Administration) inspection logs for the last three years, a loss analysis from the offeror's insurance carrier, and a loss history covering all lines of insurance coverage carried by the offeror.

PROPOSED REVISIONS

(See page 2 & 3)

The final decision on the naming of schools, other facilities, and any part of a school or facility rests with the Board.

Procedures

The Board shall announce at a regular Board meeting the intent to name a new school, an athletic facility, a school wing, a library, or another facility. The Board shall invite the community to submit nominations to the Superintendent for a period of not less than 30 days before any action is taken by the Board to name the facility.

Citizens, local clubs, staff, students, and Board members may submit nominations, which must be in writing and should include, as applicable, biographical data, significant contributions and accomplishments, and a summary statement supporting the nomination.

The Board may appoint a committee of citizens to review all nominations for the naming of schools and other facilities and may make recommendations to the Board based on the criteria outlined in this policy.

A unanimous vote by the Board is required to approve naming any facility after a living person; a majority vote is required for all other types of names.

No facility that has been named for a person shall be renamed without a unanimous vote by the Board.

Requirements

An unnamed existing facility or an unnamed part of an existing school or facility may be named for a living or deceased person who:

1. Has made exceptional contributions locally or nationally and distinguished himself or herself in education, service to the District, or service to the community;
2. Represents exemplary qualities and can serve as a model of excellence to students who attend the school or use the facility;
3. Has distinguished himself or herself in the military by demonstrating patriotism, loyalty, and exemplary citizenship; or
4. Has served in a position of leadership and service worthy of commemorating including, but not limited to, involvement in education, service, arts, or government.

Alternatively, an unnamed existing facility or an unnamed part of an existing school or facility may be named for a local, state, or national geographic area.

Athletic Facilities

In addition to the requirements established in this policy for naming a facility after a person, a person whose name is considered for a sports complex or another athletic facility shall:

1. Have made significant contributions to the athletic program; and
2. Have coached or participated in a District sport for which the facility will be used.

Wings and Annexes

In addition to the requirements established in this policy for naming a facility after a person, a person whose name is considered for a wing, annex, or any other facility shall have made significant contributions to the programs that use the facility to be named.

Recognition

The District shall display in a key location an appropriate picture of the person after whom the school or facility has been named, along with a biography of the person, so that students, staff, visitors, and the general public may learn the origin of the school's or the facility's name.

Construction Plaques

The District shall affix to a building or other District facility a construction plaque when the building/facility is new, when there is a major addition to a building/facility, or when a building/facility is remodeled.

The Superintendent and the campus principal shall determine the exact location of the plaque on the building/facility.

The plaque shall include the following information:

1. Name of the school, building, or other facility.
2. Name of the District.
3. Names and offices held by the Superintendent and the members of the Board who were serving on the date the architectural contract was awarded.
4. Date the construction was completed.

Dedication Ceremonies

A new school building shall be dedicated at an appropriate ceremony conducted as soon as possible after occupancy.

Other Permanent Structures

Only the Board shall approve the installation of any permanent structure, such as a statue, at an individual school~~. [See FM for approval of school colors and mascots]~~

School Colors and Mascots	The Board shall approve for each individual campus a nickname, mascot, insignia, or emblem, as well as official school colors, as applicable.

PROPOSED REVISIONS

Personnel Duties

The Superintendent shall define the qualifications, duties, and responsibilities of all positions and shall ensure that job descriptions are current and accessible to employees and supervisors.

Posting Vacancies

The Superintendent or designee shall establish guidelines for advertising employment opportunities and posting notices of vacancies. These guidelines shall advance the Board's commitment to equal opportunity employment and to recruiting well-qualified candidates. Current District employees may apply for any vacancy for which they have appropriate qualifications.

Applications

All applicants shall complete the application form supplied by the District. Information on applications shall be confirmed before a contract is offered for a contractual position and before hiring or as soon as possible thereafter for a noncontractual position.

[For information related to the evaluation of criminal history records, see DBAA.]

~~Employing Related Employees~~

~~The District shall, in all cases, observe fair and equitable hiring practices. Each staff member responsible for employment in the District, including any employee responsible for recommending the employment of applicants, shall avoid any act or practice that may be interpreted as preferential consideration to another employee or to a potential employee and shall not be authorized to hire or recommend for employment any person who is related to that staff member within the third degree by consanguinity or the second degree by affinity [see DBE]. The Board may, upon recommendation from the Superintendent, make an exception to this prohibition when the Board decides that doing so would serve the best interest of the District.~~

Employment of Contractual Personnel

The Superintendent has sole authority to make recommendations to the Board regarding the selection of contractual personnel.

The Board retains final authority for employment of all contractual personnel. [See DCA, DCB, DCC, and DCE as appropriate]

Employment of Noncontractual Personnel

Note: For employment of a bus driver related to a Board member or the Superintendent, see DBE(LEGAL).

The Board delegates to the Superintendent final authority to employ and dismiss noncontractual employees on an at-will basis~~, except that the Board retains the final authority for employment and dismissal of any person in a position of director, executive director, assistant superintendent, or associate superintendent who is hired on an at-will basis~~. [See DCD]

Employment Assistance Prohibited

No District employee shall assist another employee of the District or of any school district in obtaining a new job if the employee knows, or has probable cause to believe, that the other employee engaged in sexual misconduct regarding a minor or student in violation of the law. Routine transmission of an administrative or personnel file does not violate this prohibition. [See CJ for prohibitions relating to contractors and agents and DH(EXHIBIT) for the Educators' Code of Ethics.]

PROPOSED REVISIONS

Personnel not hired under a contract shall be employed on an at-will basis.

[For information regarding contractual employment, see DCA, DCB, DCC, and DCE, as appropriate]

~~**Progressive Discipline**~~

~~Purpose~~

~~In the exercise of the progressive discipline process, the District's values of honesty, ethical behavior, and mutual respect should guide the content, presentation, and handling of all disciplinary situations and actions. Through a careful review process, the Superintendent intends to maintain objectivity, fairness, and consistency in the District's progressive discipline process.~~

~~Poor job performance, unacceptable or unprofessional behavior, policy violations, negative attendance trends, illegal or unethical actions, and/or misconduct shall be considered as a few examples but shall not be interpreted as an all-inclusive list of actions that may result in disciplinary action, up to and including termination.~~

~~Various types of disciplinary actions may be taken in order to help an employee assume responsibility and modify and correct unacceptable performance, behavior, or actions. The alternatives available, ranging from counseling to termination of employment, shall be dependent on the severity or recurring nature of the violation or behavior. Misconduct deemed sufficiently serious, including criminal and gross or ethical misconduct, may result in an employee's immediate termination of employment.~~

~~The District reserves the right to move to a higher level of the progressive discipline process, to suspend an employee without pay, or to demote an employee to a lower pay grade until sustained satisfactory performance or satisfactory behavior is achieved.~~

~~The employee shall always be asked to sign the warning documents to demonstrate that he or she had a discussion with the employee's supervisor. A signature is not intended to imply or indicate agreement of the issues noted. An employee may submit within ten business days of the applicable "step" meeting a rebuttal statement to his or her supervisor to explain the employee's point of view.~~

~~Process~~

~~No prior disciplinary action shall be a prerequisite for another disciplinary action, including termination of employment. The progressive discipline process shall be used according to the following "step" processes when appropriate in the judgement of the assistant superintendent for human resources or designee, except in certain cases, for example in cases of criminal, gross, or ethical misconduct.~~

~~*Step One: Counseling and Verbal Warning*~~	~~This step shall create an opportunity for the immediate supervisor to schedule a meeting with the employee to bring attention to the existing unacceptable performance, conduct, or behavior issue. The supervisor should discuss with the employee the nature of the problem and clearly describe expectations and required steps the employee must take to improve upon the problem and sustain the improvements. Within ten District business days of this meeting, the supervisor shall prepare written documentation of the Step One meeting.~~
~~*Step Two: Written Warning*~~	~~Although the District hopes that the employee will promptly correct issues noted in the Step One meeting, the District recognizes that this may not always occur. The Step Two written warning involves more formal documentation of the unacceptable situation and consequences of continued unacceptable actions or behavior. A warning outlining additional disciplinary actions the employee may be subject to, up to and including termination, should be included in the written warning document.~~ ~~During the Step Two meeting, the immediate supervisor shall meet with the employee to review any additional incidents or information, as well as prior relevant corrective action plans. The supervisor shall be encouraged to coordinate in advance with the human resources director about the situation and next steps. Management shall outline the consequences for the employee of his or her continued failure to meet performance or behavior expectations. Within ten District business days of this meeting, the supervisor shall prepare written documentation of the Step Two meeting.~~ ~~A growth plan may be issued that lists the required immediate and sustained corrective actions. If issued, a plan shall be issued within ten District business days of the Step Two meeting.~~
~~*Step Three: Final Written Warning*~~	~~If performance or behavior does not improve on a sustained basis, the immediate supervisor shall conduct a Step Three meeting with the employee and the human resources director. The employee shall be issued his or her final written warning during this meeting. The documentation shall include copies of previous warnings, indicate specific areas in which the employee must improve, and specify the time period in which the employee must make the necessary and sustained improvements.~~
~~*Step Four: Recommendation for Termination of Employment*~~	~~The last and most serious step in the progressive discipline process is a recommendation for termination of employment. When making a recommendation for termination of employment, the supervisor shall be responsible for providing the human resources department copies of supporting documentation pertaining to all actions taken to date to correct or modify the employee's actions, performance, or behavior. Recommendations for termination of~~

~~employment shall be reviewed and approved by the office of human resources, legal counsel, and the Superintendent prior to termination.~~

~~The termination meeting shall include informing the employee of his or her appeal rights and procedures.~~

~~Severe or Dangerous Actions~~

~~There may be performance, conduct, or safety incidents so problematic and harmful that the most effective action may be temporary removal of the employee from the workplace so that an investigation may be conducted. When immediate action is necessary to ensure the safety of the employee or others, the supervisor shall immediately contact the human resources director or assistant superintendent for human resources.~~

Dismissal

At-will employees may be dismissed at any time for any reason not prohibited by law or for no reason, as determined by the needs of the District. At-will employees who are dismissed shall receive pay through the end of the last day worked.

Appeal of Employment Actions

A dismissed employee may appeal the dismissal in accordance with DGBA(LOCAL).

ADD POLICY

Non-Chapter 21 Contracts

Non-Chapter 21 contracts shall be provided for positions included on the list approved by the Board. A non-Chapter 21 contract shall not be governed by Chapter 21 of the Education Code.

Termination During Contract Term

In accordance with DCE(LEGAL), an employee may request a hearing before the Board to appeal discharge during the contract period.

An employee whose contract is not reissued at the end of the contract period may appeal in accordance with DGBA(LOCAL).

PROPOSED REVISIONS

The Superintendent shall recommend an annual compensation plan for all District employees. The compensation plan may include wage and salary structures, stipends, benefits, and incentives. [See also DEAA] The recommended plan shall support District goals for hiring and retaining highly qualified employees. The Board shall review and approve the compensation plan to be used by the District. The Board shall also determine the total compensation package for the Superintendent. [See BJ series]

Pay Administration

The Superintendent shall implement the compensation plan and establish procedures for plan administration consistent with the budget. The classification of each job title within the compensation plan shall be based on the qualifications, duties, and market value of the position.

Annualized Salary

The District shall pay all salaried employees over 12 months in equal monthly or semi-monthly installments, regardless of the number of months employed during the school year. Salaried employees hired during the school year shall be paid in accordance with administrative regulations.

Pay Increases

The Superintendent shall recommend to the Board an amount for employee pay increases as part of the annual budget. Any pay adjustments for individual employees shall be determined within the approved budget following established procedures.

Midyear Pay Increases

Contract Employees

A contract employee's pay may be increased after performance on the contract has begun only if authorized by the compensation plan of the District or there is a change in the employee's job assignment or duties during the term of the contract that warrants additional compensation. Any such changes in pay that do not conform with the compensation plan shall require Board approval. [See DEA(LEGAL) for provisions on pay increases and public hearing requirements.]

Noncontract Employees

The Superintendent may grant a pay increase to a noncontract employee after duties have begun because of a change in the employee's job assignment or to address pay equity. The Superintendent shall report any such pay increases to the Board at the next regular meeting.

Pay During Closing

During an emergency closure, all ~~full-time~~ employees shall continue to be paid for their regular duty schedule unless otherwise provided by Board action. Following an emergency closure, the Board shall adopt a resolution or take other Board action establishing the purpose and parameters for such payments. [See EB for the authority to close schools.]

Premium Pay During Disasters

~~All~~ Nonexempt employees who are required to work to mitigate the reason for an emergency closing shall be paid at the rate of one and one-half times their regular rate of pay for all hours worked up to 40 hours per week. All other nonexempt employees who are required to work during an emergency closing shall be paid their regular rate of pay.

Overtime for time worked over 40 hours in a week shall be calculated and paid according to law. [See DEAB] The Superintendent shall approve payments and ensure that accurate time records are kept of actual hours worked during emergency closings.

PROPOSED REVISIONS

(See pages 3 & 6)

Leave Administration

The Superintendent shall develop administrative regulations addressing employee leaves and absences to implement the provisions of this policy.

Definitions

The term "immediate family" is defined as:

Immediate Family

1. Spouse.
2. Son or daughter, including a biological, adopted, or foster child, a son- or daughter-in-law, a stepchild, a legal ward, or a child for whom the employee stands *in loco parentis*.
3. Parent, stepparent, parent-in-law, or other individual who stands *in loco parentis* to the employee.
4. Sibling, stepsibling, and sibling-in-law.
5. Grandparent and grandchild.
6. Any person residing in the employee's household at the time of illness or death.

For purposes of the Family and Medical Leave Act (FMLA), the definitions of spouse, parent, son or daughter, and next of kin are found in DECA(LEGAL).

Family Emergency

The term "family emergency" shall be limited to disasters and life-threatening situations involving the employee or a member of the employee's immediate family.

Leave Day

A "leave day" for purposes of earning, using, or recording leave shall mean the number of hours per day equivalent to the employee's usual assignment, whether full-time or part-time.

School Year

A "school year" for purposes of earning, using, or recording leave shall mean the term of the employee's annual employment as set by the District for the employee's usual assignment, whether full-time or part-time.

Catastrophic Illness or Injury

A catastrophic illness or injury is a severe condition or combination of conditions affecting the mental or physical health of the employee or a member of the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose compensation from the District. Such conditions typically require prolonged hospitalization or recovery or are expected to result in disability or death. Conditions

relating to pregnancy or childbirth shall be considered catastrophic if they meet the requirements of this paragraph.

Note: For District contribution to employee insurance during leave, see CRD(LOCAL).

Availability

The District shall make state personal leave and local leave for the current year available for use at the beginning of the school year.

State Leave Proration

If an employee separates from employment with the District before his or her last duty day of the school year or begins employment after the first duty day of the school year, state personal leave shall be prorated based on the actual time employed.

If an employee separates from employment before the last duty day of the school year, the employee's final paycheck shall be reduced for state personal leave the employee used beyond his or her pro rata entitlement for the school year.

Medical Certification

An employee shall submit medical certification of the need for leave if:

1. The employee is absent more than three consecutive workdays because of personal illness or illness in the immediate family;
2. The District requires medical certification due to a questionable pattern of absences or when deemed necessary by the supervisor or Superintendent; or
3. The employee requests FMLA leave for the employee's serious health condition; a serious health condition of the employee's spouse, parent, or child; or for military caregiver leave.

In each case, medical certification shall be made by a health-care provider as defined by the FMLA. [See DECA(LEGAL)]

State Personal Leave

The Board requires employees to differentiate the manner in which state personal leave is used.

Nondiscretionary Use

Nondiscretionary use of leave shall be for the same reasons and in the same manner as state sick leave accumulated before May 30, 1995. [See DEC(LEGAL)]

Nondiscretionary use includes leave related to the birth or placement of a child and taken within the first year after the child's birth, adoption, or foster placement.

Discretionary Use

Discretionary use of leave is at the individual employee's discretion, subject to limitations set out below.

Request for Leave

In deciding whether to approve or deny a request for discretionary use of state personal leave, the supervisor shall not seek or consider the reasons for which an employee requests to use leave. The supervisor shall, however, consider the duration of the requested absence in conjunction with the effect of the employee's absence on the educational program and District operations, as well as the availability of substitutes.

Local Leave

Each employee shall earn five paid local leave days per school year in accordance with administrative regulations.

Local leave shall accumulate without limit.

Local leave shall be used according to the terms and conditions of state personal leave. [See State Personal Leave, above]

Extended Sick Leave

After all available paid leave days and any applicable compensatory time have been exhausted, a full-time employee shall be granted in a school year a maximum of 30 leave days of extended sick leave to be used on consecutive workdays and only for the employee's own personal illness or injury, including pregnancy-related illness or injury.

A written request for extended sick leave must be accompanied by medical certification of the illness or injury.

Extended sick leave shall be unpaid leave.

Sick Leave Pool

An employee who has exhausted all paid leave as well as any applicable compensatory time and who suffers from a catastrophic illness or injury or is absent due to the catastrophic illness or injury of a member of the employee's ~~spouse, parent, or child~~immediate family may request the establishment of a sick leave pool, to which District employees may donate local leave for use by the eligible employee.

The pool shall cease to exist when the employee no longer needs leave for the purpose requested, uses the maximum number of days allowed under a pool, or exhausts all leave days donated to the sick leave pool.

The Superintendent shall develop regulations for the implementation of the sick leave pool that address the following:

1. Procedures to request the establishment of a sick leave pool;
2. The maximum number of days an employee may donate to a sick leave pool;

3. The maximum number of days per school year an eligible employee may receive from a sick leave pool; and

4. The return of unused days to donors.

Appeal

An employee may appeal a decision regarding the establishment or implementation of the District's sick leave pool in accordance with DGBA(LOCAL), beginning with the Superintendent or appropriate administrator.

Mental Health Leave

A District peace officer or a full-time District telecommunicator, as defined by law, who experiences a traumatic event in the scope of employment shall be granted a maximum of five days of mental health leave per traumatic event. Such leave shall be provided in accordance with administrative regulations and shall not be deducted from the employee's pay or leave balance.

The Superintendent shall develop regulations regarding mental health leave that address the following:

1. Circumstances or reasons under which an eligible employee may use mental health leave;

2. Procedures for requesting mental health leave and maintaining the anonymity of the requestor;

3. The administrator authorized to approve requests for mental health leave; and

4. Other procedures deemed necessary for administering this provision.

Quarantine Leave

A District peace officer shall be granted quarantine leave when ordered by the local health authority or the peace officer's supervisor to quarantine or isolate due to possible or known exposure to a communicable disease while on duty. Such leave shall be provided in accordance with administrative regulations and shall not be deducted from the employee's pay or leave balance.

The Superintendent shall develop regulations regarding quarantine leave that address the following:

1. Continuation of all employment benefits and compensation for the duration of the leave;

2. Reimbursement for reasonable costs related to the quarantine; and

3. Other procedures deemed necessary for administering this provision.

Line of Duty Illness or Injury Leave of Absence

Following a leave of absence with full pay as required by law, the police officer may use accumulated leave in accordance with administrative guidelines. The District shall not extend the leave of absence for a police officer's line of duty illness or injury.

Family and Medical Leave

FMLA leave shall run concurrently with applicable paid leave and compensatory time, as applicable.

Note: See DECA(LEGAL) for provisions addressing FMLA.

Twelve-Month Period

For purposes of an employee's entitlement to FMLA leave, the 12-month period shall be measured backward from the date an employee uses FMLA leave.

Combined Leave for Spouses

When both spouses are employed by the District, the District shall limit FMLA leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition, to a combined total of 12 weeks. The District shall limit military caregiver leave to a combined total of 26 weeks.

Intermittent or Reduced Schedule Leave

The District shall not permit use of intermittent or reduced schedule FMLA leave for the care of a newborn child or for the adoption or placement of a child with the employee.

Certification of Leave

When an employee requests leave, the employee shall provide certification, in accordance with FMLA regulations, of the need for leave.

Fitness-for-Duty Certification

In accordance with administrative regulations, when an employee takes FMLA leave due to the employee's own serious health condition, the employee shall provide, before resuming work, a fitness-for-duty certification.

Leave at the End of Semester

When a teacher takes leave near the end of the semester, the District may require the teacher to continue leave until the end of the semester.

Temporary Disability Leave

Any full-time employee whose position requires educator certification by the State Board for Educator Certification or by the District shall be eligible for temporary disability leave. The maximum length of temporary disability leave shall be 180 calendar days. [See DBB(LOCAL) for temporary disability leave placement and DEC(LEGAL) for return to active duty.]

An employee's notification of need for extended absence due to the employee's own medical condition shall be forwarded to the Superintendent as a request for temporary disability leave.

The District shall require the employee to use temporary disability leave and paid leave, including any compensatory time, concurrently with FMLA leave.

Workers' Compensation

Note: Workers' compensation is not a form of leave. The workers' compensation law does not require the continuation of the District's contribution to health insurance.

An absence due to a work-related injury or illness shall be designated as FMLA leave, temporary disability leave, and/or assault leave, as applicable.

No Paid Leave Offset

The District shall not permit the option for paid leave offset in conjunction with workers' compensation income benefits. [See CRE]

Court Appearances

Absences due to compliance with a valid subpoena or for jury duty shall be fully compensated by the District and shall not be deducted from the employee's pay or leave balance.

Payment for Accumulated Leave Upon Retirement

The following leave provisions shall apply to state and local leave accumulated beginning on the original effective date of this program.

An employee who retires from the District shall be eligible for payment for accumulated state and local leave under the following conditions:

1. The employee's retirement is voluntary, i.e., the employee is not being discharged or nonrenewed.
2. ~~1.~~ The employee is retiring under the Teacher Retirement System of Texas (TRS).
3. ~~2.~~ The employee has been employed by the District for at least the last eight consecutive years.

The employee shall receive payment for each day of accumulated state and local leave, to a maximum of 75 days, at a rate established by the Board. If the employee is reemployed with the District, days for which the employee received payment shall not be available to that employee.

The rate established by the Board shall be in effect until the Board adopts a new rate. Any changes to the rate shall apply beginning with the school year following the adoption of the rate change.

When a person who meets all eligibility criteria for this benefit dies while employed by the District, the District shall make the applicable payment to the estate of the deceased employee.

Neutral Absence Control

If an employee does not return to work after exhausting all available paid and unpaid leave, the District shall provide the employee written notice that he or she no longer has leave available for use. The District shall automatically pursue termination of an employee who has exhausted all available leave, regardless of the reason for the absence [see DF series]. The employee's eligibility for reasonable accommodations, as required by the Americans with Disabilities Act [see DAA(LEGAL)], shall be considered before termination. If terminated, the employee may apply for reemployment with the District.

PROPOSED REVISIONS

(See page 2)

Complaints

In this policy, the terms “complaint” and “grievance” shall have the same meaning.

Other Complaint Processes

Employee complaints shall be filed in accordance with this policy, except as required by the policies listed below. Some of these policies require appeals to be submitted in accordance with DGBA after the relevant complaint process:

1. Complaints alleging discrimination, including violations of Title IX (gender), Title VII (sex, race, color, religion, national origin), ADEA (age), or Section 504 (disability), shall be submitted in accordance with the DIA series.
2. Complaints alleging certain forms of harassment, including harassment by a supervisor and violation of Title VII, shall be submitted in accordance with the DIA series.
3. Complaints concerning retaliation relating to discrimination and harassment shall be submitted in accordance with the DIA series.
4. Complaints concerning instructional resources shall be submitted in accordance with the EF series.
5. Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with the CKE series.
6. Complaints concerning the proposed nonrenewal of a term contract issued under Chapter 21 of the Education Code shall be submitted in accordance with DFBB.
7. Complaints concerning the proposed termination or suspension without pay of an employee on a probationary, term, or continuing contract issued under Chapter 21 of the Education Code during the contract term shall be submitted in accordance with DFAA, DFBA, or DFCA.

Notice to Employees

The District shall inform employees of this policy through appropriate District publications.

Guiding Principles

Informal Process

The Board encourages employees to discuss their concerns with their supervisor, principal, or other appropriate administrator who has the authority to address the concerns. Concerns should be expressed as soon as possible to allow early resolution at the lowest possible administrative level.

Informal resolution shall be encouraged but shall not extend any deadlines in this policy, except by mutual written consent.

Direct Communication with Board Members

Employees shall not be prohibited from communicating with a member of the Board regarding District operations except when communication between an employee and a Board member would be inappropriate because of a pending hearing or appeal related to the employee.

Formal Process

An employee may initiate the formal process described below by timely filing a written complaint form.

Even after initiating the formal complaint process, employees are encouraged to seek informal resolution of their concerns. An employee whose concerns are resolved may withdraw a formal complaint at any time.

The process described in this policy shall not be construed to create new or additional rights beyond those granted by law or Board policy, nor to require a full evidentiary hearing or "mini-trial" at any level.

Freedom from Retaliation

Neither the Board nor any District employee shall unlawfully retaliate against an employee for bringing a concern or complaint.

Whistleblower Complaints

Whistleblower complaints shall be filed within the time specified by law and may be made to the Superintendent or designee beginning at Level Two. Timelines for the employee and the District set out in this policy may be shortened to allow the Board to make a final decision within 60 calendar days of the initiation of the complaint. [See DG]

Complaints Against Supervisors

Complaints alleging a violation of law by a supervisor may be made to the Superintendent or designee. Complaint forms alleging a violation of law by the Superintendent may be submitted directly to the Board or designee.

General Provisions

Filing

Complaint forms and appeal notices may be filed by hand-delivery, by electronic communication, including email and fax, or by U.S. Mail. ~~Hand-delivered filings shall be timely filed if received by the appropriate administrator or designee and the human resources department by the close of business on the deadline.~~ Filings submitted by electronic communication shall be timely filed if they are received by the close of business on the deadline, as indicated by the date/time shown on the electronic communication. Mail filings shall be timely filed if they are postmarked by U.S. Mail on or before the deadline and received by the appropriate administrator or designated representative no more than three days after the deadline.

Scheduling Conferences	The District shall make reasonable attempts to schedule conferences at a mutually agreeable time. If the employee fails to appear at a scheduled conference, the District may hold the conference and issue a decision in the employee's absence.
Response	At Levels One and Two, "response" shall mean a written communication to the employee from the appropriate administrator. Responses may be hand-delivered, sent by electronic communication to the employee's email address of record, or sent by U.S. Mail to the employee's mailing address of record. Mailed responses shall be timely if they are postmarked by U.S. Mail on or before the deadline.
Days	"Days" shall mean District business days, unless otherwise noted. In calculating timelines under this policy, the day a document is filed is "day zero." The following business day is "day one."
Representative	"Representative" shall mean any person who or an organization that does not claim the right to strike and is designated by the employee to represent him or her in the complaint process. The employee may designate a representative through written notice to the District at any level of this process. The representative may participate in person or by telephone conference call. If the employee designates a representative with fewer than three days' notice to the District before a scheduled conference or hearing, the District may reschedule the conference or hearing to a later date, if desired, in order to include the District's counsel. The District may be represented by counsel at any level of the process.
Consolidating Complaints	Complaints arising out of an event or a series of related events shall be addressed in one complaint. Employees shall not file separate or serial complaints arising from any event or series of events that have been or could have been addressed in a previous complaint. When two or more complaints are sufficiently similar in nature and remedy sought to permit their resolution through one proceeding, the District may consolidate the complaints.
Untimely Filings	All time limits shall be strictly followed unless modified by mutual written consent. If a complaint form or appeal notice is not timely filed, the complaint may be dismissed, on written notice to the employee, at any point during the complaint process. The employee may appeal the dismissal by seeking review in writing within ten days from the date of the written dismissal notice, starting at the level at which the complaint was dismissed. Such appeal shall be limited to the issue of timeliness.

Costs Incurred

Each party shall pay its own costs incurred in the course of the complaint.

Complaint and Appeal Forms

Complaints and appeals under this policy shall be submitted in writing on a form provided by the District.

Copies of any documents that support the complaint should be attached to the complaint form. If the employee does not have copies of these documents, they may be presented at the Level One conference. After the Level One conference, no new documents may be submitted by the employee unless the employee did not know the documents existed before the Level One conference.

A complaint or appeal form that is incomplete in any material aspect may be dismissed but may be refiled with all the required information if the refiling is within the designated time for filing.

Audio Recording

As provided by law, an employee shall be permitted to make an audio recording of a conference or hearing under this policy at which the substance of the employee's complaint is discussed. The employee shall notify all attendees present that an audio recording is taking place.

Level One

Complaint forms must be filed:

1. Within 15 days of the date the employee first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance; and

2. With the lowest level administrator who has the authority to remedy the alleged problem.

   In most circumstances, employees on a school campus shall file Level One complaints with the campus principal; other District employees shall file Level One complaints with their immediate supervisor.

   If the only administrator who has authority to remedy the alleged problem is the Superintendent or designee, the complaint may begin at Level Two following the procedure, including deadlines, for filing the complaint form at Level One.

If the complaint is not filed with the appropriate administrator, the receiving administrator must note the date and time the complaint form was received and immediately forward the complaint form to the appropriate administrator.

The appropriate administrator shall investigate as necessary and schedule a conference with the employee within ten days after receipt of the written complaint. The administrator may set reasonable time limits for the conference.

Absent extenuating circumstances, the administrator shall provide the employee a written response within ten days following the conference. The written response shall set forth the basis of the decision. In reaching a decision, the administrator may consider information provided at the Level One conference and any other relevant documents or information the administrator believes will help resolve the complaint.

Level Two

If the employee did not receive the relief requested at Level One or if the time for a response has expired, the employee may request a conference with the Superintendent or designee to appeal the Level One decision.

The appeal notice must be filed in writing, on a form provided by the District, within ten days of the date of the written Level One response or, if no response was received, within ten days of the Level One response deadline.

After receiving notice of the appeal, the Level One administrator shall prepare and forward a record of the Level One complaint to the Level Two administrator. The employee may request a copy of the Level One record.

The Level One record shall include:

1. The original complaint form and any attachments.
2. All other documents submitted by the employee at Level One.
3. The written response issued at Level One and any attachments.
4. All other documents relied upon by the Level One administrator in reaching the Level One decision.

The Superintendent or designee shall schedule a conference within ten days after the appeal notice is filed. The conference shall be limited to the issues and documents considered at Level One. At the conference, the employee may provide information concerning any documents or information relied upon by the administration for the Level One decision. The Superintendent or designee may set reasonable time limits for the conference.

The Superintendent or designee shall provide the employee a written response within ten days following the conference. The written response shall set forth the basis of the decision. In reaching a decision, the Superintendent or designee may consider the Level One record, information provided at the Level Two conference, and any other relevant documents or information the Superintendent or designee believes will help resolve the complaint.

Recordings of the Level One and Level Two conferences, if any, shall be maintained with the Level One and Level Two records.

Level Three

If the employee did not receive the relief requested at Level Two or if the time for a response has expired, the employee may appeal the decision to the Board.

The appeal notice must be filed in writing, on a form provided by the District, within ten days of the date of the written Level Two response or, if no response was received, within ten days of the Level Two response deadline.

The Superintendent or designee shall inform the employee of the date, time, and place of the Board meeting at which the complaint will be on the agenda for presentation to the Board.

The Superintendent or designee shall provide the Board the record of the Level Two appeal. The employee may request a copy of the Level Two record.

The Level Two record shall include:

1. The Level One record.
2. The notice of appeal from Level One to Level Two.
3. The written response issued at Level Two and any attachments.
4. All other documents relied upon by the administration in reaching the Level Two decision.

The appeal shall be limited to the issues and documents considered at Level Two, except that if at the Level Three hearing the administration intends to rely on evidence not included in the Level Two record, the administration shall provide the employee notice of the nature of the evidence at least three days before the hearing.

The District shall determine whether the complaint will be presented in open or closed meeting in accordance with the Texas Open Meetings Act and other applicable law. [See BE]

The presiding officer may set reasonable time limits and guidelines for the presentation, including an opportunity for the employee and administration to each make a presentation and provide rebuttal and an opportunity for questioning by the Board. The Board shall hear the complaint and may request that the administration provide an explanation for the decisions at the preceding levels.

In addition to any other record of the Board meeting required by law, the Board shall prepare a separate record of the Level Three

presentation. The Level Three presentation, including the presentation by the employee or the employee's representative, any presentation from the administration, and questions from the Board with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

The Board shall then consider the complaint. It may give notice of its decision orally or in writing at any time up to and including the next regularly scheduled Board meeting. If the Board does not make a decision regarding the complaint by the end of the next regularly scheduled meeting, the lack of a response by the Board upholds the administrative decision at Level Two.

PROPOSED REVISIONS

Superintendent's Authority

All personnel are employed subject to assignment and reassignment by the Superintendent or designee when the Superintendent determines that the assignment or reassignment is in the best interest of the District. Reassignment shall be defined as a transfer to another position, department, or facility that does not necessitate a change in the employment contract of a contract employee. Any change in an employee's contract shall be in accordance with policy DC.

Any employee may request reassignment within the District to another position for which he or she is qualified.

Assignment of Relatives

No employee shall be assigned to a position in which he or she would supervise or would otherwise be directly ~~or indirectly~~ responsible for the evaluation of a member of his or her immediate family, as defined in DEC(LOCAL). ~~any person related to the employee~~.

~~For purposes of this policy, a relative shall be defined as the employee's spouse, child, parent, sibling, grandchild, mother- or father-in-law, brother- or sister-in-law, aunt, uncle, niece, or nephew~~.

Campus Assignments

The principal's criteria for approval of campus appointments and reassignments shall be consistent with District policy regarding equal opportunity employment, and with staffing patterns approved in the District and campus plans. [See BQ series] In exercising their authority to approve appointments and reassignments, principals shall work cooperatively with the central office staff to ensure the efficient operation of the District as a whole.

Supplemental Duties

Noncontractual supplemental duties for which supplemental pay is received may be discontinued by either party at any time. An employee who wishes to relinquish a paid supplemental duty may do so by notifying the Superintendent or designee in writing. Paid supplemental duties are not part of the District's contractual obligation to the employee and an employee shall hold no expectation of continuing assignment to any paid supplemental duty.

Work Calendars and Schedules

Subject to the Board-adopted budget and compensation plan and in harmony with employment contracts, the Superintendent shall determine required work calendars for all employees. [See DC, EB]

Daily time schedules for all employees shall be determined by the Superintendent or designee and principals.

PROPOSED REVISIONS

T-TESS

The District shall appraise teachers using the Texas Teacher Evaluation and Support System (T-TESS) in accordance with law and administrative regulations.

The Board shall approve a list of certified appraisers who can appraise a teacher in place of the teacher's supervisor.

Annual Appraisal

A teacher who is a member of a campus cohort participating in the teacher incentive allotment program shall be appraised annually.

All other District teachers shall be appraised annually unless they ~~.~~

~~*Exception*~~

~~Teachers who~~ are eligible for less frequent evaluations in accordance with law [see DNA(LEGAL)] and the local criteria established in this policy shall be appraised in accordance with the provisions below.

Less-Than-Annual *Eligibility*

In addition to meeting the eligibility requirements in state rules, to be eligible for less-than-annual evaluations under the T-TESS, a teacher shall:

1. Be employed on an educator term contract;
2. Hold SBEC certification;
3. Be assigned in his or her certification area;
4. Have been employed by the District for at least three years;
5. Have served at the current campus for at least two years; and
6. Have overall teaching experience of at least ~~ten~~ 10 years.

Frequency

Eligible teachers shall be appraised every three years.

During any school year when a complete appraisal is not scheduled for an eligible teacher, either the teacher or the principal may require that an appraisal be conducted by providing written notice to the other party.

A teacher's supervisor shall have the authority to return a teacher to the traditional appraisal cycle as a result of performance deficiencies documented in accordance with state rule.

Annual Review Process

In the years in which a T-TESS appraisal is not scheduled for an eligible teacher, the teacher shall participate in an annual review process that includes the elements listed in state rule.

The annual review process shall produce a written document to be presented to the teacher, signed by the teacher and supervisor, and maintained in the personnel file.

PROPOSED REVISIONS

Principals

The District shall appraise principals using the Texas Principal Evaluation and Support System (T-PESS) in accordance with law and administrative regulations.

Other Campus Administrators

The appraisal system used for campus administrators other than principals shall be determined by each administrator's position and job responsibilities and shall consist of either a local appraisal system developed in accordance with law and administrative regulations or a modified version of the T-PESS.

Frequency

District principals and other campus administrators shall be appraised annually.

~~**Employment Decisions**~~

~~When relevant to the decision, written evaluations of a professional employee's performance, as documented to date, and any other information the administration determines to be appropriate shall be considered in decisions affecting contract status.~~

~~Exception~~

~~Written evaluations and other evaluative information need not be considered prior to a decision to terminate a probationary contract at the end of the contract term.~~

DELETE POLICY

Hunter Education

Hunter education instructors shall be permitted to bring unloaded firearms onto school premises for instructional purposes upon strict compliance with the following procedures:

1. The instructor shall obtain written authorization from the campus principal listing each time a firearm will be brought onto school premises. This authorization shall include both the instructor's and the principal's names and signatures; specify the number, types, and serial numbers of firearms to be used for instructional aides; and indicate when the firearms may be used and when they must be removed from campus.
2. The instructor shall carry the authorization when firearms are on school premises.
3. A copy of each authorization shall be maintained on file in the campus administrative office.
4. The instructor shall ensure that no live ammunition is brought onto school premises.

Notification

The principal shall notify local law enforcement officials when a hunter education program is offered at the campus and that instructors are authorized to be in possession of unloaded firearms on school premises.

PROPOSED REVISIONS

Additional Definitions of At-Risk Student

In addition to applying state criteria, the District shall classify as "at risk" any student who:

1. Receives services from supplementary/intervention programs; or

~~2. Is performing at least two years below grade level in mathematics or reading;~~

~~3. Has been psychologically, sexually, or physically abused;~~

~~4.~~2. Has been absent more than ~~ten~~ 10 days in a semester.~~;~~

~~5. Has earned a passing score on a state-mandated assessment that is not more than ten percent above the state-established passing standard; or~~

~~6. Has identified himself or herself as a gang member.~~

As permitted by law, the District shall use compensatory education funds to provide services to such students. [See EHBC(LEGAL)]

PROPOSED REVISIONS

Certificate of Coursework Completion

The District shall issue a certificate of coursework completion to a student who has successfully completed state and local credit requirements for graduation but has failed to meet all applicable state testing requirements. [See EIF, FMH]

Partial Credit

When a student earns a passing grade in only half of a course and the combined grade for both halves is lower than 70, the District shall award the student credit for the half with the passing grade.

Credentialing

The District shall award credit for a credentialed lower-level course in a language other than English (LOTE) on a pass/fail basis if a student completes the higher-level LOTE course with an overall grade of 70 or higher or earns credit for the higher-level LOTE course through credit by examination.

PROPOSED REVISIONS

Relation to Essential Knowledge and Skills

The District shall establish instructional objectives that relate to the essential knowledge and skills for grade-level subjects or courses. These objectives shall address the skills needed for successful performance in the next grade or next course in a sequence of courses.

Assignments, tests, projects, classroom activities, and other instructional activities shall be designed so that each student's performance indicates the level of mastery of the designated District objectives.

Guidelines for Grading

The Superintendent or designee shall ensure that each campus or instructional level develops guidelines for teachers to follow in determining grades for students. These guidelines shall ensure that grading reflects a student's relative mastery of an assignment and that a sufficient number of grades are taken to support the grade average assigned. Guidelines for grading shall be clearly communicated to students and parents.

The District shall permit a student who meets the criteria detailed in the grading guidelines a reasonable opportunity to redo an assignment or retake a test for which the student received a failing grade.

~~A student who has a grade of "Incomplete" at the end of a grading period, and who is eligible under the grading guidelines to redo an assignment or retake a test, shall complete all work, including any retest, within two school days after the end of the grading period in order to replace the "Incomplete" grade.~~

Progress Reporting

The District shall issue grade reports/report cards every six weeks on a form approved by the Superintendent or designee. Performance shall be measured in accordance with this policy and the standards established in EIE.

Interim Reports

Interim progress reports shall be issued for all students after the third week of each grading period. Supplemental progress reports may be issued at the teacher's discretion.

Conferences

In addition to conferences scheduled on the campus calendar, conferences may be requested by a teacher or parent as needed.

~~Each elementary school teacher shall make a good faith effort to have a conference with parents at least once each year and shall have additional conferences as needed. Each secondary school teacher shall make a good faith effort to have a conference with parents of any student who is having difficulties in class.~~

~~Student Responsibility~~

~~District students shall be expected to take individual responsibility for all class assignments, projects, and examinations and to do their own work unless a teacher has made specific provisions for working cooperatively in pairs or in groups.~~

Academic Dishonesty

A student found to have engaged in academic dishonesty shall be subject to grade penalties on assignments or tests and disciplinary penalties in accordance with the Student Code of Conduct. Academic dishonesty includes cheating or copying the work of another student, plagiarism, the use of artificial intelligence to complete an assignment in part or in whole unless approved by the classroom teacher, and unauthorized communication between students during an examination. The determination that a student has engaged in academic dishonesty shall be based on the judgment of the classroom teacher or another supervising professional employee, taking into consideration written materials, observation, or information from students, or the use of an artificial intelligence detection tool selected by the District.

PROPOSED REVISIONS

Curriculum Mastery

Promotion and course credit shall be based on mastery of the curriculum. Expectations and standards for promotion shall be established for each grade level, content area, and course and shall be coordinated with compensatory, intensive, and/or accelerated services. [See EHBC] The District shall comply with applicable state and federal requirements when determining methods for students with disabilities [see FB] or students who are English language learners [see EHBE and EKBA] to demonstrate mastery of the curriculum.

Students Receiving Special Education Services

Any modified promotion standards for a student receiving special education services shall be determined by the student's admission, review, and dismissal (ARD) committee and documented in the student's individualized education program (IEP). [See EHBA series and EKB]

Standards for Mastery

In addition to the factors in law that must be considered for promotion, mastery shall be determined as follows:

1. Course assignments and unit evaluation shall be used to determine student grades in a subject. An average of 70 or ~~higher~~ above on a scale of 100 based on course-level, grade-level standards (essential knowledge and skills) shall be considered a passing grade.

2. Mastery of the skills necessary for success at the next level shall be validated by assessments that may either be incorporated into unit or final exams or may be administered separately. Mastery of at least 70 percent of the objectives shall be required.

Grades 1-8

In grades 1-8, promotion to the next grade level shall be based on an overall average of 70 ~~on a scale of 100 based on course-level, grade-level standards (essential knowledge and skills)~~or above for all subject areas, a grade of 70 or above in language arts and mathematics, and ~~a grade of 70 or above in~~ either science or social studies.

Grades 9-12

Grade-level advancement for students in grades 9-12 shall be earned by course credits. [See EI]

PROPOSED REVISIONS

Persons Age 21 and Over

The District shall not admit into its public schools any person age 21 or over unless otherwise required by law.

~~The District shall admit persons who are at least age 21 and under age 26 for the purpose of completing the requirements for a high school diploma.~~

Registration Forms

The student's parent, legal guardian, or other person having lawful control shall annually complete registration forms. A student who has reached age 18 shall be permitted to complete these forms.

Proof of Residency

In accordance with administrative regulations, the parent, guardian, or other person having lawful control of the student under order of a court shall present proof of residency. The District may investigate stated residency as necessary.

Minor Living Apart

Person Standing in Parental Relation

A minor student residing in the District but whose parent, guardian, or other person having lawful control under a court order does not reside in the District shall present a power of attorney or an authorization agreement as provided in Chapter 34 of the Family Code assigning responsibility for the student in all school-related matters to an adult resident of the District.

Misconduct

A minor student living apart who has engaged in misconduct that results in any of the consequences found in Education Code 25.001(d) shall not be permitted to attend a District school.

Exceptions

Based on an individual student's circumstance, the Superintendent shall have authority to grant exceptions to the requirement for a power of attorney or authorization agreement and to the exclusion for misconduct.

Extracurricular Activities

The Superintendent shall determine whether a minor student living apart is present in the District for the primary purpose of participating in extracurricular activities.

Students Not Enrolled

A student enrolled in another public school district or a private school, including a homeschool, shall not be eligible for concurrent enrollment in the District nor for participation in curricular or extracurricular activities, except as required by law. [See EEL and FM]

Nonresident Student in Grandparent's After-School Care

The parent and grandparent of a nonresident student requesting admission under Education Code 25.001(b)(9) shall provide to the Superintendent the required information on the grandparent's residency and complete a form provided by the District describing the extent of after-school care to be provided by the grandparent.

The Superintendent shall have authority to approve or deny such admissions requests in accordance with criteria approved by the Board.

"Accredited" Defined

For the purposes of this policy, "accredited" shall be defined as accreditation by TEA, an equivalent agency from another state, or an accrediting association recognized by the commissioner of education.

Grade-Level Placement

Accredited Schools

The parent, guardian, or other person having lawful control of a student enrolling in a District school from an accredited public, private, or parochial school shall provide evidence of the prior schooling outside the District. The student shall be placed initially at the grade level reached elsewhere, pending observation by the classroom teacher, guidance personnel, and the principal. On the basis of these observations and results of tests that may be administered by appropriate District personnel, the principal shall determine the final grade placement.

Nonaccredited Schools

A student enrolling in a District school from a nonaccredited public, private, or parochial school, including a homeschool, shall be placed initially at the discretion of the principal, pending observation by classroom teachers, guidance personnel, and the principal. Criteria for placement may include:

1. Scores on achievement tests, which may be administered by appropriate District personnel.
2. Recommendation of the sending school.
3. Prior academic record.
4. Chronological age and social and emotional development of the student.
5. Other criteria deemed appropriate by the principal.

Transfer of Credit

Accredited Texas Public Schools

Credit toward state graduation requirements earned in an accredited public school district in Texas shall be transferable and recognized by the District.

Other Accredited or Nonaccredited Schools

Before recognizing credit in a course earned in an accredited nonpublic school, an accredited school outside of Texas, or a nonaccredited school, appropriate personnel shall evaluate a student's records and transcript. The District may require the student to demonstrate mastery of the content or use alternative methods to verify course content for the award of credit.

Transition Assistance

In accordance with law, when a student who is identified as homeless or in substitute care enrolls in the District, the District shall assess the student's available records and other relevant information

to ensure credit, including proportionate credit, is awarded appropriately for all subjects and courses taken prior to enrollment.

[See EI]

Withdrawal

A parent or guardian wishing to withdraw a minor student shall present a signed statement that includes the reason for the withdrawal. A student who is 18 or older may submit a withdrawal statement without a parent's or guardian's signature.

[For District withdrawal of students no longer in attendance, see FEA(LOCAL).]

PROPOSED REVISIONS

Authority

The Superintendent ~~or designee~~ is authorized to accept or reject any transfer requests, provided that such action is without regard to race, religion, color, sex, disability, national origin, or ancestral language.

A resident student who becomes a nonresident during the course of a semester shall be permitted to continue in attendance for the remainder of the semester.

Transfer Requests

A nonresident student wishing to transfer into the District shall file an application for transfer each school year with the Superintendent or designee. Transfers shall be granted for one regular school year at a time.

Factors

In approving transfers, the Superintendent shall consider availability of space and instructional staff and the student's disciplinary history and attendance records.

Transfer Agreements

A transfer student shall be notified in the written transfer agreement that he or she must follow all rules and regulations of the District. Violation of the terms of the agreement may result in a transfer request not being approved the following year.

~~In approving or denying an interdistrict transfer, the Superintendent or designee shall consider the student's disciplinary history and attendance records, as well as:~~

- ~~Building capacity;~~
- ~~Enrollment levels at each campus, in each grade level, and in each program;~~
- ~~Growth projections;~~
- ~~Teacher allocations;~~
- ~~Allocations of other professional staff; and~~
- ~~Other criteria applicable to individual campuses.~~

~~**Revocation of Transfer**~~

~~A transfer student shall be notified in the written transfer agreement that he or she must follow all rules and regulations of the District. Violation of the terms of the agreement may result in a transfer request not being approved the following year.~~

~~The effective date of the revocation shall be set in accordance with the written transfer agreement. Written notification of any interdistrict transfer revocation shall be sent to the district of residence.~~

Tuition

If the District charges tuition, the amount shall be set by the Board, within statutory limits.

Waivers	The Board may waive tuition for a student based on financial hardship upon written application by the student, parent, or guardian. [See FP]
Nonpayment	The District may initiate withdrawal of students whose tuition payments are delinquent.
Transportation	The District shall not provide transportation for interdistrict transfer students, except as required by law.
~~**UIL Eligibility**~~	~~Eligibility for participation in UIL activities shall be determined in accordance with applicable UIL rules.~~
Appeals	Any appeals shall be made in accordance with FNG(LOCAL) and GF(LOCAL), as appropriate.

PROPOSED REVISIONS

A student shall be assigned to a school in the ~~feeder pattern that serves the~~ attendance ~~zone~~ area in which he or she resides.

~~Students Who Engage in Bullying~~

~~The Board or the Board's designee may transfer a student who has engaged in bullying in accordance with FDB(LEGAL) and FFI.~~

Class Changes

The campus principal shall be authorized to investigate and approve the transfer of a student from one classroom to another on that campus.

Transfers Between Schools

The Superintendent shall be authorized to investigate and approve or deny transfers between schools~~, provided that such action is without regard to race, religion, color, sex, disability, national origin, or ancestral language~~.

~~Transfer Requests~~

~~A resident student wishing to transfer to another school within the District shall file an application for transfer with the Superintendent or designee.~~

~~*Factors*~~

~~Approval or denial of a request for an intradistrict transfer shall be based on consideration of the student's disciplinary history and attendance records, as well as:~~

- ~~Building capacity;~~
- ~~Enrollment levels at each campus, in each grade level, and in each program;~~
- ~~Growth projections;~~
- ~~Teacher allocations;~~
- ~~Allocations of other professional staff; and~~
- ~~Other criteria applicable to individual campuses.~~

~~Renewal of Transfer~~

~~Once the District has approved a student's transfer request, the approval shall automatically renew each year. The student shall be allowed to continue enrollment at the receiving school until he or she has completed the highest grade level offered at that school, except as provided at REVOCATION OF TRANSFER, below.~~

~~Change of Residence Within the District~~

~~A student who moves from one attendance zone to another within the District during a school year shall be granted, upon request, an intradistrict transfer to complete that school year at the same school before being reassigned to the school serving the attendance zone of the new residence. However, the student and parent shall be required to complete a written intradistrict transfer agreement, and the REVOCATION OF TRANSFER provisions of this policy shall apply.~~

~~Changes in Attendance Zones~~

~~When the Board approves changes to District attendance zone boundaries, students shall attend the schools specified. Exceptions shall be granted as follows:~~

1. ~~A student attending a high school at the time of zone boundary changes shall be granted, upon request, an intradistrict transfer to continue enrollment at that high school until graduation.~~

2. ~~If the school year is in progress at the time of the zone boundary changes, an elementary or middle school student shall be granted, upon request, an intradistrict transfer to complete the current year at that same school.~~

~~Revocation of Transfer~~

~~An intradistrict transfer student shall be notified in the written intradistrict transfer agreement that he or she must follow all rules and regulations of the District, including those for student conduct and attendance, and that violation of the District's rules and regulations may result in revocation of the intradistrict transfer agreement. The effective date of the revocation will be set in accordance with the written transfer agreement.~~

Note: For the transfer of a student who is the victim of bullying or who engaged in bullying, see FDB(LEGAL). For the transfer of a student who attends a persistently dangerous school, becomes a victim of a violent criminal offense, or becomes a victim of sexual assault, see FDE.

DELETE POLICY

Leaving Campus During Lunch Time

No student shall be permitted to leave campus during lunch except as approved by the principal, on a case-by-case basis in response to a parent's written request.

All Students

Students who leave campus during lunch or at any other time without administrative approval shall be subject to disciplinary action in accordance with the Student Code of Conduct.

PROPOSED REVISIONS

The District shall support the general wellness of all students by implementing ~~measureable~~measurable goals to promote sound nutrition, physical activity, and student health and to reduce childhood obesity.

[See EHAA for information regarding the District's coordinated school health program.]

Development, Implementation, and Review of Guidelines and Goals

The local school health advisory council (SHAC), on behalf of the District, shall review and consider evidence-based strategies and techniques and shall develop nutrition guidelines and wellness goals as required by law. In the development, implementation, and review of these guidelines and goals, the SHAC shall permit participation by parents, students, representatives of the District's food service provider, physical education teachers, school health professionals, members of the Board, school administrators, and members of the public.

[See BDF for required membership of the SHAC.]

Wellness Plan

The SHAC shall develop a wellness plan to implement the District's nutrition guidelines and wellness goals. The wellness plan shall, at a minimum, address:

1. Strategies for soliciting involvement by and input from persons interested in the wellness plan and policy;
2. Objectives, benchmarks, and activities for implementing the wellness goals;
3. Methods for measuring implementation of the wellness goals;
4. The District's standards for foods and beverages provided, but not sold, to students during the school day on a school campus; and
5. The manner of communicating to the public applicable information about the District's wellness policy and plan.

The SHAC shall review and revise the plan on a regular basis and recommend revisions to the wellness policy when necessary.

Nutrition Guidelines

Foods and Beverages Sold

The District's nutrition guidelines for reimbursable school meals and all other foods and beverages sold or marketed to students during the school day shall be designed to promote student health and reduce childhood obesity and shall be at least as restrictive as federal regulations and guidance, except when the District allows an exemption for fundraising activities as authorized by state and federal rules. [See CO and FJ]

Foods and Beverages Provided

The District shall establish standards for all foods and beverages provided, but not sold, to students during the school day. These standards shall be addressed in the District's wellness plan.

Wellness Goals

Nutrition Promotion and Education

The District shall implement, in accordance with law, a coordinated school health program with a nutrition education component. [See EHAA] The District's nutrition promotion activities shall encourage participation in the National School Lunch Program, the School Breakfast Program, and any other supplemental food and nutrition programs offered by the District.

The District establishes the following goal~~s~~ for nutrition promotion: The District's food service staff, teachers, and other District personnel shall consistently promote healthy nutrition messages in cafeterias, classrooms, and other appropriate settings.

~~1. The District's food service staff, teachers, and other District personnel shall consistently promote healthy nutrition messages in cafeterias, classrooms, and other appropriate settings.~~

~~2. The District shall share educational nutrition information with families and the general public to promote healthy nutrition choices and positively influence the health of students.~~

The District establishes the following goal~~s~~ for nutrition education: The District shall deliver nutrition education that fosters the adoption and maintenance of healthy eating behaviors.

~~1. The District shall deliver nutrition education that fosters the adoption and maintenance of healthy eating behaviors.~~

~~2. The District shall make nutrition education a District-wide priority and shall integrate nutrition education into other areas of the curriculum, as appropriate.~~

Physical Activity

The District shall implement, in accordance with law, a coordinated health program with physical education and physical activity components and shall offer at least the required amount of physical activity for all grades. [See BDF, EHAA, EHAB, and EHAC]

The District establishes the following goal~~s~~ for physical activity: The District shall make appropriate before-school and after-school physical activity programs available and shall encourage students to participate.

~~1. The District shall provide an environment that fosters safe, enjoyable, and developmentally appropriate fitness activities for all students, including those who are not participating in physical education classes or competitive sports.~~

~~2. The District shall provide appropriate staff development and encourage teachers to integrate physical activity into the academic curriculum where appropriate.~~

~~3. The District shall make appropriate before-school and after-school physical activity programs available and shall encourage students to participate.~~

~~4. The District shall encourage students, parents, staff, and community members to use the District's recreational facilities, such as tracks, playgrounds, and the like, that are available outside of the school day. [See GKD]~~

Other School-Based Activities

The District establishes the following goal~~s~~ to create an environment conducive to healthful eating and physical activity and to promote and express a consistent wellness message through other school-based activities: The District shall allow sufficient time for students to eat meals in cafeteria facilities that are clean, safe, and comfortable.

~~1. The District shall allow sufficient time for students to eat meals in cafeteria facilities that are clean, safe, and comfortable.~~

~~2. The District shall promote wellness for students and their families at suitable District and campus activities.~~

~~3. The District shall promote employee wellness activities and involvement at suitable District and campus activities.~~

Implementation

The District's ~~health and wellness~~school health advisory council coordinator shall oversee the implementation of this policy and the development and implementation of the wellness plan and appropriate administrative procedures.

Evaluation

The District shall comply with federal requirements for evaluating this policy and the wellness plan.

Public Notification

The District shall annually inform and update the public about the content and implementation of the wellness policy, including posting on its website copies of the wellness policy, the wellness plan, and the required implementation assessment.

Records Retention

The District shall retain all the required records associated with the wellness policy, in accordance with law and the District's records management program. [See CPC and FFA(LEGAL)]

PROPOSED REVISIONS

~~**Tuberculosis Screening**~~	~~All students entering District schools for the first time in any grade shall provide evidence of having received a tuberculosis screening in accordance with regional and county health department guidelines.~~
Required Medical Clearance	Prior to participating in a designated University Interscholastic League (UIL) program or other District extracurricular program identified by the Superintendent, a student shall undergo a physical examination annually and shall submit a statement from an authorized health-care provider indicating that the student has been examined and medically cleared to participate in the program.
Additional Screening	The District may provide additional screening as District and community resources permit.
Referrals	Parents of students identified through any screening programs as needing treatment or further examination shall be advised of the need and referred to appropriate health agencies.
Notice of Lice	A school nurse or administrator who discovers or becomes aware that a child enrolled in a District elementary school has lice shall provide written or electronic notice to parents within the time frames prescribed in law.

PROPOSED REVISIONS

No employee shall give any student prescription medication, nonprescription medication, herbal substances, anabolic steroids, or dietary supplements of any type, except as authorized by this or other District policy.

Medication Provided by Parent

The Superintendent shall designate the employees who are authorized to administer medication that has been provided by a student's parent. An authorized employee is permitted to administer the following medication in accordance with administrative regulations:

1. Prescription medication in accordance with legal requirements.
2. Nonprescription medication, upon a parent's written request and with a physician's written orders, when properly labeled and in the original container.
3. Herbal substances or dietary supplements provided by the parent and only if required by the individualized education program or Section 504 plan for a student with disabilities.

Medication Provided by District

Except as required by law and provided by this policy, the District shall not purchase medication to administer to a student.

Athletic Program

The District shall purchase nonprescription medication that may be used to prevent or treat illness or injury in the District's athletic program. Only a licensed athletic trainer or a physician licensed to practice medicine in the state of Texas may administer this medication and may do so only if:

1. The District has prior written consent for medication to be administered [see Medical Treatment, below]; and
2. The administration of a medication by an athletic trainer is in accordance with a standing order or procedures approved by a physician licensed to practice medicine in the state of Texas.

Epinephrine

The District authorizes school personnel who have agreed in writing and been adequately trained to administer an unassigned epinephrine auto-injector in accordance with law and this policy. Administration of epinephrine shall only be permitted when an authorized and trained individual reasonably believes a person is experiencing anaphylaxis.

On Campus

Authorized and trained individuals may administer an unassigned epinephrine auto-injector at any time to a person experiencing anaphylaxis on a school campus.

	The District shall ensure that at each campus a sufficient number of authorized individuals are trained to administer epinephrine so that at least one trained individual is present on campus during all hours the campus is open. In accordance with state rules, the campus shall be considered open for this purpose during regular on-campus school hours and whenever school personnel are physically on site for school-sponsored activities.
~~*Off Campus*~~	~~Authorized and trained individuals may administer an unassigned epinephrine auto-injector to a person experiencing anaphylaxis at an off-campus school event or while in transit to or from a school event when an unassigned epinephrine auto-injector is available.~~
Maintenance, Availability, and Training	The Superintendent shall develop administrative regulations designating a coordinator to manage policy implementation and addressing annual training of authorized individuals in accordance with law; procedures for auto-injector use; and acquisition or purchase, maintenance, expiration, disposal, and availability of unassigned epinephrine auto-injectors at each campus~~, at off-campus events, and while in transit to and from a school event~~.
Notice to Parents	In accordance with law, the District shall provide notice of the policy to parents regarding the epinephrine program, including notice of any change to or discontinuation of this program.
Opioid Antagonist	This provision shall be applicable to every campus.
On Campus	The District authorizes school personnel who have been adequately trained to administer an opioid antagonist in accordance with law and this policy. Administration of an opioid antagonist shall only be permitted when an authorized and trained individual reasonably believes a person is experiencing an opioid-related overdose. Each applicable campus shall have at least one individual who is authorized and trained to administer an opioid antagonist present during regular school hours.
Maintenance, Availability, Training, and Reporting	Each applicable campus shall have at least two unused, unexpired opioid antagonist doses available. All opioid antagonists shall be stored in a secure location and shall be easily accessible by individuals who are authorized and trained to administer an opioid antagonist. The Superintendent shall develop administrative regulations addressing acquisition, maintenance, expiration, and disposal of opioid antagonists in the District, as well as reporting, employee training, and emergency notification requirements.

Psychotropics

Except as permitted by law, an employee shall not:

1. Recommend to a student or a parent that the student use a psychotropic drug;
2. Suggest a particular diagnosis; or
3. Exclude the student from a class or a school-related activity because of the parent's refusal to consent to psychiatric evaluation or examination or treatment of the student.

Medical Treatment

A student's parent, legal guardian, or other person having lawful control shall annually complete and sign a form that provides emergency information and addresses authorization regarding medical treatment. A student who has reached age 18 shall be permitted to complete this form.

The District shall seek appropriate emergency care for a student as required or deemed necessary.

PROPOSED REVISIONS

(See pages 1 & 5)

Comprehensive System

The Superintendent shall develop and maintain a comprehensive system of student records and reports dealing with all facets of the school program operation and shall ensure through reasonable procedures that records are accessed by authorized persons only, as allowed by this policy. These data and records shall be stored in a safe and secure manner and shall be conveniently retrievable for use by authorized school officials.

Cumulative Record

A cumulative record shall be maintained for each student from entrance into District schools until withdrawal or graduation from the District.

This record shall move with the student from school to school and be maintained at the school where currently enrolled until graduation or withdrawal. Records for nonenrolled students shall be retained for the period of time required by law. No permanent records may be destroyed without explicit permission from the Superintendent. [See CPC]

Custodian of Records

The ~~Superintendent~~ principal is custodian of all records for currently enrolled students. The ~~Superintendent~~ director of student operations is the custodian of records for students who have withdrawn or graduated. The student handbook made available to all students and parents shall contain a listing of the addresses of District schools, as well as the Superintendent's business address.

Types of Education Records

The record custodian shall be responsible for the education records of the District. These records may include:

1. Admissions data, personal and family data, including certification of date of birth.
2. Standardized test data, including intelligence, aptitude, interest, personality, and social adjustment ratings.
3. All achievement records, as determined by tests, recorded grades, and teacher evaluations.
4. All documentation regarding a student's testing history and any accelerated instruction he or she has received, including any accelerated education plan developed for the student.
5. Health services record, including:
    a. The results of any tuberculin tests required by the District.

b. The findings of screening or health appraisal programs the District conducts or provides. [See FFAA]

c. Immunization records. [See FFAB]

6. Attendance records.

7. Student questionnaires.

8. Records of teacher, school counselor, or administrative conferences with the student or pertaining to the student.

9. Verified reports of serious or recurrent behavior patterns.

10. Copies of correspondence with parents and others concerned with the student.

11. Records transferred from other districts in which the student was enrolled.

12. Records pertaining to participation in extracurricular activities.

13. Information relating to student participation in special programs.

14. Records of fees assessed and paid.

15. Records pertaining to student and parent complaints.

16. Other records that may contribute to an understanding of the student.

Access by Parents

The District shall make a student's records available to the student's parents, as permitted by law. The records custodian or designee shall use reasonable procedures to verify the requester's identity before disclosing student records containing personally identifiable information.

Records may be reviewed in person during regular school hours without charge upon written request to the records custodian. For in-person viewing, the records custodian or designee shall be available to explain the record and to answer questions. The confidential nature of the student's records shall be maintained at all times, and records to be viewed shall be restricted to use only in the Superintendent's, principal's, or school counselor's office, or other restricted area designated by the records custodian. The original copy of the record or any document contained in the cumulative record shall not be removed from the school.

Copies of records are available at a per copy cost, payable in advance. Copies of records must be requested in writing. Parents

may be denied copies of records if they fail to follow proper procedures or pay the copying charge. If the student qualifies for free or reduced-price lunches and the parents are unable to view the records during regular school hours, upon written request of a parent, one copy of the record shall be provided at no charge.

A parent may continue to have access to his or her child's records under specific circumstances after the student has attained 18 years of age or is attending an institution of postsecondary education. [See FL(LEGAL)]

Access by School Officials

A school official shall be allowed access to student records if he or she has a legitimate educational interest in the records.

For the purposes of this policy, "school officials" shall include:

1. An employee, Board member, or agent of the District, including an attorney, a consultant, a contractor, a volunteer, a school resource officer, and any outside service provider used by the District to perform institutional services.
2. An employee of a cooperative of which the District is a member or of a facility with which the District contracts for placement of students with disabilities.
3. A contractor retained by a cooperative of which the District is a member or by a facility with which the District contracts for placement of students with disabilities.
4. A parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.
5. A person appointed to serve on a team to support the District's safe and supportive school program.

All contractors provided with student records shall follow the same rules as employees concerning privacy of the records and shall return the records upon completion of the assignment.

A school official has a "legitimate educational interest" in a student's records when he or she is:

1. Working with the student;
2. Considering disciplinary or academic actions, the student's case, or an individualized education program for a student with disabilities;
3. Compiling statistical data;

4. Reviewing an education record to fulfill the official's professional responsibility; or

5. Investigating or evaluating programs.

Transcripts and Transfers of Records

The District may request transcripts from previously attended schools for students transferring into District schools; however, the ultimate responsibility for obtaining transcripts from sending schools rests with the parent or student, if 18 or older.

For purposes of a student's enrollment or transfer, the District shall promptly forward in accordance with the timeline provided in law education records upon request to officials of other schools or school systems in which the student intends to enroll or enrolls. [See FD(LEGAL), Required Documentation] The District may return an education record to the school identified as the source of the record.

Records Responsibility for Students in Special Education

The director of special education shall be responsible for ensuring the confidentiality of any personally identifiable information in records of students in special education.

A current listing of names and positions of persons who have access to records of students in special education is maintained at the special education office.

Procedure to Amend Records

Within 15 District business days of the record custodian's receipt of a request to amend records, the District shall notify the parents in writing of its decision on the request and, if the request is denied, of their right to a hearing. If a hearing is requested, it shall be held within 10 District business days after the request is received.

Parents shall be notified in advance of the date, time, and place of the hearing. An administrator who is not responsible for the contested records and who does not have a direct interest in the outcome of the hearing shall conduct the hearing. The parents shall be given a full and fair opportunity to present evidence and, at their own expense, may be assisted or represented at the hearing.

The parents shall be notified of the decision in writing within 10 District business days of the hearing. The decision shall be based solely on the evidence presented at the hearing and shall include a summary of the evidence and reasons for the decision. If the decision is to deny the request, the parents shall be informed that they have 30 District business days within which to exercise their right to place in the record a statement commenting on the contested information and/or stating any reason for disagreeing with the District's decision.

Directory Information

Directory information for District students has been classified into two separate categories:

1. Items for use only for school-sponsored purposes; and
2. Items for all other purposes.

School-Sponsored Purposes

For the following school-sponsored purposes — all District publications and announcements — directory information shall include student name, photograph, date of birth, honors and awards, dates of attendance, grade level, most recent school previously attended, enrollment status, participation in officially recognized activities and sports, and weight and height of members of athletic teams~~, and student identification numbers or identifiers that cannot be used alone to gain access to electronic education records~~.

All Other Purposes

For all other purposes, directory information shall include student name, honors and awards, grade level, enrollment status, participation in officially recognized activities and sports, and weight and height of members of athletic teams.

PROPOSED REVISIONS

Extracurricular Activity Absences

The District shall make no distinction between absences for UIL activities and absences for other extracurricular activities approved by the Board. ~~A student shall be allowed in a school year a maximum of ten extracurricular absences not related to post-district competition; however, a student shall be allowed unlimited absences for participation in post-district, state, or national competition.~~

The District shall not limit an eligible student's absences related to participation in extracurricular activities. [See FM(LEGAL)]

[For eligibility of a student enrolled in another public school district or of a private school student, including a homeschool student, to participate in extracurricular activities, see FD(LOCAL).]

~~**Exemptions from 'No Pass, No Play' Rule**~~

~~The principal shall grant an exemption to the 'no pass, no play' rule that would normally require a suspension from extracurricular activities when a student receives a grade below 70 in a course or subject under the following conditions:~~

~~1. The class has been identified as an honors course, in accordance with state rules;~~

~~2. The student's grade in the course is not below 65;~~

~~3. The student submits to the principal a written request for the exemption on a form provided by the District; and~~

~~4. No other exemption from the 'no pass, no play' rule has been approved for the student in the same semester.~~

Use of District Facilities

School-sponsored student groups may use District facilities with prior approval of the appropriate administrator. Other student groups may use District facilities in accordance with policy FNAB.

~~**School Colors and Mascots**~~

~~The Board shall approve for each individual campus a nickname, mascot, insignia, or emblem, as well as official school colors, as applicable.~~

PROPOSED REVISIONS

Transportation for Student Travel

Students who participate in school-sponsored trips shall be required to use transportation provided by the District to and from the event, except as otherwise permitted in administrative regulations.

In-State Overnight Trips

Any in-state overnight trips taken by student organizations and other student groups shall require approval from the Superintendent ~~or designee~~.

Out-of-State Trips

Any out-of-state trips taken by student organizations or other student groups shall require approval from the Superintendent ~~or designee~~.

Out-of-Country Trips ~~(or Alaska or Hawaii)~~

Any trips out of the country or beyond the contiguous 48 states shall require approval from the Board.

PROPOSED REVISIONS

Commencement Exercises

A student who has satisfactorily completed all coursework requirements for graduation but has failed to meet applicable state-testing requirements shall be allowed to participate in commencement activities and ceremonies. [See EI, EIF]

~~Dress for the Ceremony~~

~~The Superintendent shall develop and enforce for the graduation ceremony stricter dress and grooming standards than the District's dress code standards for a school day and may condition participation in the graduation ceremony on adherence to those standards.~~

~~During preparations for the graduation ceremony, each student shall be informed in writing of the applicable dress and grooming standards. Each student and his or her parent shall sign and return to the principal a statement that they have read the dress and grooming standards and agree to them as a condition of participation in the graduation ceremony.~~

~~A student who violates the dress and grooming standards shall be removed from participation in the graduation ceremony.~~

Awards of Diplomas

Exceptions

During the graduation exercises, Board members shall award the diplomas or certificates of coursework completion to the students participating in the ceremony; however, any of the following shall be permitted to award a diploma or certificate of coursework completion to his or her child or grandchild participating in the ceremony:

1. Former Board member or the surviving spouse of a deceased former Board member;
2. Superintendent;
3. ~~Assistant~~ Associate superintendent; ~~or~~
~~3.~~4. Deputy superintendent;
5. High school principal or
~~4.~~6. Other person designated by the Board.

PROPOSED REVISIONS

Purpose

The District's dress code is established to instill discipline, prevent disruption, avoid safety hazards, and teach respect for authority.

General Guidelines

Students shall be dressed and groomed in a manner that is clean and neat and that will not be a health or safety hazard to themselves or others. The District prohibits any clothing or grooming that in the principal's judgment may reasonably be expected to cause disruption of or interference with normal school operations.

The District prohibits pictures, emblems, or writings on clothing that:

1. Are lewd, offensive, vulgar, or obscene.
2. Advertise or depict tobacco products, alcoholic beverages, drugs, or any other substance prohibited under FNCF(LEGAL).

The student and parent may determine the student's personal dress and grooming standards, provided that they comply with the general guidelines set out above and with the student dress code and any uniform rules outlined in the student handbook.

Extracurricular Activities

The principal, in cooperation with the sponsor, coach, or other person in charge of an extracurricular activity, may regulate the dress and grooming of students who participate in the activity. Students who violate dress and grooming standards established for such an activity may be removed or excluded from the activity for a period determined by the principal or sponsor and may be subject to other disciplinary action, as specified in the Student Code of Conduct. [See FO series]

School Uniforms

With prior Board approval, a campus shall be permitted to implement a mandatory school uniform program in accordance with administrative regulations.

Upon adoption of a mandatory school uniform program, the parent or guardian shall be notified at least 90 days prior to implementation of the program. [See FNCA(LEGAL)]

~~The Superintendent or designee shall establish administrative regulations allowing each campus to decide whether to implement a mandatory school uniform program with prior Board approval. A campus that implements a mandatory school uniform program shall do so in accordance with administrative regulations.~~

~~In accordance with law, parents and students shall be notified of the adoption of the uniform rule or any change in a uniform rule at~~

~~least 90 days prior to the effective date of such rule or change. [See FNCA(LEGAL)]~~

Funding

The Superintendent shall maintain federal and local funds for the clothing needs of students who cannot afford to purchase the uniforms. Any funds donated for the purpose of purchasing uniforms shall be used only for that purpose. [See CDC]

Exemptions

In accordance with administrative regulations, a parent or guardian may request that their student be exempted from the mandatory school uniform program.

~~In accordance with law, a parent or guardian may request that his or her child be exempted from the uniform requirement. In order to exercise this option, the parent or guardian shall submit a written statement of a religious or philosophical objection to the uniform requirement. The Superintendent shall establish procedures and forms for this purpose.~~

Non-Discrimination

District and campus personnel shall not discriminate against any student whose parent or guardian submits a request for an exemption to the uniform rules because of religious or philosophical objections.

PROPOSED REVISIONS

(See pages 2 & 6)

Complaints

In this policy, the terms “complaint” and “grievance” shall have the same meaning.

Other Complaint Processes

Student or parent complaints shall be filed in accordance with this policy, except as required by the policies listed below. Some of these policies require appeals to be submitted in accordance with FNG after the relevant complaint process:

1. Complaints alleging discrimination or harassment based on race, color, religion, sex, gender, national origin, age, or disability shall be submitted in accordance with the FFH series.
2. Complaints concerning dating violence shall be submitted in accordance with the FFH series.
3. Complaints concerning retaliation related to discrimination and harassment shall be submitted in accordance with the FFH series.
4. Complaints concerning bullying or retaliation related to bullying shall be submitted in accordance with FFI.
5. Complaints concerning failure to award credit or a final grade on the basis of attendance shall be submitted in accordance with FEC.
6. Complaints concerning expulsion shall be submitted in accordance with FOD and the Student Code of Conduct.
7. Complaints concerning any final decisions of the gifted and talented selection committee regarding selection for or exit from the gifted program shall be submitted in accordance with EHBB.
8. Complaints within the scope of Section 504, including complaints concerning identification, evaluation, or educational placement of a student with a disability, shall be submitted in accordance with FB and the procedural safeguards handbook.
9. Complaints within the scope of the Individuals with Disabilities Education Act, including complaints concerning identification, evaluation, educational placement, or discipline of a student with a disability, shall be submitted in accordance with EHBAE, FOF, and the procedural safeguards handbook provided to parents of all students referred to special education.

10. Complaints concerning instructional resources shall be submitted in accordance with the EF series.

11. Complaints concerning a commissioned peace officer who is an employee of the District shall be submitted in accordance with the CKE series.

12. Complaints concerning intradistrict transfers or campus assignment shall be submitted in accordance with FDB.

13. Complaints concerning admission, placement, or services provided for a homeless student shall be submitted in accordance with FDC.

14. Complaints concerning disputes regarding a student's eligibility for free or reduced-priced meal programs shall be submitted in accordance with COB.

Complaints regarding refusal of entry to or ejection from District property based on Education Code 37.105 shall be filed in accordance with this policy. However, the timelines shall be adjusted as necessary to permit the complainant to address the Board in person within 90 calendar days of filing the initial complaint, unless the complaint is resolved before the Board considers it. [See GKA(LEGAL)]

Extracurricular Activity Complaints

For a complaint concerning a student's participation in an extracurricular activity that does not involve a violation of a right guaranteed by Education Code Chapter 26, the Level Two decision is final and may not be appealed to the Board.

Notice to Students and Parents

The District shall inform students and parents of this policy through appropriate District publications.

Guiding Principles

Informal Process

The Board encourages students and parents to discuss their concerns with the appropriate teacher, principal, or other campus administrator who has the authority to address the concerns. Concerns should be expressed as soon as possible to allow early resolution at the lowest possible administrative level.

Informal resolution shall be encouraged but shall not extend any deadlines in this policy, except by mutual written consent.

Formal Process

A student or parent may initiate the formal process described below by timely filing a written complaint form.

Even after initiating the formal complaint process, students and parents are encouraged to seek informal resolution of their concerns. A student or parent whose concerns are resolved may withdraw a formal complaint at any time.

The process described in this policy shall not be construed to create new or additional rights beyond those granted by law or Board policy, nor to require a full evidentiary hearing or "mini-trial" at any level.

Freedom from Retaliation

Neither the Board nor any District employee shall unlawfully retaliate against any student or parent for bringing a concern or complaint.

General Provisions

Filing

Complaint forms and appeal notices may be filed by hand-delivery, by electronic communication, including email and fax, or by U.S. Mail. Hand-delivered filings shall be timely filed if received by the appropriate administrator or designee by the close of business on the deadline. Filings submitted by electronic communication shall be timely filed if they are received by the close of business on the deadline, as indicated by the date/time shown on the electronic communication. Mail filings shall be timely filed if they are postmarked by U.S. Mail on or before the deadline and received by the appropriate administrator or designated representative no more than three days after the deadline.

Scheduling Conferences

The District shall make reasonable attempts to schedule conferences at a mutually agreeable time. If a student or parent fails to appear at a scheduled conference, the District may hold the conference and issue a decision in the student's or parent's absence.

Response

At Levels One and Two, "response" shall mean a written communication to the student or parent from the appropriate administrator. Responses may be hand-delivered, sent by electronic communication to the student's or parent's email address of record, or sent by U.S. Mail to the student's or parent's mailing address of record. Mailed responses shall be timely if they are postmarked by U.S. Mail on or before the deadline.

Days

"Days" shall mean District business days, unless otherwise noted. In calculating timelines under this policy, the day a document is filed is "day zero." The following business day is "day one."

Representative

"Representative" shall mean any person who or organization that is designated by the student or parent to represent the student or parent in the complaint process. A student may be represented by an adult at any level of the complaint.

The student or parent may designate a representative through written notice to the District at any level of this process. If the student or parent designates a representative with fewer than three days' notice to the District before a scheduled conference or hearing, the District may reschedule the conference or hearing to a later date, if

desired, in order to include the District's counsel. The District may be represented by counsel at any level of the process.

Consolidating Complaints

Complaints arising out of an event or a series of related events shall be addressed in one complaint. A student or parent shall not file separate or serial complaints arising from any event or series of events that have been or could have been addressed in a previous complaint.

Untimely Filings

All time limits shall be strictly followed unless modified by mutual written consent.

If a complaint form or appeal notice is not timely filed, the complaint may be dismissed, on written notice to the student or parent, at any point during the complaint process. The student or parent may appeal the dismissal by seeking review in writing within ten days from the date of the written dismissal notice, starting at the level at which the complaint was dismissed. Such appeal shall be limited to the issue of timeliness.

Costs Incurred

Each party shall pay its own costs incurred in the course of the complaint.

Complaint and Appeal Forms

Complaints and appeals under this policy shall be submitted in writing on a form provided by the District.

Copies of any documents that support the complaint should be attached to the complaint form. If the student or parent does not have copies of these documents, copies may be presented at the Level One conference. After the Level One conference, no new documents may be submitted by the student or parent unless the student or parent did not know the documents existed before the Level One conference.

A complaint or appeal form that is incomplete in any material aspect may be dismissed but may be refiled with all the required information if the refiling is within the designated time for filing.

Level One

Complaint forms must be filed:

1. Within 15 days of the date the student or parent first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance; and
2. With the lowest level administrator who has the authority to remedy the alleged problem.

   In most circumstances, students and parents shall file Level One complaints with the campus principal.

If the only administrator who has authority to remedy the alleged problem is the Superintendent or designee, the complaint may begin at Level Two following the procedure, including deadlines, for filing the complaint form at Level One.

If the complaint is not filed with the appropriate administrator, the receiving administrator must note the date and time the complaint form was received and immediately forward the complaint form to the appropriate administrator.

The appropriate administrator shall investigate as necessary and schedule a conference with the student or parent within ten days after receipt of the written complaint. The administrator may set reasonable time limits for the conference.

Absent extenuating circumstances, the administrator shall provide the student or parent a written response within ten days following the conference. The written response shall set forth the basis of the decision. In reaching a decision, the administrator may consider information provided at the Level One conference and any other relevant documents or information the administrator believes will help resolve the complaint.

Level Two

If the student or parent did not receive the relief requested at Level One or if the time for a response has expired, the student or parent may request a conference with the Superintendent or designee to appeal the Level One decision.

The appeal notice must be filed in writing, on a form provided by the District, within ten days of the date of the written Level One response or, if no response was received, within ten days of the Level One response deadline.

After receiving notice of the appeal, the Level One administrator shall prepare and forward a record of the Level One complaint to the Level Two administrator. The student or parent may request a copy of the Level One record.

The Level One record shall include:

1. The original complaint form and any attachments.
2. All other documents submitted by the student or parent at Level One.
3. The written response issued at Level One and any attachments.
4. All other documents relied upon by the Level One administrator in reaching the Level One decision.

The Superintendent or designee shall schedule a conference within ten days after the appeal notice is filed. The conference shall be limited to the issues and documents considered at Level One. At the conference, the student or parent may provide information concerning any documents or information relied upon by the administration for the Level One decision. The Superintendent or designee may set reasonable time limits for the conference.

The Superintendent or designee shall provide the student or parent a written response within ten days following the conference. The written response shall set forth the basis of the decision. In reaching a decision, the Superintendent or designee may consider the Level One record, information provided at the Level Two conference, and any other relevant documents or information the Superintendent or designee believes will help resolve the complaint.

Recordings of the Level One and Level Two conferences, if any, shall be maintained with the Level One and Level Two records.

Level Three

With the exception of complaints regarding extracurricular activities, described above, if~~I~~f the student or parent did not receive the relief requested at Level Two or if the time for a response has expired, the student or parent may appeal the decision to the Board.

The appeal notice must be filed in writing, on a form provided by the District, within ten days of the date of the written Level Two response or, if no response was received, within ten days of the Level Two response deadline.

The Superintendent or designee shall inform the student or parent of the date, time, and place of the Board meeting at which the complaint will be on the agenda for presentation to the Board.

The Superintendent or designee shall provide the Board the record of the Level Two appeal. The student or parent may request a copy of the Level Two record.

The Level Two record shall include:

1. The Level One record.
2. The notice of appeal from Level One to Level Two.
3. The written response issued at Level Two and any attachments.
4. All other documents relied upon by the administration in reaching the Level Two decision.

The appeal shall be limited to the issues and documents considered at Level Two, except that if at the Level Three hearing the administration intends to rely on evidence not included in the Level Two record, the administration shall provide the student or parent notice of the nature of the evidence at least three days before the hearing.

The District shall determine whether the complaint will be presented in open or closed meeting in accordance with the Texas Open Meetings Act and other applicable law. [See BE]

The presiding officer may set reasonable time limits and guidelines for the presentation, including an opportunity for the student or parent and administration to each make a presentation and provide rebuttal and an opportunity for questioning by the Board. The Board shall hear the complaint and may request that the administration provide an explanation for the decisions at the preceding levels.

In addition to any other record of the Board meeting required by law, the Board shall prepare a separate record of the Level Three presentation. The Level Three presentation, including the presentation by the student or parent or the student's representative, any presentation from the administration, and questions from the Board with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

The Board shall then consider the complaint. It may give notice of its decision orally or in writing at any time up to and including the next regularly scheduled Board meeting. If the Board does not make a decision regarding the complaint by the end of the next regularly scheduled meeting, the lack of a response by the Board upholds the administrative decision at Level Two.

PROPOSED REVISIONS

District-affiliated school-support organizations and booster organizations, and other parent groups, shall organize, fundraise or solicit donations, and function in a way that is consistent with the District's philosophy and objectives, Board policies, District administrative regulations, applicable UIL or other governing association guidelines, and financial and audit regulations. [See also CDC and CFC]

Before engaging in fundraising or soliciting gifts, an organization or group shall notify the principal or other appropriate administrator identified in administrative regulations. [See CDC(LOCAL) for District acceptance of gifts and solicitations.]

Use of District Facilities

District-affiliated school-support or booster organizations may use District facilities with prior approval of the appropriate administrator. Other parent groups may use District facilities in accordance with policy GKD.

~~**Requirements for Booster Organizations**~~

~~Each booster organization shall submit to the Superintendent or designee a list of officers and a statement of the purpose of the organization, as well as the organizational guidelines of the organization. The guidelines may include bylaws, a list of procedures, or a constitution. In addition, the organization shall submit a written statement giving consent for the District to review the organization's financial documents.~~

~~Each booster organization shall annually submit to the Superintendent or designee a statement of financial goals, including anticipated income and expenses, and the most recent income statement and balance sheet. Upon recommendation from the Superintendent or designee, the Board may at any time order a review of all funds and financial statements of the organization by the District's internal auditor.~~

~~In order to be recognized as a District-affiliated school-support or booster organization, an organization shall agree to comply with the following additional rules:~~

~~1. The Superintendent and the principal, as applicable, shall have the authority to veto any proposed action of the organization.~~

~~2. The organization shall have no authority to direct any District employee in any of his or her duties, nor any authority to guide, direct, or establish rules for any campus activity or student activity.~~

~~3. All meetings of the organization shall be open to the public.~~

~~4. All District residents who meet criteria detailed in the organization's guidelines shall be eligible for membership in the organization.~~

~~5. The election of the organization's officers shall be conducted in a manner that allows any eligible person to be nominated for an office.~~

~~6. The organization may recommend a use for funds it donates to the District; however, the Superintendent or the principal, as applicable, shall have discretion in expenditure of all donated funds. [See CDC]~~

~~No donation from a booster organization shall be used to alter or modify any District-owned property or facility without prior approval from the Superintendent or designee.~~

~~Upon recommendation from the Superintendent, the Board may cease to recognize and may withdraw affiliation with any booster organization that, in the opinion of the Board, does not adhere to applicable policies and administrative regulations. In the event of such Board action, any privileges afforded to the organization as a District-affiliated organization shall cease. [See CY and GKD]~~

PROPOSED REVISIONS

The District has established a limited open forum for nonschool use of District facilities in accordance with this policy.

The District shall provide equal access to youth groups designated in federal law, including the Boy Scouts, as it provides to other nonschool users of District facilities. [See Patriotic Societies in GKD(LEGAL)]

Scope of Use

The District shall permit nonschool use of designated District facilities for educational, recreational, civic, or social activities when these activities do not conflict with school use or with this policy.

Approval shall not be granted for any purpose that would damage ~~school~~ District property or to any group that has damaged District property.

Note: See the following policies for other information regarding facilities use:

- Use by employee professional organizations: DGA
- Use of facilities for school-sponsored and school-related activities: FM
- Use by noncurriculum-related student groups: FNAB
- Use by District-affiliated school-support organizations: GE

Nonprofit Fund-Raising

The District shall permit nonprofit organizations to conduct fund-raising events on District property when these activities do not conflict with school use or with this policy.

For-Profit Use

The District shall not permit individuals or for-profit organizations to use its facilities for financial gain; however, the District shall permit public performances, recitals, or presentations so long as no admission fee is charged and when these activities do not conflict with school use or with this policy.

Campaign-Related Use

Except to the extent a District facility is used as an official polling place, District facilities shall not be available for use by individuals or groups for political advertising, campaign communications, or electioneering, as those terms are used in state law. This prohibition shall not preclude the use of a District facility for a debate among political candidates.

Scheduling

Requests for nonschool use of District facilities shall be considered on a first-come, first-served basis.

Academic and extracurricular activities sponsored by the District shall always have priority when any use is scheduled. [See FM] The ~~director of plant operations~~Superintendent shall have authority to cancel a scheduled nonschool use if an unexpected conflict arises with a District activity.

Approval of Use

The ~~director of plant operations~~Superintendent is authorized to approve any nonschool use of any District facility.

Exception

No approval shall be required for nonschool-related recreational use of the District's unlocked, outdoor recreational facilities, such as tracks, playgrounds, tennis courts, and the like, ~~during nonschool hours and~~ when the facilities are not in use by the District or for a scheduled nonschool purpose.

Emergency Use

In case of emergencies or disasters, the Superintendent ~~or designee~~ may authorize the use of ~~school~~ District facilities by civil defense, health, or emergency service authorities.

Use Agreement

Any organization or individual approved for a nonschool use of District facilities shall be required to complete ~~at least once each year~~ a written agreement indicating receipt and understanding of this policy and any appliable administrative regulations~~District facility use procedures~~, and ~~acknowledging~~ acknowledges that the District is not liable for any personal injury or damages to personal property related to the nonschool use.

Fees for Use

Nonschool users shall be charged a fee for the use of designated District facilities.

Fee Schedule

The executive director of ~~plant operations~~facilities for maintenance operations shall establish and publish a schedule of fees based on the cost of the physical operation of the facilities, as well as any applicable personnel costs for supervision, custodial services, food services, security, and technology services.

Exceptions

Fees shall not be charged when District facilities are used:

- ~~1. For nonschool uses scheduled during the 2.25 hours following the end of the instructional day;~~
- ~~1. When school buildings are used for~~ For public meetings sponsored by state or local governmental agencies; or

2. ~~For use by~~ By District employee professional organizations. [~~See~~ see DGA].

3. For nonschool uses scheduled during the 2.25 hours following the end of the instructional day;

Required Conduct

Persons or groups using ~~school~~ District facilities shall:

1. Conduct business in an orderly manner.
2. Abide by all laws and policies, including but not limited to those prohibiting the use, sale, or possession of alcoholic beverages, illegal drugs, and firearms, and the use of tobacco products or e-cigarettes on school property. [See GKA]
3. Make no alteration, temporary or permanent, to school property without prior written consent from the Superintendent.

All groups using school facilities shall be responsible for the cost of repairing any damages incurred during use and shall be required to indemnify the District for the cost of any such repairs.

ADD POLICY

The District shall use volunteers to provide assistance in areas that:

1. Support and enhance teaching and learning;
2. Support the welfare of the students and/or staff; and
3. Support the District in other areas of need.

Application

All prospective volunteers shall submit an application form as provided by the District.

Criminal History Record Check

The District shall obtain the criminal history record for prospective volunteers when required by law or the District. Once received, the District shall determine the person's eligibility and inform approved volunteers when their services are to begin.

Authority

District volunteers shall work directly under the supervision of the campus principal or a District employee in accordance with administrative regulations.

Administrative regulations shall be established regarding the volunteer application process, qualifications, training, duties, and other relevant information about the District's volunteer program.

Training

Volunteers shall complete District training requirements prior to participating in the District's volunteer program.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Report Regarding the School Board Elections to be held May 3, 2025

REFERENCE: Section 3.004 of the Texas Election Code

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The McAllen Independent School District Board of Trustees consists of seven members serving terms of four years, with elections held biennially. The Election for places 1, 2, 4, and 5 shall be held in 2027, 2031 and in four-year intervals thereafter. The Election for places 3, 6, and 7 shall be held in 2025, 2029, and 2031 and in four-year intervals thereafter. School Board Elections for Places 3, 6, and 7 will be held on May 3, 2025.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District will begin accepting applications for candidacy on Wednesday, January 15, 2025 at 8:00 a.m. and will end on Friday, February 14, 2025 at 5:00 p.m. Applications may be filed in person.

LEGAL REVIEW:

None

BUDGETARY CONSIDERATIONS:

Projected costs $65,000.

RECOMMENDED BOARD ACTION:

This Report Regarding the School Board Elections to be held May 3, 2025 is submitted to the Board for informational purposes only and requires no Board action.

Attachment: ☑

SUBMITTED BY: Alberto Canales
Alberto Canales (Jan 9, 2025 16:21 CST)

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 (Jan 10, 2025 13:02 CST)

Superintendent of Schools

REPORT REGARDING MAY 3, 2025 SCHOOL BOARD ELECTIONS

REPORT REGARDING MAY 3, 2025 SCHOOL BOARD ELECTIONS

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The McAllen Independent School District Board of Trustees consists of seven members serving terms of four years, with elections held biennially.

1. The Election for places 1, 2, 4, and 5 shall be held in 2027, 2031 and in four-year intervals thereafter. The Election for places 3, 6, and 7 shall be held in 2025, 2029, and 2031 and in four-year intervals thereafter.
    a. School Board Elections for Places 3, 6, and 7 will be held on May 3, 2025.

REPORT REGARDING MAY 3, 2025 SCHOOL BOARD ELECTIONS

Candidate Filing Dates:

- Opens Wednesday, January 15, 2025 at 8:00 am
- Closes Friday, February 14, 2025 at 5:00 pm

Application for Place on Ballot may be picked up and turned in with Student Support Services located at 2200 Tamarack Ave., Portable 691

Early Voting Locations, Election Day Locations, & Schedules:

- Information is currently pending from Hidalgo County Elections office as they are wrapping up run off elections conducted after the November 3rd election date.

Additional Election Information may be found at:
https://www.mcallenisd.org/o/mcallenisd/page/2025-mcallen-school-board-elections

REPORT REGARDING MAY 3, 2025 SCHOOL BOARD ELECTIONS

Hidalgo County Elections Cost:

- 2021 – $69, 606.56
- 2023
  - May Election – $42,535.34
  - November VATRE Election – $55,570.12
- 2025 – Projected cost $65,000.00

REPORT REGARDING MAY 3, 2025 SCHOOL BOARD ELECTIONS

THANK YOU!

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Report Regarding 2025-2026 Budget Calendar

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District institutes and operates a governmental budgeting system that provides financial information to both external users and internal management. This information is used to monitor the expenditure of public funds and to ensure that the financial transactions of the School District are conducted in accordance with State regulations and local policies.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The financial goal of the District is to have a sufficient fund balance to be able to maintain fiscal independence in case of a financial need or crisis. The District's purpose in the presentation of the budget data is to improve the quality of information provided to the Board of Trustees and the community.

LEGAL REVIEW:

Not Applicable.

BUDGETARY CONSIDERATIONS:

Not Applicable.

RECOMMENDED BOARD ACTION:

This report is for information purposes only, requires no Board action.

Attachment: ☑

SUBMITTED BY: _____ **SUPERVISOR:** Lorena Garcia

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 8, 2025 14:53 CST)

Superintendent of Schools

REPORT REGARDING 2025 - 2026 BUDGET CALENDAR

BUDGETWORKSHOPS

- **FIRST BUDGET WORKSHOP**
- February 18, 2025
  - Human Resources
  - Review of 2024-2025 Budget
  - Year to Year Staffing Comparison
  - Compensation Plan
  - History of Raises
  - Cost Scenarios
  - Staffing Guidelines
  - Legislative Updates

- **SECOND BUDGET WORKSHOP**
- March 4, 2025
  - Tax Rate History
  - Fund Balance
  - Student Enrollment Projections
  - Attendance
  - Optional Flexible School Day Program
  - Additional Days School Year

BUDGET WORKSHOPS

- **THIRD BUDGET WORKSHOP**
- March 25, 2025
  - Employee Benefits Update
    - Health Plan
    - Pharmacy Plan
    - Workers Compensation Plan
    - Unemployment Compensation Plan
  - Legislative Updates

- **FOURTH BUDGET WORKSHOP**
- April 15, 2025
  - TASB Report Review
    - Market Value Comparison
    - Pay Structure Shift
    - Salary Cost Estimate
  - Staffing Guidelines
  - Legislative Updates

FIFTH BUDGET WORKSHOP

- May 6, 2025
  - 2024-2025 Budget Updates
  - 2025-2026 Budget Projections
  - Budget Reductions
  - School Health and Related Service Update
  - Optional Flexible School Day Program/Additional Days School Year Update
  - Property Values Update - Hidalgo County Appraisal District
  - Employee Benefits Update
  - Legislative Updates

McALLEN ISD

BUDGET WORKSHOPS

6TH BUDGET WORKSHOP

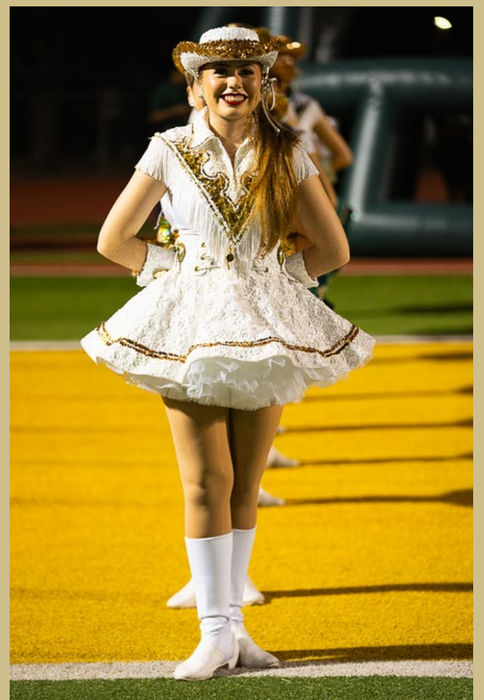
- June 3, 2025
  - Human Resource Update
  - Department Budgets
  - Budget Updates
  - 2025-2026 Annual Budget Book
  - Legislative Updates

APPROVE BUDGET OR 7TH BUDGET WORKSHOP

- June 10, 2025
  - Annual Budget Book

- Approve Budget (final opportunity) June 17 or 24, 2025

THANK YOU



BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Report Regarding Timeline for Facilities Improvement Projects

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District has been steadfast in its efforts to make steady improvements and then to continually report its progress to the Board of Trustees and its community.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District continually assess the needs of its school facilities with an emphasis on quality teaching and learning environments. The District identifies the priorities that set our facility needs standards and ensures viable and dynamic planning that ultimately supports quality teaching and learning.

The District is in the process of conducting a facilities needs assessment. The needs assessment will not only determine physical needs, but also will project the dollar amounts necessary to address the identified facility needs. The Administration and Board will need to decide whether the district will address the needs and prioritize them. Representatives from Estrada Hinojosa will discuss funding mechanisms that may be reviewed for viability.

LEGAL REVIEW:

Not Applicable.

BUDGETARY CONSIDERATIONS:

Not Applicable.

RECOMMENDED BOARD ACTION:

This report is for information purposes only, requires no Board action.

Attachment: ☑

SUBMITTED BY: _____ **SUPERVISOR:** Lorena Garcia

For further information contact:
Name: Lorena Garcia, Deputy Superintendent for Business and Operations
Office: 956-688-3535
Email: lorena.garcia@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 10, 2025 09:54 CST)

Superintendent of Schools

January 2025

McALLEN INDEPENDENT SCHOOL DISTRICT

Facility Needs Financing Options

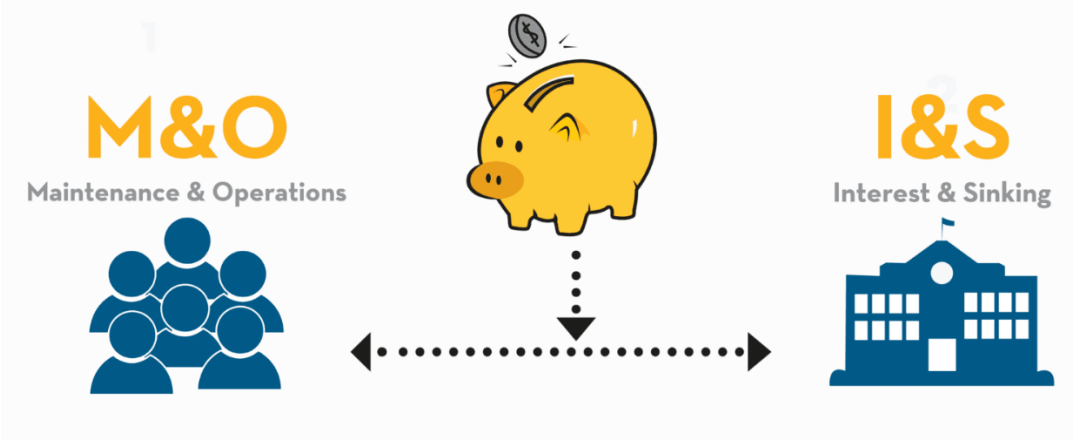
ESTRADA HINOJOSA
INVESTMENT BANKERS

Dallas • Austin • Chicago • Houston • Miami • New York • Rio Grande Valley • San Antonio

Facilities Needs Assessment

- District in process of facilities needs assessment;
- Needs assessment will not only determine physical needs, but also will project the dollar amounts necessary to address the identified facility needs;
- The Administration and Board will decide whether the district will address the needs;
- If yes, the needs will likely be prioritized;
- A timetable to address the needs by priority ranking will likely be established; and
- Funding mechanisms will be reviewed for viability.

School District Tax Rates



- M&O Tax Tate:
  - local tax levy from tax rate collections.
  - Pays Salaries, Maintenance, Instructional Materials, Utilities, etc.
- I&S Tax Rate
  - Voter authorized debt by constituents
  - Authorizes District to set an “Unlimited Tax Rate” to satisfy debt service payments.
  - Only used for authorized voter debt.

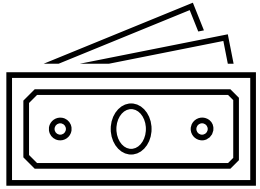
Financing Options

Fund Balance (Cash)

- TEA recommendation is for districts to have 90 days of operational expenditures to be maintained in the fund balance.
- The District's savings account for emergencies and other unexpected needs.

Maintenance Tax Notes (MTN)

- A loan paid through the General Fund.
- General Fund is portion that pays for teacher salaries and instructional operations.
- Can only be used for facility renovations; no new construction
- Generally short term and smaller amounts



Public Facility Corporation (PFC)

- A corporation formed separately by the Board and typically the school board is the same board for the PFC.
- Similar to MTN, but utilized for new building construction
- Paid from M&O general fund, typically as a lease-revenue bond

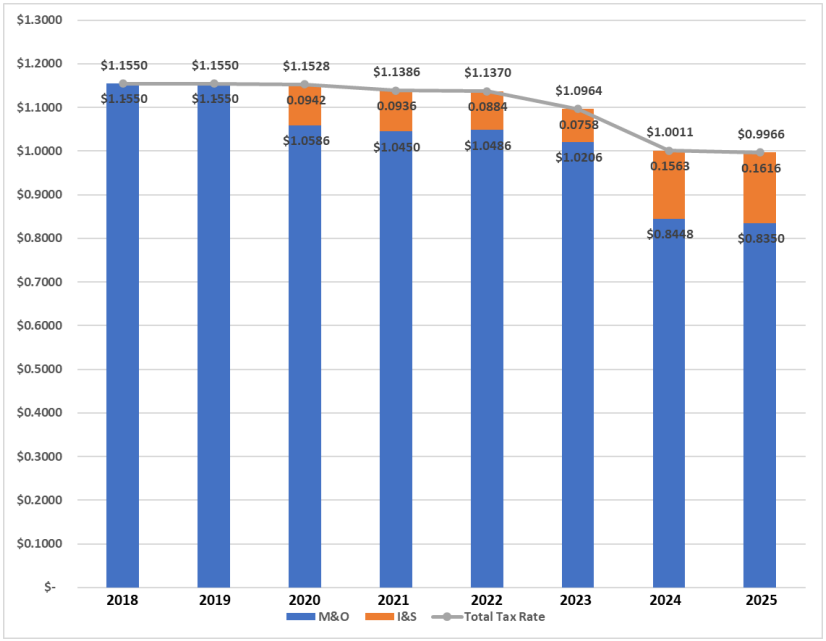
Voter Approved Debt

- Paid from Interest & Sinking (I&S) tax to pay bonds directly.
- Election is required and must be held in May or November.
- Does not affect current Budget or General Fund Balance.

McAllen ISD Historical Tax Rates

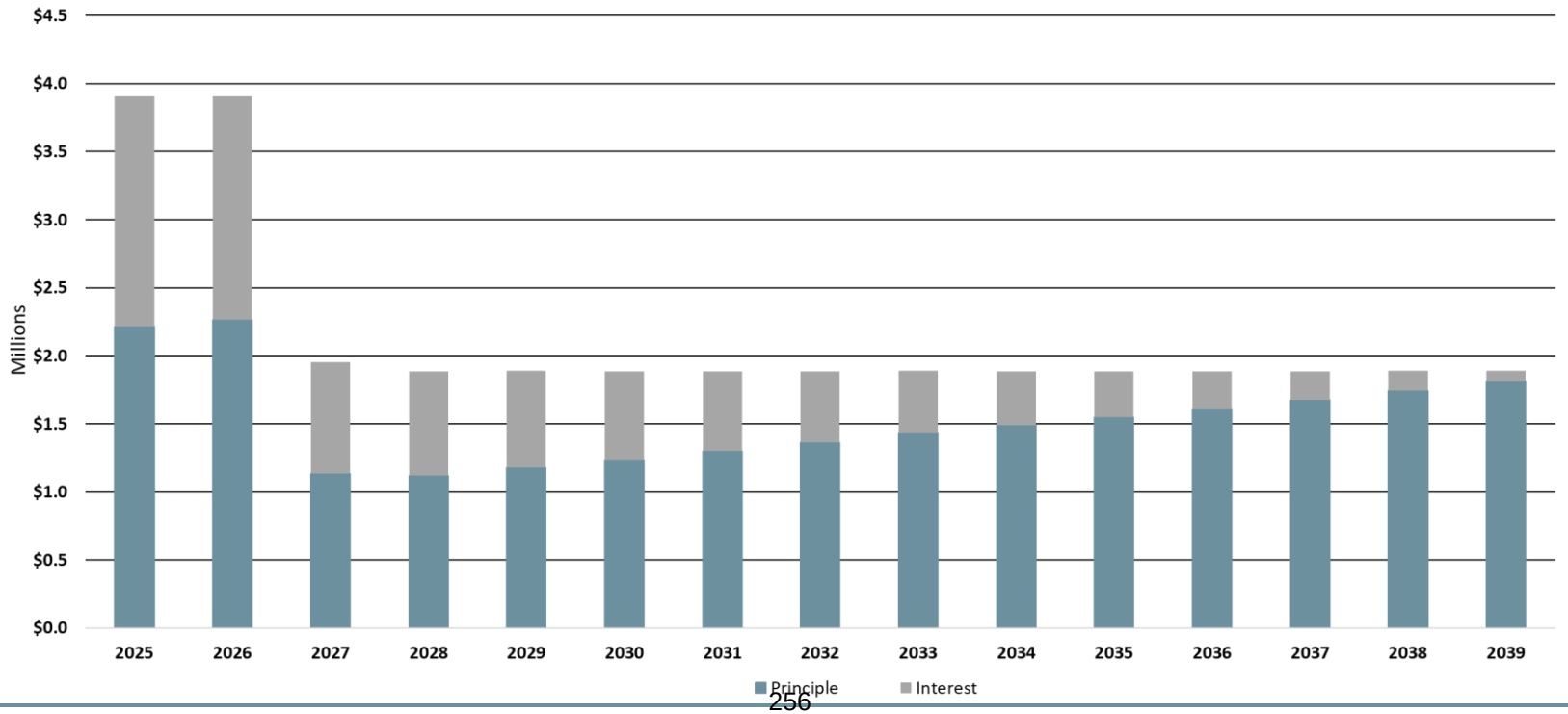
Historical Tax Rate (Fiscal Year)								
Fiscal Year	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**2025**
M&O	$ 1.1550	$ 1.1550	$ 1.0586	$ 1.0450	$ 1.0486	$ 1.0206	$ 0.8448	$ 0.8350
I&S	-	-	0.0942	0.0936	0.0884	0.0758	0.1563	0.1616
Total Tax Rate	$ 1.1550	$ 1.1550	$ 1.1528	$ 1.1386	$ 1.1370	$ 1.0964	$ 1.0011	$ 0.9966

- Total Tax Rate has decreased every year since 2019.
- Since 2019, reduction of Total Tax Rate has been 15.84 cents.



Maintenance & Operations (M&O) Outstanding Debt

Limited Debt Outstanding			
Series	**Outstanding**	**Callable**	**Call Date**
Mtc Tax Notes Ser 2020	20,580,000	15,220,000	2/15/2029
Mtc Tax QSCN Taxable Ser 2012	196,000	-	Non-Call
Mtc Tax QSCN Taxable Ser 2011	2,360,000	2,360,000	2/15/2021
TOTAL ALL BONDS	$ 23,136,000	$17,580,000	

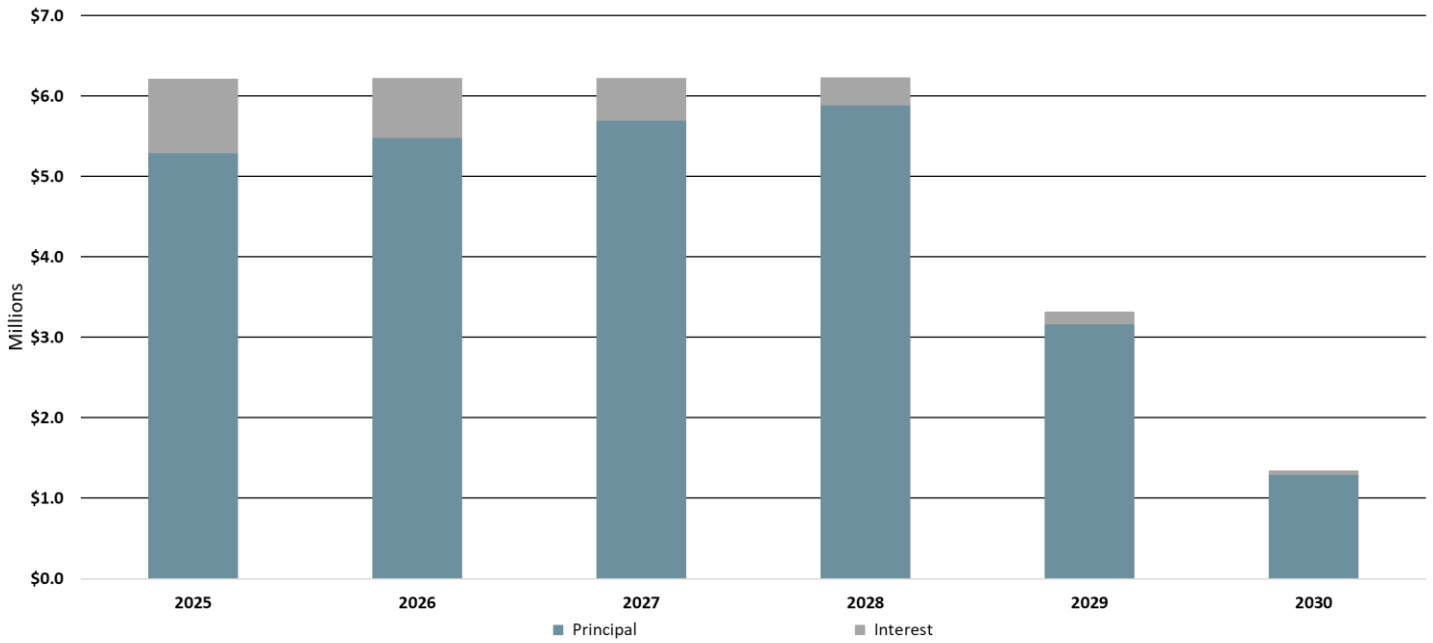


McALLEN INDEPENDENT SCHOOL DISTRICT

ESTRADA HINOJOSA INVESTMENT BANKERS

Interest & Sinking (I&S) Voter Approved Outstanding Debt

General Obligation Debt Outstanding			
Series	**Outstanding**	**Callable**	**Call Date**
U/L Tax Ref Bds Ser 2020A	$ 7,015,000	-	Non-Call
U/L Tax Ref Bds Taxable Ser 2020B*	19,785,000	-	Non-Call
TOTAL ALL BONDS	$ 26,800,000	$ -	



I&S Tax Rate & Debt Analysis

McAllen Independent School District

PRE

Tax Rate Impact

FOR DISCUSSION ONLY

All Amounts are Estimates

Collections Rate
100.00%

FYE 6/30	Taxable Assessed Valuation [1]	AV Growth	Outstanding Debt Service	I&S Difference	2025 Defeasance Calculation*	2026 Defeasance Calculation*	Total Net Debt Service	Estimated Calculated I&S	I&S Tax Rate Inc or (Dec)	FYE 6/30
2025	$ **8,836,031,452**	4.3%	$ 6,218,350	$ 8,060,677	$ -	$ -	$ 14,279,027	$ 0.16160	0.00530	2025
2026	9,189,472,710	4.0%	6,223,750	8,855,638	(229,200)	-	14,850,188	$ 0.16160	-	2026
2027	9,557,051,618	4.0%	6,224,750	-	(229,200)	(5,995,550)	-	-	(0.16160)	2027
2028	9,939,333,683	4.0%	6,232,450	-	(4,229,200)	(2,003,250)	-	-	-	2028
2029	10,237,513,694	3.0%	3,324,000	-	(2,029,200)	(1,294,800)	-	-	-	2029
2030	10,544,639,105	3.0%	1,341,600	-	(1,341,600)	-	-	-	-	2030
2031	10,755,531,887	2.0%	-	-	-	-	-	-	-	2031
2032	10,755,531,887	0.0%	-	-	-	-	-	-	-	2032
2033	10,755,531,887	0.0%	-	-	-	-	-	-	-	2033
2034	10,755,531,887	0.0%	-	-	-	-	-	-	-	2034
2035	10,755,531,887	0.0%	-	-	-	-	-	-	-	2035
Total			$ 29,564,900	$ 16,916,315			$ 29,129,215			**Total**

[1] Source: Hidalgo County Appraisal District (Freeze Adjusted Taxable Grand Total).

*Preliminary.

- Defeasances (early debt pay off) in Fiscal Years 2024-2025 and 2025-2026 will reduce Debt Service to zero for Fiscal Year 2026-2027.
- With no Debt Service, the I&S rate will drop from $0.16160 to zero.

Disclaimer

This document is intended for discussion purposes only and, in conjunction with oral presentations and further negotiations, is subject to the final terms of definitive transaction related written agreements, if appropriate, and is not a commitment to lend money, underwrite or purchase securities or commit capital, nor does it obligate this firm to enter into written agreements. The terms and conditions described herein are an indicative summary which may be amended or replaced by subsequent summaries.

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Report Regarding Intention to Apply for the 2025-2026 Community Development Block Grant (CDBG) for an All-Inclusive Playground at Juan Seguin Elementary, All-Inclusive Playground at Theodore Roosevelt Elementary, William B. Travis Middle School Community Track Project, and Community Track Lighting Project Phase Two and Community Parking Lot at Dorothea Brown Middle School.

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
Through the Housing and Community Development Act of 1974, local governments with populations of 50,000 or more become eligible for funds from the U.S. Department of Housing and Urban Development (HUD) to implement a wide range of programs and projects dealing with neighborhood improvements and city services. In order to recieve the funds from HUD's Community Development Block Grant (CDBG) Program and Home Investment Partnership Program, the City must file an application that contains the plan for the use of the funds.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
McAllen ISD intends to apply for the Community Development Block Grant (CDBG) grant to construct an all-inclusive playground at Juan Seguin Elementary located at 2209 North 29th Street, McAllen, Texas, an all-inclusive playground at Theodore Roosevelt Elementary located at 4801 South 26th Street, McAllen, Texas, a community track project at William B. Travis Middle School located at 600 West Houston Avenue, McAllen, Texas, and community track lighting project phase two and community parking lot at Dorothea Brown Middle School located at 2700 South Ware Road, McAllen, Texas.

LEGAL REVIEW:
None required.

BUDGETARY CONSIDERATIONS:
Community Development Block Grant (CBDG) funding request of $1,530,000.00 for an all inclusive playground at Juan Seguin Elementary, all-inclusive playground at Theodore Roosevelt Elementary, William B. Travis Middle School community track project, and community track lighting project phase two and community parking lot at Dorothea Brown Middle School.

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

Attachment: ☑

SUBMITTED BY: _____ **SUPERVISOR:** _____

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:

260

Superintendent of Schools

Report Regarding Intent to Apply for FY 2025-2026 Community Development Block Grant (CDBG)

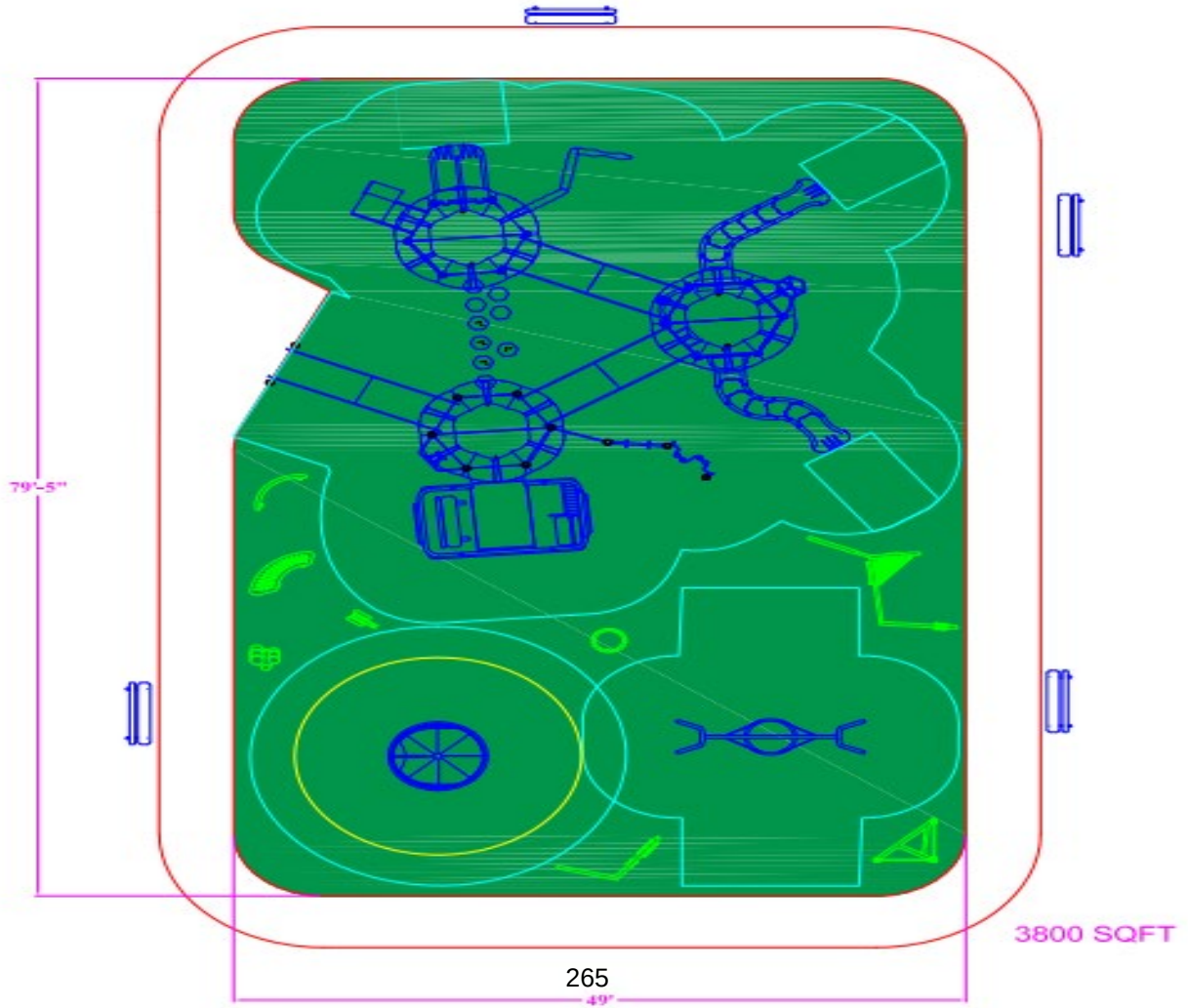
Board Meeting
January 14, 2025

Highlights of the FY 25-26 Community Development Block Grant (CDBG)

Through the Housing and Community Development Act of 1974, local governments with populations of 50,000 or more become eligible for funds from the U.S. Department of Housing and Urban Development (HUD) to implement a wide range of programs and projects dealing with neighborhood improvements and city services.

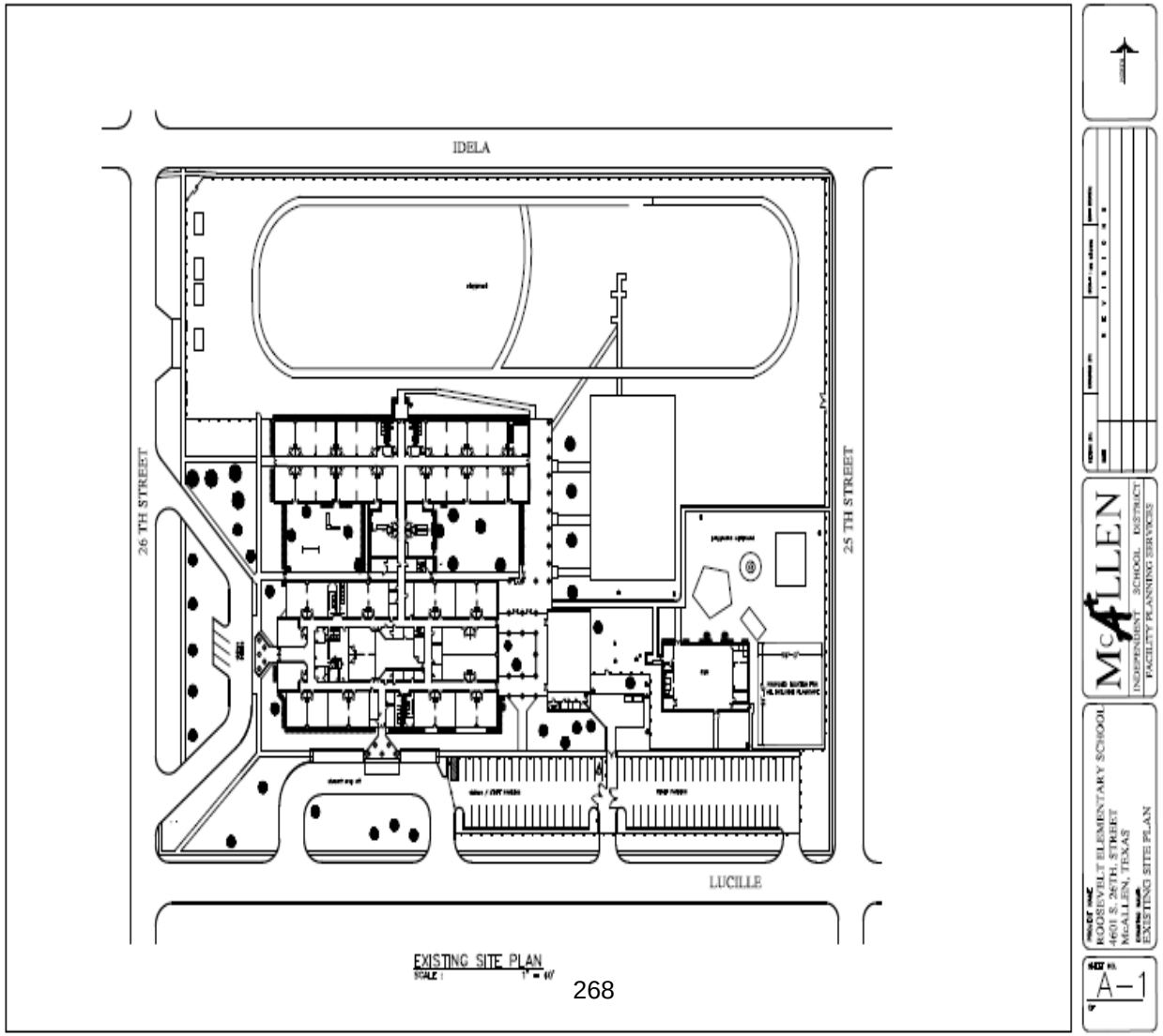
- Application due on February 6, 2025
- Requesting $1,530,000
- Presentation of construction applications to the CDBG Board pending

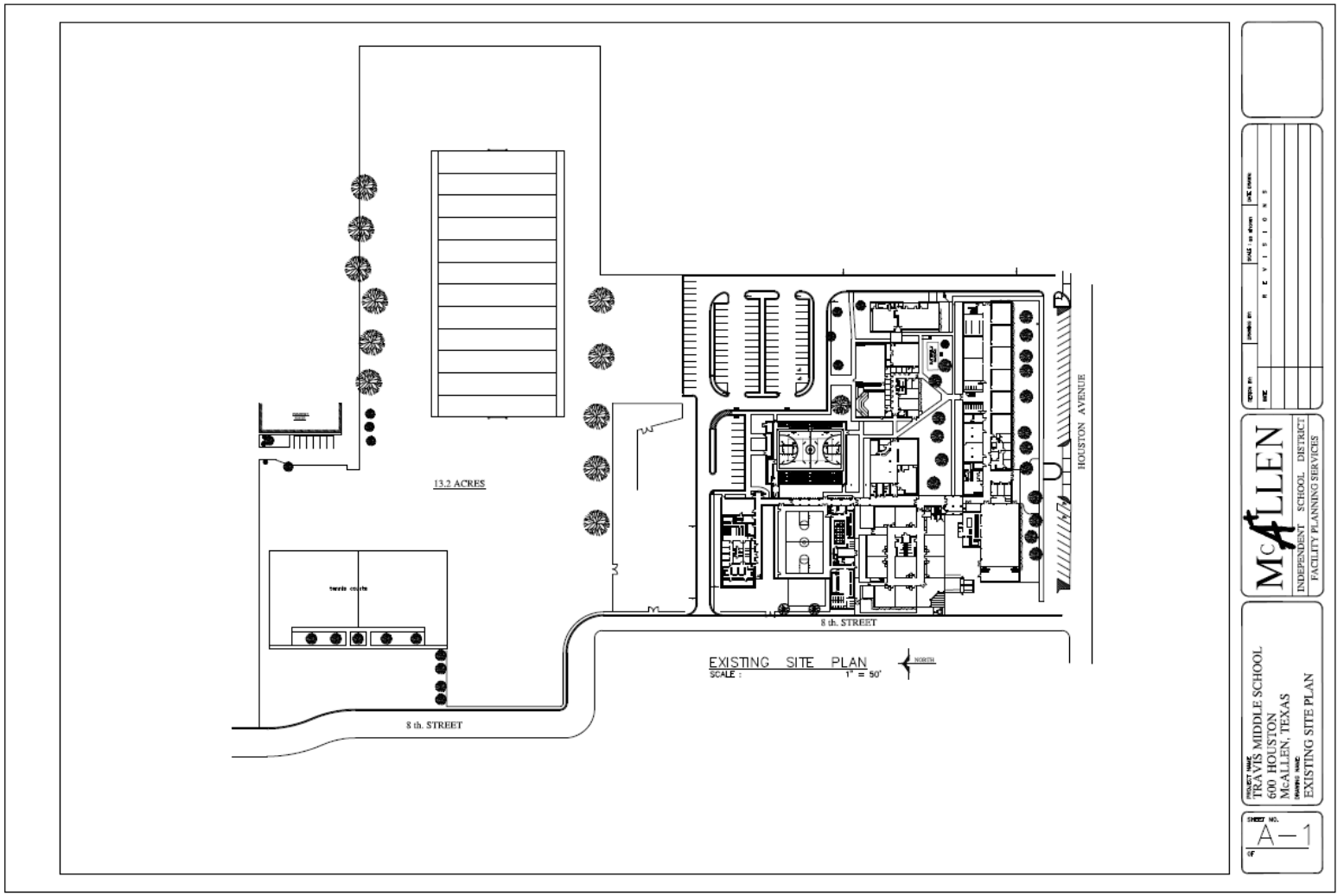
Highlights of the Community Development Block Grant (CDBG) -
All Inclusive Playground at Juan Seguin Elementary
Requesting $390,000


79'-5"
3800 SQFT
265
49'

Highlights of the Community Development Block Grant (CDBG) -
All Inclusive Playground at Theodore Roosevelt Elementary
Requesting $390,000

267


IDELA
26 TH STREET
25 TH STREET
LUCILLE
EXISTING SITE PLAN
SCALE : 1" = 40'
ROOSEVELT ELEMENTARY SCHOOL
1601 S. 26TH. STREET
MCALLEN, TEXAS
EXISTING SITE PLAN
MCALLEN
INDEPENDENT SCHOOL DISTRICT
FACILITY PLANNING SERVICES
A-1

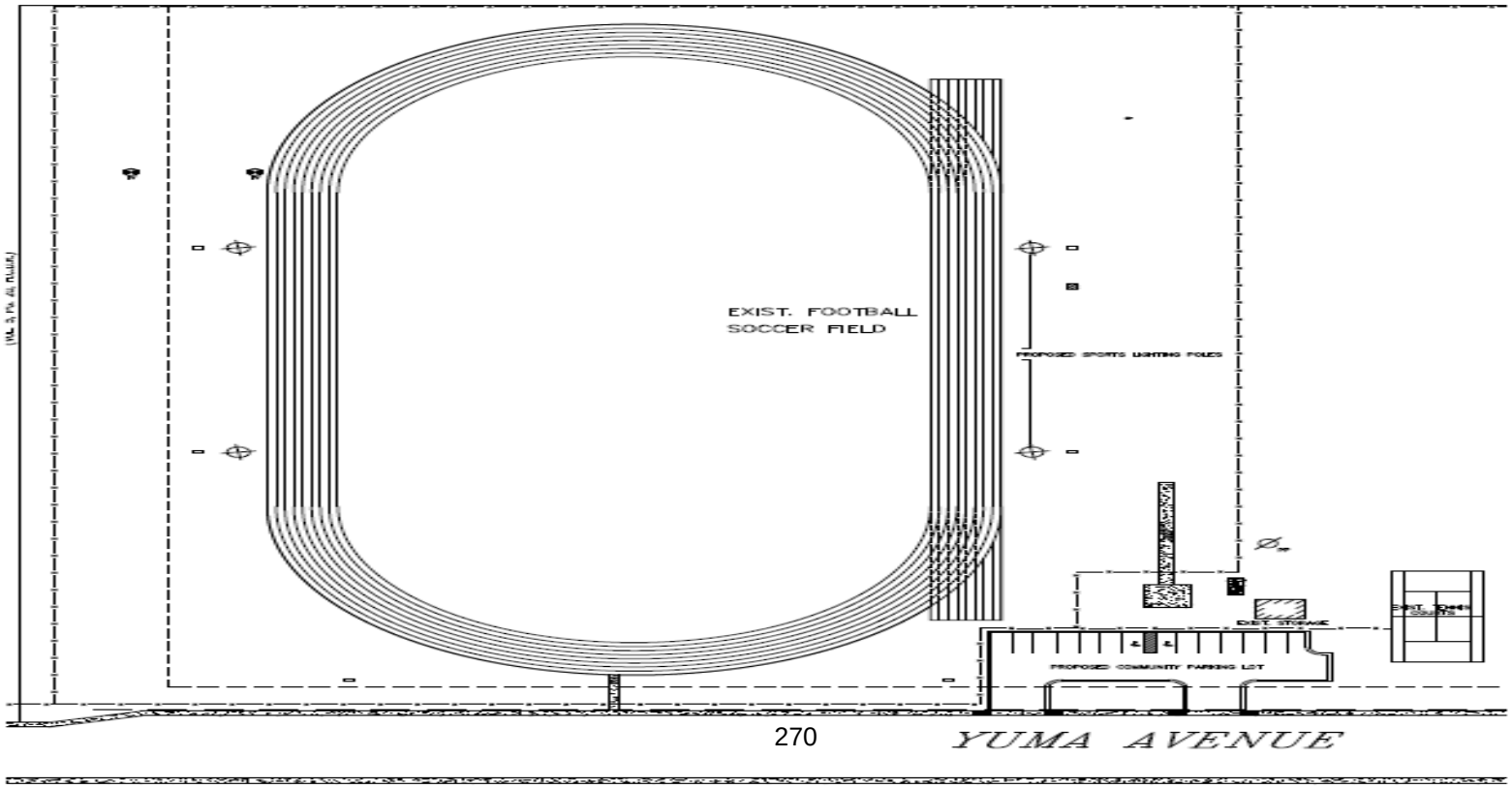


269

Highlights of the Community Development Block Grant (CDBG)- Community Track at William B. Travis Middle School

Requesting $350,000

Highlights of the Community Development Block Grant – CDBG – Dorothea Brown Middle School Community Track Lighting Project Phase II and Community Parking Lot
Requesting $400,000



Thank you.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2025-1022 Facilities Needs Assessment

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
The McAllen Independent School District ("District") solicited proposals from consultant firms ("firms") qualified and experienced in developing a facilities needs assessment for K-12 school districts. The facilities needs assessment included goals and strategies to address equity in facilities; overcrowding and under-enrollment; health, safety, and security; academics and co-curricular supports; protection of investments and develop a capital spending program and reflect community input.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
One hundred sixty-two (162) firms were invited to submit qualifications and six (6) vendors responded, including one (1) no-bid response. The evaluation committee comprised of Lorena Garcia, Deputy Superintendent for Business & Operations; Dr. Alberto Canales, Chief Human Resources Officer; Judith Escamilla, Executive Director for Department of Technology; Ruben Trevino, Executive Director for Facilities, Maintenance, and Operations; Laura Williams, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Krystal Mercado Senior Buyer, met to evaluate the submittals.

LEGAL REVIEW:
None required.

BUDGETARY CONSIDERATIONS:
None.

RECOMMENDED BOARD ACTION:
a) approve the ranking for Request for Proposal No. 2025-1022 Facilities Needs Assessment, for a term of one (1) year with the option to renew for one (1) additional year.
b) approve that Administration begin negotiations with the highest ranked firm If the District is unable to negotiate a satisfactory contract with the selected vendor the District shall, formally and in writing, end negotiations with that firm and proceed to the next firm in the order of the selection ranking until a contract is reached or all submittals are rejected;
c) authorize the Superintendent to execute a contract, once contract negotiations have been successfully achieved.

Attachment: ☑

SUBMITTED BY: _____

SUPERVISOR: lorena Garcia
lorena Garcia (Jan 6, 2025 11:33 CST)

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 6, 2025 15:26 CST)

Superintendent of Schools

Evaluation Matrix
RFP 2025-1022 Facilities Needs Assessment

No.	Criteria	Max. Pts. 100	MGT Impact Solutions, LLC Tampa, Florida	SDI Engineering, LLC Edinburg, Texas	ADM Group, Inc. Tempe, Arizona	PBK, Inc. McAllen, Texas	Gignac & Associates, LLP McAllen, Texas
	Total Points	**100**	**95**	**67**	**84**	**81**	**66**
	Ranking		**1**	**4**	**2**	**3**	**5**
1	**Price**	**40**	**40**	**27**	**37**	**30**	**14**
	Fees (Line Item #1.1)	40	$ 306,402.00	$ 452,000.00	$ 482,509.00	$ 646,221.40	$ 1,908,620.00
2	**Reputation of the vendor and of the vendor's goods or services;**	**10**	**9.00**	**9.40**	**9.40**	**9.00**	**7.80**
	References (5) - 1pt.Each (Bid Attributes #109-#129)	5	5	5	5	5	5
	Reference Forms (5) - 0.6pt.Each (Response Attachments)	3	3	2.4	2.4	3	1.8
			Five (5) School District Reference Froms Submitted	*Four (4) School District Reference Froms Submitted*	*Four (4) School District Reference Forms Submitted*	*Five (5) School District Reference Forms Submitted*	*Three (3) School District Reference Forms Submitted*
	Litigation History - 2pts (Bid Attiribute #171) - No Litigation History=2pts; Litigation Response Provided=1pt	2	1	2	2	1	1
			Litigation Response Provided	*No Litigation History*	*No Litigation History*	*Litigation Response Provided*	*Litigation Response Provided*
3	**The quality of the vendor's goods or services**	**25**	**22.5**	**6**	**15**	**18.5**	**20**
	Project Experience - 2.5 pts. Per Project (Bid Attributes #62-#107)	12.5	10	0	2.5	12.5	7.5
	Project 1	*2.5*	*2.5*	*0*	*0*	*2.5*	*0*
			Response Facility Needs Assessment Related	*Response Not Facility Needs Assessment Related*	*Response Not Facility Needs Assessment Related*	*Response Facility Needs Assessment Related*	*Response Not Facility Needs Assessment Related*
	Project 2	*2.5*	*2.5*	*0*	*2.5*	*2.5*	*2.5*
			Response Facility Needs Assessment Related	*Response Not Facility Needs Assessment Related*	*Response Facility Needs Assessment Related*	*Response Facility Needs Assessment Related*	*Response Facility Needs Assessment Related*
	Project 3	*2.5*	*2.5*	*0*	*0*	*2.5*	*2.5*
			Response Facility Needs Assessment Related	*Response Not Facility Needs Assessment Related*	*Response Not Facility Needs Assessment Related*	*Response Facility Needs Assessment Related*	*Response Facility Needs Assessment Related*
	Project 4	*2.5*	*2.5*	*0*	*0*	*2.5*	*2.5*
			Response Facility Needs Assessment Related	*Response Not Facility Needs Assessment Related*	*Response Not Facility Needs Assessment Related*	*Response Facility Needs Assessment Related*	*Response Facility Needs Assessment Related*
	Project 5	*2.5*	*0*	*0*	*0*	*2.5*	*0*
			Response Not Facility Needs Assessment Related	*Response Not Facility Needs Assessment Related*	*Response Not Facility Needs Assessment Related*	*Response Facility Needs Assessment Related*	*Response Not Facility Needs Assessment Related*
	Project Team Summary (Experience) >=10 years = 12.5 pts.; 5-9 years = 6 pts.; less than 5 years = 1 pt. (Bid Attributes #131-#141) (Avg Based on Number of Team Members Provided)	12.5	12.5	6	12.5	6	12.5
			Avg # of years = 18.8	*Avg # of years =6.22*	*Avg # of years =11.25*	*Avg # of years =5.5*	*Avg # of years =23.28*
4	**The extent to which the goods or services meet District's needs**	**21**	**21.00**	**21.00**	**21.00**	**21.00**	**21.00**
	Approach to Work - Experience= 3.5 pts.; Expertise= 3.5 pts.; Familiarity= 3.5 pts. (Bid Attribute #59)	10.5	10.5	10.5	10.5	10.5	10.5
	Approach to Work - Project Management= 3.5 pts; Coordination Methodology= 3.5 pts; Prioritizaiton Analysis and Study Approaches = 3.5 pts. (Bid Attribute #60)	10.5	10.5	10.5	10.5	10.5	10.5
5	**Past Relationship with District**	**1**	**1**	**0**	**0**	**1**	**1**
	Yes = 1; No = 0	1	1	0	0	1	1
			Yes	*No*	*No*	*Yes*	*Yes*
6	**HUB**	**1**	**0**	**1**	**0**	**0**	**1**
	Yes = 1; No = 0 (Bid Attribute #19)	1	0	1	0	0	1
			No	*Yes*	*No*	*No*	*Yes*
7	**Total long-term cost to the district to acquire the vendor's goods or services;**	**0**	**0**	**0**	**0**	**0**	**0**
	N/A	0	0	0	0	0	0
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**	**1**	**0**	**1**	**0**	**1**	**1**
	1 pt. (Bid Attribute #12)	1	0	1	0	1	1
			Principal place is NOT in Texas	*Principal place of business is in TX*	*Principal place is NOT in Texas*	*Principal place of business is in TX*	*Principal place of business is in TX*
9	**Any other relevant factor specifically listed in the request for bids or proposals.**	**1**	**1**	**1**	**1**	**1**	**1**
	Sample Facilities Needs Assessment - 1 pt. (Response Attachments)	1	1	1	1	1	1

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Discussion and Possible Action on the McAllen Independent School District December Budget Amendment for Fiscal Year Beginning July 1, 2024 and Ending June 30, 2025.

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

In accordance with TEA budget and accounting procedures guidelines, the District's official budget is comprised of the General Fund which includes Food Service and the Debt Service Fund. The District has administratively opted to officially adopt the Capital Projects Fund budget. The adoption of the budgets associated with these funds, and subsequent amendments, should be approved by the Board of Trustees. The authority to approve a budget or a budget amendment for a grant program, however, lies with the granting agency and not with the District's Board.

The administration will routinely allow amendments of existing budgeted funds between major function levels, in order to accommodate the necessary operations of the requesting department or campus. These amendments usually become necessary due to account coding requirements. These requests allowed at the administrative level are subject to final approval by the Board of Trustees.

The budget amendments are broken down into the following two categories:

1. Revisions – amendments that are necessary because of policy changes or revisions to programs that increase/decrease the budget.

2. Transfers – amendments that are necessary and/or amounts require adjustments but do not increase/decrease the budget.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The budget amendment detail provides explanations for the revisions and transfers.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

	General Fund	Capital Projects Fund
Audited Fund Balance	$ 145,853,587	$ 6,237,048
Revenues	249,711,901	1,102,926
Expenditures	267,087,813	6,986,942
Preliminary Ending Fund Balance	$ 128,477,675	$ 353,032

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Discussion and Possible Action on the McAllen Independent School District December Budget Amendment for Fiscal Year Beginning July 1, 2024 and Ending June 30, 2025.

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the McAllen Independent School District December Budget Amendment for the General Fund and Capital Projects Fund for Fiscal Year Beginning July 1, 2024 and Ending June 30, 2025.

Attachment: ☑

SUBMITTED BY: Joel Garcia (Jan 6, 2025 11:38 CST)

SUPERVISOR: Lorena Garcia (Jan 6, 2025 15:18 CST)

For further information contact:
Name: Joel Garcia
Office: (956) 618-6016
eMail: joel.garcia@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 6, 2025 17:04 CST)

Superintendent of Schools

McAllen Independent School District
Summary Report as of December 31, 2024
Review of Budget Amendments and Proposed Amendments

GENERAL FUND

	A	B	C	D	E
			Budget Amendments Under Consideration		
Description	Original Budget	Revised Budget 12/01/2024	Revisions	Transfers	Revised Budget 12/31/2024
Audited Fund Balance	**145,853,587**	**145,853,587**			**145,853,587**
Revenues:					
Local:					
Property Taxes	79,212,593	79,212,593			79,212,593
Interest Income	3,060,000	3,060,000			3,060,000
Other Local Income	2,176,542	2,296,741			2,296,741
State:	140,703,661	140,703,661			140,703,661
Federal:	23,947,355	24,288,552			24,288,552
Other Sources:	0	144,821	5,533		150,354
Total Revenues	**249,100,151**	**249,706,368**	**5,533**	**0**	**249,711,901**
Expenditures:					
11 Instruction	132,270,921	132,456,189	(13,367)	(170,714)	132,272,108
12 Inst. Res. & Media Services	3,349,732	3,397,551		1,100	3,398,651
13 Curriculum Dev. & Inst. Staff Dev.	3,862,783	4,236,272	(1,890)	4,226	4,238,608
21 Inst. Leadership	3,460,537	3,372,305	(630)	(165,355)	3,206,320
23 School Leadership	13,842,089	13,476,768		7,322	13,484,090
31 Guid., Counseling & Eval. Ser.	10,829,063	11,154,759	(630)	113,656	11,267,785
32 Social Work Services	1,970,180	2,059,021		78,636	2,137,657
33 Health Services	3,026,343	3,088,115			3,088,115
34 Student (Pupil) Trans.	4,940,668	6,435,999			6,435,999
35 Food Services	21,826,304	22,847,613		631	22,848,244
36 Curricular/Extracurricular Act.	9,896,442	11,075,879		15,331	11,091,210
41 General Administration	7,650,393	7,805,123		115,000	7,920,123
51 Plant Maint. & Operations	20,698,687	23,620,377		300,585	23,920,962
52 Security and Monitoring Serv.	5,048,236	7,258,093		3,471	7,261,564
53 Data Processing Services	5,251,154	5,488,199		(18)	5,488,181
61 Community Services	82,415	105,650			105,650
71 Debt Service	4,481,506	5,031,673			5,031,673
81 Fac. Acquisition & Const.	0	2,082,046		(303,871)	1,778,175
95 Pmt. to Juv. Justice Alt. Ed. Prg.	40,000	40,000			40,000
99 Other Intergovernmental Charges	1,072,698	1,072,698			1,072,698
Other Uses	0	1,000,000			1,000,000
Total Expenditures	**253,600,151**	**267,104,330**	**(16,517)**	**0**	**267,087,813**
Preliminary Ending Fund Balance	**141,353,587**	**128,455,625**	**22,050**	**0**	**128,477,675**

GENERAL FUND
Revisions

REVENUES:

Other Sources

	- Transfer to Fund 199 General Fund from Fund 713 Safe and Secure for Projector and Signal Upgrade at Perez Elementary	$ 5,533	5,533
	Grand Total		$ 5,533

EXPENDITURES:

Function 11	- Increase for Projector and Signal Upgrade at Perez Elementary for Fund 199 General Fund	$ 5,533	
	- Transfer to Fund Balance for Fund 164 Funding Change for Expense of One-time Employee Retention Incentive Pay	(18,900)	(13,367)
Function 13	- Transfer to Fund Balance for Fund 164 Funding Change for Expense of One-time Employee Retention Incentive Pay	$ (1,890)	(1,890)
Function 21	- Transfer to Fund Balance for Fund 164 Funding Change for Expense of One-time Employee Retention Incentive Pay	$ (630)	(630)
Function 31	- Transfer to Fund Balance for Fund 164 Funding Change for Expense of One-time Employee Retention Incentive Pay	$ (630)	(630)
	Grand Total		$ (16,517)

McAllen Independent School District
Summary Report as of December 31, 2024
Review of Budget Amendments and Proposed Amendments

CAPITAL PROJECTS

	A	B	C	D	E
			Budget Amendments Under Consideration		
Description	Original Budget	Revised Budget 11/30/2024	Revisions	Transfers	Revised Budget 12/31/2024
Audited Fund Balance	**6,237,048**	**6,237,048**			**6,237,048**
Revenues:					
Local					
Interest Income		41,558	60,040		101,598
Other Local Income	0	1,001,328			1,001,328
Other Sources	0	0			0
Total Revenues	**0**	**1,001,328**	**60,040**	**0**	**1,102,926**
Expenditures:					
11 Instruction		74,902			74,902
33 Health Services		2,094			2,094
36 Curricular/Extracurricular Act.		154,972	193,570		348,542
51 Plant Maint. & Operations	279,043	1,151,213		168,702	1,319,915
52 Security and Monitoring Serv.		508,053			508,053
53 Data Processing Services		0	364,492	122,028	486,520
81 Fac. Acquisition & Const.	4,648,611	4,537,646		(290,730)	4,246,916
Total Expenditures	**4,927,654**	**6,428,880**	**558,062**	**0**	**6,986,942**
Preliminary Ending Fund Balance	**1,309,394**	**809,496**	**(498,022)**	**0**	**353,032**

CAPITAL PROJECTS FUND
Revisions

REVENUES:				
Local				
Interest Income	- Increase to Interest Income for Fund 620 Capital Projects for Fine Arts Sounds System for Middle School Cafeterias	$ 60,040		
			60,040	
	Grand Total			$ 60,040
EXPENDITURES:				
Function 36	- Increase for Fine Arts Sounds System for Middle School Cafeterias	$ 60,040		
	- Transfer from Fund Balance for Fund 620 Capital Projects for Auditorium Sound System at Memorial Highschool	133,530		
			193,570	
Function 53				
	- Transfer from Fund Balance for Fund 620 Capital Projects for Cisco Hyperflex Storage Solution Upgrade	$ 229,520		
	- Transfer from Fund Balance for Fund 620 Capital Projects for Generators to Power the Radio Communications System	134,972		
			364,492	
	Grand Total			$ 558,062

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Discussion and Possible Action on Request for Qualifications No. 2025-1003 Bond Counsel Services

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited qualification statements for the selection of a Bond Counsel firm for assisting in acquiring debt and to provide legal opinion with respect to assessing the viability of authorizing and issuing the Bonds by the District for capital financing or refinancing; preparation of resolution, preliminary official statement, official statement, ordinance or other documentation authorizing and securing the Bonds and other authorizing documents as necessary.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Twenty-nine (29) firms were invited to submit qualifications and six (6) firms responded, including one (1) no-bid response. The evaluation committee comprised of Lorena Garcia, Deputy Superintendent for Business & Operations; Iris Luna, Former Chief Financial Officer; Vanessa Villescas, Coordinator for Budget; Laura Williams, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Krystal Mercado Senior Buyer, met to evaluate the submittals.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

a) approve the ranking for Request for Qualifications No. 2025-1003 Bond Counsel Services, for a term of one (1) year with the option to renew for two (2) additional one (1) year terms;
b) approve that Administration begin negotiations with the highest ranked firm. If the District is unable to negotiate a satisfactory contract with the selected firm, the District shall, formally and in writing, end negotiations with that firm and proceed to the next firm in the order of the selection ranking until a contract is reached or all submittals are rejected;
c) authorize the Superintendent to execute a contract, once contract negotiations have been successfully achieved.

Attachment: ☑

SUBMITTED BY: Joel Garcia (Jan 6, 2025 16:57 CST)

SUPERVISOR: Lorena Garcia

For further information contact:
Name: Mr. Joel Garcia, Chief Financial Officer
Office: (956) 618-6016
eMail: Joel.Garcia@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 7, 2025 11:45 CST)

Superintendent of Schools

Evaluation Matrix
RFQ 2025-1003 Bond Counsel Services

No	Criteria	Max. Pts. 100	Cantu Harden Montoya LLP San Antonio, Texas	McCall, Parkhurst & Horton L.L.P. San Antonio, Texas	Norton Rose Fulbright US LLP Houston, Texas	Jackson Walker Dallas, Texas	Orrick, Herrington & Sutcliffe LLP San Francisco, California
	Total Points	**100**	**95.00**	**97.00**	**98.00**	**84.00**	**89.00**
	Ranking		**3**	**2**	**1**	**5**	**4**
1	**Price** (N/A)	**0**	**0**	**0**	**0**	**0**	**0**
	N/A	0	0	0	0	0	0
2	**Reputation of the vendor and of the vendor's goods or services;**	**15**	**15**	**15**	**15**	**11**	**11**
	Disciplinary action taken, investigations underway, or lawsuits filed against the firm (Attribute #91) (Responded with "no"= 7pts; Responded with "other" = 6pts)	7	7	7	7	7	7
	References (Attributes #97, #102, and #107) (Refrence Forms Submitted and Completed = 2.666667 pts for each completed Reference Form submtited (3 references requested); 1.333333 pts each for non-completed Referenc Form submitted)	8	8	8	8	4	4
			3 Reference Forms submitted	*3 Reference Forms submitted*	*3 Reference Forms submitted*	*Reference Forms submitted but not completed*	*Reference Forms submitted but not completed*
3	**The quality of the vendor's goods or services**	**50**	**46**	**48**	**50**	**42**	**48**
	Knowledge and experience of personnel that would be assigned to District (Attribute #88)	8	8	8	8	7	8
						Partial response provided	
	Resumes/Licenses (Attributes #59, #64, #69, #74, and #79) (5pts) Years of experience (Attributes #60, #65, #70, #75, and #80) (5pts) (Weighted distribution based on average years)	10	7	8	10	8	8
	Resumes/Licenses		*5*	*5*	*5*	*5*	*5*
	Years of experience with firm (0-3yrs = 2pts) (4-6yrs = 3pts) (7-9yrs = 4pts) (10+yrs = 5pts)		*2*	*3*	*5*	*3*	*3*
			2.2 Years	*5.8 Years*	*14.6 Years*	*4.4 Years*	*5.6 Years*
	Experience with Districts (Attribute #83)	12	11	12	12	11	12
	Firm's experience and knowledge with related legislation and laws, including tax matters (Attribute #84)	12	12	12	12	12	12
	Firm's experiences in representing school districts when consulting with other parties related to district's debt obligations (Attribute #87)	8	8	8	8	4	8
						Partial response provided	
4	**The extent to which the goods or services meet District's needs**	**25**	**25**	**25**	**25**	**25**	**25**
	Ability of the firm and designated personnel to evaluate legal issues, prepare and file legal documents, and complete other tasks related to the debt obligations, in a timely manner (Attribute #89)	10	10	10	10	10	10
	Firm's experience with its approach to applicable federal securities laws and regulations (Attribute #85)	7	7	7	7	7	7
	Firm's experience in rendering objective legal opinions and advising on debt-related matters (Attribute #86)	8	8	8	8	8	8
5	**Past Relationship with District**	**3**	**3**	**3**	**3**	**0**	**0**
	Past Experience with District (Attributes #113 and #114) (Yes = 3; No = 0)	3	3	3	3	0	0
						No Past Experience with District	*No Past Experience with District*
6	**HUB**	**1**	**1**	**0**	**0**	**0**	**0**
	(Attribute #19) (Yes = 1; No = 0)	1	1	0	0	0	0
			Yes	*No*	*No*	*No*	*No*
7	**Total long-term cost to the district to acquire the vendor's goods or services** (N/A)	**0**	**0**	**0**	**0**	**0**	**0**
	N/A	0	*0*	*0*	*0*	*0*	*0*
			N/A	*N/A*	*N/A*	*N/A*	*N/A*
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**	**1**	**1**	**1**	**1**	**1**	**0**
	(Attribute #12) (Texas Vendor or Employes 500+ in Texas= 1; out of State Vendor = 0)	1	*1*	*1*	*1*	*1*	*0*
			Yes	*Yes*	*Yes*	*Yes*	*No*
9	**Any other relevant factor specifically listed in the request for bids or proposals.**	**5**	**4**	**5**	**4**	**5**	**5**
	Additional information to better describe qualifications and or benefit to District (Attribute #92)	2	*2*	*2*	*2*	*2*	*2*
	Other services that are of benefit to the District (Line Item #2.1) (Response provided = 3 pts; "N/A" response =2pts)	3	*2*	*3*	*2*	*3*	*3*
			"N/A"	*Response provided*	*"N/A"*	*Response provided*	*Response provided*

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Discussion and Possible Action on Competitive Sealed Proposal No. 2025-1028 Safety/Security Film Application Phase III

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:

One hundred twenty-five (125) contractors were invited to submit proposals, eleven (11) contractors responded including four (4) no bids, and two (2) late submittals. On December 11, 2024, the evaluation committee, comprised of Ruben Treviño, Executive Director for Facilities, Maintenance, and Operations; Jose Silva, Chief of Police, Laura Williams, Director of Purchasing; Elizabeth Cabrera, Purchasing Coordinator; and Graciela Garza, Senior Buyer, evaluated the proposals.

LEGAL REVIEW:

A draft copy of the AIA contract is attached.

BUDGETARY CONSIDERATIONS:

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

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. 2025-1028 Safety/Security Film Application Phase III; 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:** _____

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 (Jan 8, 2025 09:20 CST)

Superintendent of Schools

MCALLEN INDEPENDENT SCHOOL DISTRICT

Competitive Sealed Proposal
No. 2025-1028 Safety/Security Film Application Phase III

		Security Asssessment Group LLC	Blink Marketing Inc.	Sunsational Solutions
Rank		**2**	**3**	**1**
Maximum points	**100.00**	**89.38**	**80.83**	**94.89**
Price	**62**	**56.88**	**62.00**	**60.56**
Price per square feet (15 mil Base Bid)		**$ 15.00**	**$ 13.64**	**$ 14.00**
Estimated Square Feet	**13500**	**$ 202,500.00**	**$ 184,140.00**	**$ 189,000.00**
Contingency		**$ 20,000.00**	**$ 20,000.00**	**$ 20,000.00**
Base Bid (Includes Contingency)		**$222,500.00**	**$204,140.00**	**$209,000.00**
Offeror's experience and reputation	**19**	**14.5**	**1.50**	**16**
Three (3) K-12 reference forms	1.5	0	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 (BA168)	1.5	1.5	0.5	1.5
			submitted 1 of 3	
Claims, judgments, arbitration proceedings or suits (BA75)	1	1	1	1
Three (3) current or past K-12 projects (BA 77-94)	12	12	0	12
Similar scope and size (2 pts for scope; 2 pts for size)			*not able to identify if they are K-12*	
Current or past Non K-12 projects (BA 96-113)	3	0	0	0
Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)			*0 scope , 0 size*	
Quality of the offeror's goods or services	**2**	**2**	**2**	**2**
Repeat business for similar scope/size (BA114)	2	2	2	2
The impact on the ability of the district to comply with rules relating to historically underutilized businesses - HUB (BA13)	**1**	**0**	**0**	**1**
Offeror's safety record	**6**	**6**	**5.33**	**5.33**
OSHA Form 300 Log (BA169)	1	1	0.33	0.33
			only submitterd 2023	*only submitterd 2023*
Safety program manual and/or procedures. (BA170)	2	2	2	2
Drug/alcohol prevention policy and/or procedures. (BA171)	1	1	1	1
Frequency of safety inspections (BA115)	2	2	2	2
Offeror's Proposed Personnel	**6**	**6**	**6**	**6**
Staff experience (industry) (BA120-139)	3	3	3	3
Staff experience (firm) (BA120-139)	3	3	3	3
Whether the offeror's financial capability is appropriate to the size and scope of the project	**2**	**2**	**2**	**2**
Financial Statement (BAI73)	1	1	1	1
Surety Letter (BAI72)	1	1	1	1
Any other relevant factors specifically listed in the CSP	**2**	**2**	**2**	**2**
On-time project completion (BA57-74; BA77-94; BA 96-113)	1	1	1	1
Projects currently in progress. (141-164)	1	1	1	1

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is a Stipulated Sum*

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

and the Contractor:
(Name, legal status, address and other information)

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

MCALLEN ISD

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

The Owner and Contractor agree as follows.

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

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

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4 CONTRACT SUM

5 PAYMENTS

6 DISPUTE RESOLUTION

7 TERMINATION OR SUSPENSION

8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

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 Johnathan Ball, McAllen ISD Staff Attorney for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

DRAFT

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ARTICLE 1 THE CONTRACT DOCUMENTS

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 here 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.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

[ ] The date of this Agreement.

[ ] A date set forth in a notice to proceed issued by the Owner.

[ ] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

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

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

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

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[ ] By the following date:

Final Completion shall be thirty (30) calendar days after the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Contract Documents.

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

Portion of Work	Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

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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 (($), 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: ( )
AND 00/100 DOLLARS ($).

§ 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.

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User Notes: (1316308086)

§ 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

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

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

§ 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.)

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User Notes: (1316308086)

§ 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.)

§ 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 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.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§5.10 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts, and fees at any time.

§5.11 If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any payment to Contractor shall be subject to deduction for such amounts as the Architect if applicable, shall determine as the cost of completing incomplete Work and the value of unsettled claim.

§ 5.2 Final Payment
§ 5.2.1 Final payment, shall not be made by the Owner to the Contractor until:

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 all conditions precedent to final payment have been fulfilled including those listed in Section 9.10.2 of the AIA Document A201–2017;

.3 Contractor has submitted a signed document indicating consent of its Surety to Final Payment;

.4 Contractor has provided the following documents:.

.1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state, or local standards, laws, codes, rules, and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;

.2 Final list of Subcontractors (AIA Document G705);

.3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, if required;

.4 Contractor's warranties;

.5 Maintenance and Instruction Manuals;

.6 Owner's Final Completion Certificate;

.5 a final Certificate for Payment has been issued by the Architect; and

.6 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

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

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§ 5.3 Interest

(Paragraphs deleted)

Undisputed payments remaining unpaid under the Contract on the 31st day after the date the Owner receives a properly documented Certificate of Payment from the Architect are considered overdue and in accordance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251, shall bear interest from that date until the date that the Owner mails or electronically transmits payment, including accrued interest to that date.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017.

§ 6.2 Binding Dispute Resolution

For any Claim 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:
(Check the appropriate box.)

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

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

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

§ 6.3 When Owner has an applicable claim for construction defects, Owner shall comply with the provisions of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Contractor's or Architect's opportunity to cure.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 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.)

§ 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.

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§ 8.2 The Owner's representative:
(Name, address, email address, and other information)

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

§ 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
(Paragraph deleted)
in any other format agreed to by the Owner, Contractor and Architect in writing.

§ 8.7 Other provisions:

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

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

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

§ 8.7.4 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars ($1,000,000.00) or

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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 AIA Document A101™–2017, Exhibit A, Insurance and Bonds

.3 AIA Document A201™–2017, General Conditions of the Contract for Construction

.4 Building information modeling exhibit, dated as indicated below:
(Insert the date of the building information modeling exhibit incorporated into this Agreement.)

.5 Drawings. The Drawings are those prepared by _____dated _____and which are listed in the Index of Drawings attached hereto as Exhibit E, which are incorporated herein by reference.

Number	Title	Date

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

Section	Title	Date	Pages

.7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

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[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

[ ] The Sustainability Plan:

Title	Date	Pages

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

NOTE: Any Supplementary Conditions or other Conditions of this Contract listed above, the Project Manual or other terms or conditions attempted to be incorporated into this Contract, which contradict or conflict with the terms of this document 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.)

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

OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
(Printed name and title)	*(Printed name and title)*

APPROVED AS TO FORM
Johnathan Ball, McAllen ISD Staff Attorney

By:

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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

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EXHIBIT A INSURANCE AND BONDS

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 Johnathan Ball, McAllen ISD Staff Attorney for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

PAGE 3

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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~~ here 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 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

...

Final Completion shall be thirty (30) calendar days after the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Contract Documents.

PAGE 4

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: ( )
AND 00/100 DOLLARS ($).

...

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.

PAGE 5

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

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§ 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.

...

§5.10 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;

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.5 a final Certificate for Payment has been issued by the ~~Architect.~~Architect; and
.6 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

PAGE 7

~~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.

...

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.

PAGE 8

§ 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 a building information modeling exhibit, if completed, or as otherwise set forth below:~~
with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or
~~*(If other than in accordance with a building information modeling exhibit, 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.

...

§ 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.

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§ 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.

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.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.

...

.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.

PAGE 10

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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APPROVED AS TO FORM
Johnathan Ball, McAllen ISD Staff Attorney

By: _____

DRAFT

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

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

THE OWNER:
(Name, legal status and address)

THE ARCHITECT:
(Name, legal status and address)

* In this Agreement, any reference to "Architect" herein shall mean "Engineer."

THE CONTRACTOR

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.

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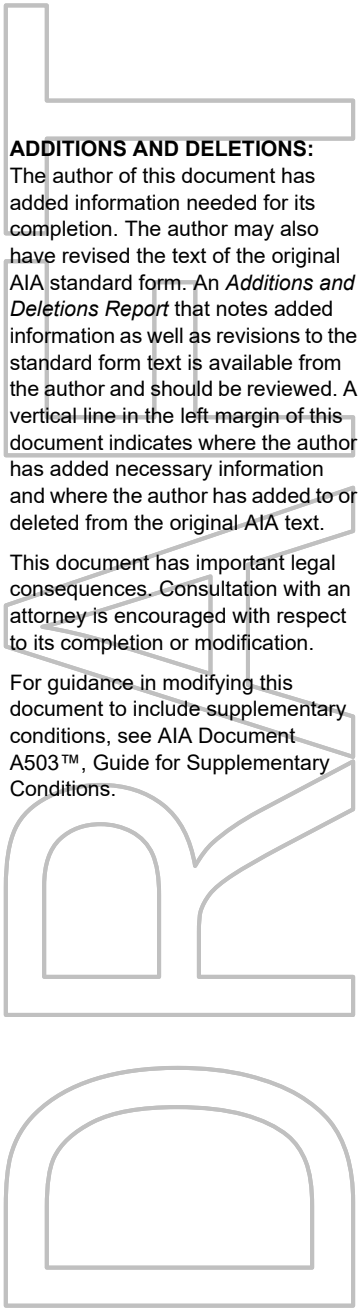
For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.



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(Paragraphs deleted)

ARTICLE 1 GENERAL PROVISIONS

(Paragraphs deleted)

§ 1.1 Basic Definitions

(Paragraphs deleted)

§ 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.

(Paragraphs deleted)

§ 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.

(Paragraphs deleted)

§ 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.

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§ 1.1.8 Initial Decision Maker
The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.
§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Miscellaneous Other Words
§ 1.1.10.1 Business Day
The term "business day" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner's Superintendent of Schools for inclement weather or other reason. Days on which the Administration Building is normally closed are Thanksgiving Break, Winter Break, Spring Break, and Summer Break, as well as other federal, state or local days specified in the calendar approved by the Owner's Board of Trustees on an annual basis. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or special events.

§ 1.1.10.2 Calendar Day
A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

§ 1.1.10.3 Holidays
Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

§ 1.1.10.4 Work Day
Work days include all calendar days except Holidays, Saturdays and Sundays.

§ 1.2 Correlation and Intent of the Contract Documents
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

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

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.1 Contract Modifications signed by Contractor and Owner.
.2 Addenda, with those of later date having precedence over those of earlier date.
.3 General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.

.4 Agreement – AIA Document A101-2017 or A133-2019, as modified by the Owner for the Project.
.5 Specifications and Drawings.
.6 Bid/Proposal Documents including the Project Manual, Contractor's Bid or Proposal Documents (to the extent such Bid or Proposal submitted by the Contractor is part of the Contract Documents and is not inconsistent with other portions of the Contract Documents)

§ 1.2.5 Relation Of Specifications And Drawings
Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above-mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.5.1 Drawings and Specifications are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above-mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.5.2 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

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

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

§ 1.3 Capitalization
Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation
In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice
§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to

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whom the notice is addressed and shall be deemed to have been duly served if delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given in person, by mail, by courier, or by electronic transmission if a method for electronic transmission (e-mail or facsimile) or other commercially reasonable means and will under any of these circumstances, be effective when actually received. Any address for notice may be changed by written notice delivered as provided in this Section 1.6.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, 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

§ 2.2 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..

(Paragraphs 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 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 may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site, but shall have no duty to do so. Notwithstanding the foregoing, if the Owner provides such survey, the Contractor shall remain responsible to independently investigate the physical characteristics, legal limitations, and utility locations for the Project site. In the event that the Contractor damages any utilities during construction, the contractor shall immediately repair the same at its sole cost and expense.

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§ 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 not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, 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 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.

§ 3.1.2 The Contractor shall perform the Work in 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 Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, or for price escalations in the marketplace. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor shall not perform any Work it knows involves an error, inconsistency, or omission without further instructions to Contractor or revised Construction Documents from the Architect. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the Work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or honor its warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner, in writing providing substantiation for its position.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. 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

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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 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 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.

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

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

§ 3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq., and shall require any applicable subcontractor to comply all such procedures. Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

§ 3.3.5 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent Contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the

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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 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for or 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.

(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).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.

§ 3.4.3 Substitutions

§ 3.4.3.1 If the Contract Documents (including the Instructions to Proposers and /or Offerors) specifically permit the submission by Contractor of requests for substitutions, Contractor may, within thirty (30) days after the Contract has been executed, make written request for the substitution of products in place of those specified in the Contract Documents to the Owner and the Architect. Any request for substitution shall be submitted to the Architect in writing, with appropriate shop drawings, product data, and certified test results substantiating the proposed product equivalence as required by this Section 3.4.3.1 and Section 3.4.3.2 and will be rejected if not so submitted.

§ 3.4.3.2 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and any modifications to the construction schedule; and (v) an affidavit stating that (a) the proposed substitution confirms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect; (c) the cost breakdown presented with Contractor's request is complete and includes all related costs, except for the Architect's redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent;(d) that the Contractor will coordinate and supervise the installation of the proposed substitute, making such changes as may be required for the Work to be complete in all respects; and (e) the Contractor will reimburse the Owner and for review or redesign services associated with any re-approval by applicable governmental authorities related to the substitution.

§ 3.4.3.3 By making requests for substitutions pursuant to Section 3.4.3 (and all subsections), the Contractor represents and certifies that: (1) Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to the product specified; (2) Contractor will provide the same warranty for the substitution product that the Contractor would have provided for the product specified; (3) the cost breakdown presented with the request is complete and includes all related costs, except for the Architect's redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent; (4) Contractor will coordinate and supervise the installation of the proposed substitute, making such changes as may be required for the Work to be complete in all respects; and (5) will reimburse Owner and Architect for review or

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redesign services associated with any re-approval by applicable governmental authorities related to the substitution.

3.4.3.4 Owner and the Architect may accept or reject any such request for substitution in their sole discretion, based on cost, time, or other considerations. Requests for substitutions submitted after such thirty (30) day period will not be considered unless a product becomes impossible to obtain due to circumstances beyond the Contractor's control.

§ 3.4.3.5 Regardless of acceptance or rejection of substitution, the Contractor shall be responsible for amounts paid by the Owner to the Architect, to evaluate the Contractor's proposed substitutions and any amounts paid to the Architect to make agreed upon changes in the Specifications and Drawings made necessary by the Owner's acceptance of such substitutions. The Owner shall be entitled to deduct such amounts from the Contract Sum.

§ 3.4.4 Responsibility for Subcontractors

§ 3.4.4.1 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor, its subcontractors and vendors shall bear responsibility for compliance with all federal, state and local laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of his own conduct. THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES; NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES; CONTRACTOR'S FORCES NON-COMPLIANCE WITH CRIMINAL LAW; OR CONTRACTOR'S OR CONTRACTOR'S FORCES NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.4.4.2 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Work may be performed in connection with an operational educational facility or the Project site may be adjacent to a public-school campus. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb or disrupt Owner's normal operations or facilities. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working at or near an operational campus and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum.

§ 3.4.5 Criminal History Records Checks

§ 3.4.5.1 For purposes of this Section 3.4.5 (and all subsections), the following definitions shall be applicable:
.1 "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.
.2 "Covered Employees", shall mean, all employees of Contractor, as well as employees of Contractor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

§ 3.4.5.2 Unless otherwise exempt from providing such information by any provision in Texas Education Code, Section 22.08341 (the "Statute"), the Contractor agrees, that prior to commencement of work under this Agreement, using the form promulgated by the Owner or such other form approved by the Owner, Contractor will arrange with the Owner to obtain any national criminal history record information ("CHRI") required pursuant to the Statute on all of Contractor's employees, independent contractors, agents, or Subcontractors, Contractor's Subcontractors of every tier ("Subcontractors"), Subcontractors' employees, independent contractors, agents, or sub-subcontractors, if any of these persons is a "Covered Employee" as defined in Section §3.4.5.1 and shall reimburse the Owner for the costs and expenses associated with obtaining the required CHRI.

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§ 3.4.5.3 For purposes of this Section 3.4.5 a person does not have the opportunity for direct contact with students if:
.1 the public work does not involve the construction, alteration, or repair of an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code ("Instructional Facility);
.2 for a public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first date the facility will be used for instructional purposes; or
.3 for a public work that involves an existing Instructional Facility:
(a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and
(b) the Contractor adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

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

§ 3.4.5.5 Prior to commencement of its work on the Project the Contractor will provide written certification to the Owner that either: (1) Contractor and its Subcontractors of every tier, do not have any Covered Employees, as defined; (2) are otherwise exempt from compliance with the Statute; or (3) has complied with the statutory and contractual requirements stated in Section 3.4.5 of this Agreement (including all subparts), as of that date, and that it:

.1 has requested a Criminal History Records Check through the District on all Covered Employees, if any, of every tier, has provided the required information to the District to do so and reimbursed the District for same;

.2 has obtained written certification from its independent contractors, and Subconsultants (of any tier) that they have provided the required information to the Contractor, necessary to secure the information from the District and reimbursed the Contractor for same; and

.3 have excluded any Covered Employee reported by the District to have a Disqualifying Criminal History from assignment to the Project.

Further, Contractor agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses, during the performance of the Work, Contractor will immediately remove the Covered Employee from District's property or other location where students are regularly present, and notify the District of said removal within three (3) days of doing so. Contractor understands that any failure to comply with the requirements of this section may be grounds for termination of this Agreement, in accordance with Article 14, Termination.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with all applicable codes, generally accepted standards of construction practice for construction of projects similar to the Project. All materials shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and

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normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. No acceptance or payment by the Owner shall constitute a waiver of the foregoing and nothing herein shall exclude or limit any warranties implied by law. The warranties provided in this Section 3.5.1 are in addition to, and not in limitation of, any other warranties, remedies and/or guaranties set out in the Contract Documents or under applicable law.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. In such case, each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion (or, for Work to be completed or corrected after the date of Substantial Completion, the Warranty Commencement Date). Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the warranties under granted in the Contract Documents will expire, on each phase or building and will provide a copy of such Schedule to the Owner, as required in Subsection 3.5.6, as a condition precedent to Final Payment.

§ 3.5.4 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or such further reasonable proof as is required by the Architect.

§ 3.5.5 The Contractor agrees to assign to the Owner at the time of Final Completion of the Work any and all manufacturer's warranties relating to equipment, machinery, materials, equipment or components and labor incorporated into the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations. The warranties provided in this Section 3.5 or otherwise provided in the Contract Documents or by law, shall in no way limit or abridge the warranties provided by the suppliers of equipment and systems which are to comprise a portion of the Work. A complete set of all warranties required from contractors, manufacturers, or suppliers as appropriate, on the manufacturer's or supplier's approved forms, executed by Contractor as required, with a Warranty Commencement Date noted as required, and in the form required by Subparagraph 3.5.6 shall be submitted to the Architect for delivery to the Owner, as a condition precedent to Final Payment.

§ 3.5.6 Prior to receipt of Final Payment, Contractor shall: (1) obtain duplicate original warranties, executed by all subcontractors, and the warranties of suppliers and manufacturers, noting the Warranty Commencement Date on the face of each; (2) verify that the documents are in proper form and contain full information; (3) Co-sign warranties when required; (4) bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers; (5) label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the Title of the Project; name, address and telephone number of Contractor; and name of its responsible principal; (6) include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified; (7) include the Schedule of Warranty Commencement Dates required by Subparagraph 3.5.3; (8) separate each warranty with index tab sheets keyed to the Table of Contents listing; and (9) deliver warranties in the form described in this Subparagraph 3.5.6, to the Architect for review same prior to submission to the Owner.

§ 3.6 Taxes

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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 bids 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.

§ 3.7.4 Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract Sum, or both. The Contract Time and the Contract Sum contained herein (as proposed by Contractor), or GMP as applicable, shall be deemed to include all costs of and sufficient time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if the Contractor encounters conditions at the site that are subsurface or otherwise concealed physical conditions which were not known to the Contractor, and that differ materially from those indicated in the Contract Documents the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed, and in no event later than three (3) days after first observance of the conditions and report its findings to the Owner and Architect.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15. In accordance with the terms of this Agreement, there will be no adjustment to the Contract Sum for delay arising out

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or related to the circumstances described in this Section 3.7.5.

§ 3.7.6 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which require the issuance of a permit shall be at Contractor's sole cost.

§ 3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

§ 3.8.4 When performing Work under Allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work on the basis of the best value for the Owner, as directed by the Architect following Owner's written approval of the cost proposal.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish a list to the Architect a list of all engineers, consultants, job-site superintendents, subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner. The Owner shall have the right, at any time, to require a change in any engineer, consultant, job-site superintendent, subcontractor or supplier if their performance is deemed unsatisfactory in its sole discretion.

§ 3.9.3 The Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

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§ 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, 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

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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.

(Paragraph deleted)
§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect and shall attend progress meetings at the Project Site, in such frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule.

§ 3.10.4 The Contractor shall submit to the Architect with each monthly application for payment a copy of the Progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein.

§ 3.10.5 Correction of Delay.
§ 3.10.5.1 In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, or any Milestone Date unless any such adjustment is submitted by the Contractor as a Claim in compliance with Article 15 or the adjustment is otherwise agreed to in a written confirmation from the Owner and documented by written Change Order.

§ 3.10.5.2 If at any time the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5. The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.5.3 In the event Contractor determines that the Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain and make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, field test records (including environmental inspection and test records), inspection certificates or records, manufacturers' certificates. The Documents to be maintained shall be kept in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner or their respective representatives, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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§ 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 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 notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall 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,

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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 Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, 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 shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall, on a daily basis, keep the premises and surrounding area free from accumulation of

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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 and 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 Indemnification

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

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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.

§ 3.18.3 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

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

§ 3.18.6 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

§ 3.18.7 Contractor shall promptly advise the Owner, in writing, of any claim or demand against the Owner or Contractor, known to the Contractor related to or arising out of Contractor's activities under this Contract.

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§ 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, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date of the Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, or as they may be amended in the future.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. and delivered on time. In addition, the Architect or its structural consultant will (1) provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable; and (2) provide on-site observations prior to covering up or closing

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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, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (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, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect or the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work may be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall prevent action to require conformance, if at any subsequent time the Work or any portion thereof is found not to conform to the requirements of the Contract Documents. Architect and/or Contractor shall promptly notify, the other party orally and in writing, and Owner of any perceived fault or defect in the design or nonconformance of the Work with the Construction Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no duty to notify Owner of discoveries made or actions taken by Architect.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or Separate Contractors, and allow sufficient time in the Architect's professional judgment to permit adequate review.

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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 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 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. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information at no additional expense to the Owner.

§ 4.2.15 The Architect may appoint an employee or other person to assist the Architect during the construction. These representatives will be instructed to assist the Contractor in interpreting the Contract Documents; however, such assistance shall not relieve the Contractor from any responsibility as set forth by the Contract Documents. The fact that the Architect's Representative may have allowed Work not in accordance with the Contract Documents shall not

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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 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 notify the Contractor 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.

§ 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. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. 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 without providing reasonable written notice to the Owner or Architect If neither the Owner nor Architect submits a reasonable objection to such proposed substitution within ten (10) days following their receipt of written notice the Contractor may proceed with the substitution. If either Owner or Architect submit an objection, the Subcontractor shall proceed in accordance with Section 5.2.3 above.

§ 5.2.5 Each Contractor or subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in Contract Sum shall be allowed for failure to so inspect or investigate.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. The terms and conditions of the Contract Documents shall be incorporated by reference into each Subcontract agreement, included as provided below. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the

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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 a 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 shall be equitably adjusted for increases in cost resulting from the suspension. Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable.

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

§ 5.5 Notice Of Subcontractor Default

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

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

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

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

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(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 Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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§ 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 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 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 as provided in Section 7.3.3.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, 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

.3 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, 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

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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 , allowed in any Change Directive, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement (by executing and returning the Change Directive) or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time not later than ten (10) calendar days following the Contractor's receipt of the Construction Change Directive. A copy of a notice of disagreement shall also be provided to the Owner concurrent with the notice to the Architect. A Notice of Disagreement must contain the number of the Change Directive, the date the Change Directive was issued and the words "Notice of Disagreement With Change Directive" in the Subject line. It is imperative that Owner receive timely specific notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and 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

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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. 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 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 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.

(Paragraph deleted)

§ 8.1.3 Substantial and Final Completion

§ 8.1.3.1 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.3.2 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) days after the date of Substantial Completion

§ 8.1.4 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 confirms 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.

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§ 8.2.4 Liquidated Damages

§ 8.2.4.1 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set out in the AIA Document A101 (2017) or the AIA Document A133 (2019) into which these General Conditions are incorporated and executed concurrently with these General Conditions, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.4.2 In the event Substantial Completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor all liquidated damages, if any, due Owner in accordance with the Contract Documents.

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by war, civil commotion, pandemic, epidemic, federal, state or local declared disaster or public emergency, act of God, governmental restrictions, regulations, orders, or interference, fire or other unavoidable casualty, material changes ordered in the Work; adverse weather conditions documented in accordance with Section 15.1.6 by delay authorized in writing by the Owner prior to the happening of the delay event; or (5) by other causes that the Contractor asserts, and the Architect and Owner determine, justify delay, then the Contract Time may be extended for such reasonable time as the Architect and Owner may determine based upon documentation by the Contractor.

§ 8.3.1.1 The adjustment of the Contract Time for delay, disruption, and interference described in this Section 8.3.1 is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time and Contractor's timely delivery of the notice and claim as set out in this Section 8.3.1. An adjustment to the Contract Time shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Section 8.3.1, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for Owner-caused delays.

§ 8.3.1.2 Notice and Claim for Extension. In the event of a delay in the commencement or progress of the Work as a result of any of the circumstances in this Section 8.3.1, the Contractor may receive an extension of time for completion of the Work equal to the delay, if the Contractor delivers a written notice and claim to the Owner and Architect delivered in any manner provided in Section 1.6.1 of this Agreement. The Notice shall identify and provide a reasonably detailed description of the circumstances causing the delay, disruption, or interference to the Contractor's performance or progress of the Work on or before the due date of Contractor's Application for Payment covering the period in which the delay began. Claims for an extension of time shall be stated in whole or half calendar days, as applicable. The actual date on which the delay(s) began and/or the date the delay ended, if applicable, must be stated in the Claim Notices as applicable.

§ 8.3.2 In the case of claims for extension of time because of unusually inclement weather, such extension of time may be granted only if the Contractor files a claim in accordance with the requirements set out in Section 15.1.6.

§ 8.3.3 Contractor shall not be entitled to an adjustment in the Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

§ 8.3.4 Any adjustment of the Contract Time authorized under Section 8.3 shall be conditioned on such adjustment

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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 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 by written agreement between the Owner and Contractor, executed prior to an order being placed based on the unit prices.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, 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, 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 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 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.

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§ 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 has 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 in a separate written agreement executed between the Owner and Contractor Prior to delivery, payments shall not be made on account of materials and equipment delivered and stored at the site or off-site for subsequent incorporation in the Work. The Owner may, in Owner's sole discretion, require Contractor's compliance with such reasonable procedures and requirements as it may establish, as a condition precedent to the grant of Owner's consent and agreement to payment, including but not limited to the following:

.1 provision of any additional insurance required to protect the materials and equipment while stored;
.2 payment of the costs to store the materials and equipment and any additional transportation costs for multiple deliveries;
.3 provision of written consent of Contractor's surety to such storage;
.4 submission of an affidavit identifying materials and equipment stored off-site for later incorporation into the Work, and acknowledging responsibility for such materials and equipment;
.5 provision of documentation that the facility where the materials and/or equipment will be stored is an adequately insured commercial warehouse, where the materials and equipment stored will be sheltered from the weather and outside elements and are stored in accordance with the manufacturer's instructions, including proper temperature and humidity controls and that the materials and equipment have been physically separated and marked for the Project;
.6. its agreement to bear the cost of Owner and/or Architect's visits to the off-site storage facility to confirm compliance with these requirements and review the stored contents, and Contractor shall agree to allow such costs to be offset from Progress Payments;
.7 agreement that payment of any costs related to compliance with the procedures and requirements for storage of materials and equipment on or off-site, shall not be subject to charges for overhead or profit;
.8 submission of bills of sale or other documentation acceptable to the Owner, showing proof of delivery and establishing the Owner's title to the materials or equipment and/or otherwise protecting the Owner's interest, including naming the Owner as additional insured on the required insurance policy (naming the specific materials or equipment stored and their location) and providing proof of delivery for those materials and equipment;
.9 agreeing that, in the event of termination of the Contract or default by the Contractor, the material and equipment stored on or off-site shall be immediately turned over to the Owner by delivery to the location designated by the Owner and that the operator of the storage facility is aware of this agreement and willing to honor it; and
.10 agreeing that all such stored materials and equipment, to the extent they include mechanical components, will be maintained by the Contractor kept in good working condition and ready for immediate installation, to the same extent they would have been, had they been delivered "just in time" for installation, that Contractor will be solely responsible for assuring any manufacturer's warranty will commence on date of completion of installation and/or start-up of the material or equipment and for repairs required prior to installation to assure performance in accordance with the Contract Documents.

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§ 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 ORSUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS PREVIOUSLY MADE BY THE OWNER TOCONTRACTOR 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 of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. Architect's written reasons for withholding certification shall be construed as the notice required by Texas Government Code Section 2251.042 et seq.

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

§ 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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§ 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; or
- **.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, that party 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, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment. 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,

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and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253. Notwithstanding the foregoing, payments received by the Contractor from the Owner for Work properly performed by Subcontractors, or materials properly provided by suppliers, shall be held in trust by the Contractor for the benefit of those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor.

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

§ 9.7 Failure of Payment

§ 9.7.1 Pursuant to Texas Government Code Section 2251.051,if the Owner does not pay the Contractor any payment certified by the Architect, which is undisputed, due and owing after the date the payment is due under the Contract Documents, then the Contractor may, upon ten (10) days' written notice to the Owner and Architect, that payment has not been made and the Contractor intends to suspend performance for nonpayment, may stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that: 1) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect to either: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is

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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 Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, as defined by the Contract Documents, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. If Work is to be completed or corrected after the date of Substantial Completion and prior to final payment, Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Architect, or the date of Final Payment. ("Warranty Commencement Date").

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

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

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§ 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 otherwise agreed upon in writing , partial occupancy or use of a portion or portions of the Work or installation of furnishings and equipment shall not constitute acceptance of Work not complying with the requirements of the Contract Documents , nor shall it constitute evidence of Substantial Completion or Final Completion.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner (at Owner's option) will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Work has been completed in accordance with the Contract Documents and that remainder of the Contract Sum, including all retainage, less any amount withheld pursuant to the Contract and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an 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 t. 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 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;

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.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.

(Paragraphs 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 and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 The Contractor shall not permit any actual or purported lien, charge or claim to attach or attempt to attach to the Work, the site or any amounts due or to become due to the Contractor under the Contract Documents. If any such lien, charge or claim is so asserted, the Contractor shall promptly procure its release and indemnify the Owner against all damage and expense incident thereto. Upon completion of the Work and before any final payment and settlement, the Contractor shall provide evidence satisfactory to the Owner of payment and release of all debts, taxes, liens, charges, obligations and claims for or relating to labor, materials, Subcontractors and Sub-subcontractors; provided, however, that if the Contractor has not paid for any of the aforesaid as a result of a bona fide dispute, and payment of such is guaranteed and covered by the payment bond provided by the Contractor, then the Contractor shall not be required to pay such claim as a condition to final payment and settlement, but instead shall be required to provide Owner with written consent to final payment executed by such surety, expressly acknowledging the existence of such unpaid claim, and agreeing that full and final payment to the Contractor shall not impair any of the Owner's rights or the surety's obligations under the bond.

§ 9.11 Audit
Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., latest edition, and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 et seq., and all amendments thereto. However, the Contractor's duties herein shall not relieve any Subcontractor or any other person or entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, from the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.1.1 Contractor shall ensure that the Project site is alcohol-free, drug-free, nicotine/ tobacco-free, e-cigarette free, weapon-free, and sexual-harassment free, and shall require strict compliance on the Project Site with the Owner's Board Policies, including but not limited to GKA(Legal) and GKA(Local). Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

§10.1.2 Dress Code, Fraternization and Sexual Harassment. Contractor shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Contractor shall prohibit fraternization between all persons working under Contractor or any of its subcontractors, students and Owner's employees while on Owner's property. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 10.1.3 Weapons. Owner has also banned use, possession, or display of any firearm, handgun, location-restricted knife, club, or "prohibited weapon", as defined by the Texas Penal Code and Owner's Board Policy FNCG(Legal), except when the Contractor, its representatives, employees, agents, and subcontractors, or anyone else over which the Contractor has control or authority holds a Texas handgun license, stores the handgun or other firearm in a locked vehicle in the Owners parking lot, garage, or other parking area provided by the Owner AND the firearm is not loaded and not in plain view. A copy of such policy is available through a link on the Owner's website. The Contractor further agrees that Contractor's representatives, employees, agents, and subcontractors will abide by these requirements as well as the Federal Gun-Free School Zones Act.

§ 10.1.4 Tobacco and E-Cigarettes. Contractor's employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not use e-cigarettes or tobacco products while on the Project Site.

§ 10.1.5 Small Unmanned Aircraft (Drones). The Contractor shall operate any Small Unmanned Aircraft as required by 14 C.F.R. Part 107. as applicable, and any other applicable federal or state laws and regulations.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable 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

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.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.

(Paragraph deleted)

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

10.2.8.1 If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding three (3) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

§ 10.2.8.2 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, then the accident shall be reported immediately by any means necessary to give actual notice to the Owner's representative and the Architect.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. If such notice is provided orally, written confirmation of such notice by Contractor shall be provided not later than one (1) business day following such notification. Owner shall not be responsible for materials or substances brought to the site

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by the Contractor.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall, as soon as reasonably possible, obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. Contractor may be entitled to an extension of the Contract Time in accordance with Article 8.3.

§ 10.3.3 To the extent permitted by the laws and Constitution of the State of Texas, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

§ 10.3.5 Except to the extent that the cost and expense are due to the Owner's fault or negligence, if Contractor imports hazardous materials onto the Project site, the Contractor shall indemnify and hold harmless the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, (2) where the Contractor fails to perform its obligations under Section 10.3.1; and (3) any fines or penalties of government agencies directly resulting from the Contractor's importation of the hazardous materials onto the Project site.
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(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

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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 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 State of Texas.

Workmen's Compensation:	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

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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.	

§ 11.1.2 The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner..

§ 11.1.3 The General Liability and Automobile policies so issued in the name of Contractor shall also name the Owner as additional insured. The coverage afforded to the additional insured under the policy or policies shall be primary insurance. It is the intent of the parties to this Agreement that the General Liability coverage (and associated Umbrella Coverage) required herein shall be primary to and shall seek no contribution from all insurance available to Owner, with Owner's insurance being excess, secondary and non-contributing. The Commercial General Liability coverage provided by Contractor shall be endorsed to provide such primary and non-contributing liability. If the additional insured has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis.

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(Paragraph deleted)
§ 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.

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§ 11.1.8 As an alternative and at Owner's option and expense, Owner may elect to furnish or to arrange for any part or all of the insurance required by Section 11.1 hereof. If Owner so elects, it shall notify, in writing, Contractor and issue a Change Order therefor, but no adjustment to the scheduled completion date or the Contract Sum shall be allowed.

§ 11.1.9 Workers' Compensation Insurance Coverage.

.1 Definitions:

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

.1.2 Duration of the Project. Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code §406.096). Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracts directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

.2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.

.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

.4 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

.**5** The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:

.5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.5.2 no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

.7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

.8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

.9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:

.**9.1** provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;

.9.2 provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

.9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage

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showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.9.4 obtain from each other person with whom it contracts, and provide to the Contractor: (a) a certificate of coverage, prior to the other person beginning work on the Project; and (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

.9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.

.10 By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Department of Insurance, Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

.11 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [28 TAC §110.110(c)(7)]

§ 11.2 Owner's Insurance

(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.

§ 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.

(Paragraphs deleted)

§ 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

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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.

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

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

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

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

§ 11.4.9 By inclusion of this Section 11.4.9 in the Contract Documents, the surety which issues the bonds is hereby notified that the Owner, the Architect, and their agents and employees do not represent and will not be responsible for the surety's interests during the course of the Work. To protect its interests, the surety shall have the right to attend pay estimate meetings, review Applications for Payment when requested in writing by them, comment upon and make recommendations regarding payments, and inspect the Work in the presence of the Contractor and the Architect. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner, the Architect, their agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Contractor, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.

§11.5 Adjustment and Settlement of Insured Loss

(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

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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 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 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.

§ 12.2.3 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

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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.

§ 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

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inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including but not limited to those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth (46th) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

§ 13.6 Equal Opportunity In Employment

§ 13.6.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

§ 13.6.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law.

§ 13.7 Contractors Records

§ 13.7.1 Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office or the principal offices of the Contractor, at the sole option

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of the Owner.

§ 13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

§ 13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.7.1.

§ 13.7.5 Contractor shall keep all Construction Documents related to the Project, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

§ 13.7.6 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 No Third-Party Beneficiaries
There are no third-party beneficiaries to this agreement.

§ 13.9 Proprietary Interests And Confidential Information
§ 13.9.1 Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

§ 13.9.2 Neither Architect nor Contractor shall disclose any confidential information of Owner which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to: pending real estate purchases, exchange, lease, or value; information related to litigation; detailed layouts of the Owner's Facilities; the location and deployment of security devices; security access codes; student likenesses; student record information; employee information; or any other information deemed confidential by law.

§ 13.9.3 The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Section 552.001, et seq., and the Texas Open Meetings Act, Texas Government Code, Section 551.001, et seq.

§ 13.10 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 If the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- **.3** Because the Owner has not made payment of undisputed sums due on an approved Certificate for Payment within the time stated in the Contract Documents; or

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§ 14.1.2 If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment in an amount which would have been recoverable had the termination been for the Owner's convenience..

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon ten (10) additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors or suppliers 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 Contractors premises and remove the same therefrom. No election herunder shall be construed as a waiver of any rights or remedies of the Onwe 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, then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to

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the Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

§ 14.2.6 As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a Contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall 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.

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

(Paragraph deleted)

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor, shall be initiated by notice to the Owner and to the Architect. Claims under this Section 15.1.3.1 shall be initiated within 21 calendar days after the occurrence of the event giving rise to such Claim or within 21 calendar days after the claimant first knew or should have known of the condition giving rise to the Claim, whichever is earlier. If the full impact cannot be assessed as of the date of the Notice, then Notice shall be provided and amended by a second notice at the earliest date that is reasonably possible, but in no event later than the date of Contractor's Application for Payment covering the period in which the impact can be assessed and quantified.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required. If Texas Government Code, Chapter 2272 is applicable to the Claim, the Owner shall comply with the requirements set out therein as a condition precedent to any initiation of any litigation. .

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments for work performed in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party 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.

(Paragraph deleted)

§ 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

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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 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. .

(Paragraphs 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

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this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator qualified as an impartial third party for purposes of Section 154.052 of the Texas Civil Practice & Remedies Code.

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

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

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.3.5 Nothing herein shall preclude the Owner or the Contractor 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*)		CONTRACTOR (*Signature*)
, President		
(Printed Name and Title)		*(Printed Name and Title)*

APPROVED AS TO FORM
Johnathan Ball, McAllen ISD Staff Attorney

By:

(Paragraphs deleted)

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Additions and Deletions Report for

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PAGE 1

(Name, legal status and address)

[redacted]

* In this Agreement, any reference to "Architect" herein shall mean "Engineer."

THE CONTRACTOR

[redacted]

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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 Johnathan Ball, McAllen ISD Staff Attorney for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

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~~**ARTICLE 1 GENERAL PROVISIONS**~~

~~**§ 1.1 Basic Definitions**~~

~~**§ 1.1.1 The Contract Documents**~~

~~The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, 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.~~

~~**§ 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. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (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.~~

ARTICLE 1 GENERAL PROVISIONS

~~**§ 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 Basic Definitions

~~**§ 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.~~

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§ 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.

~~**§ 1.1.7 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.~~

§ 1.1.3 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.

~~**§ 1.1.8 Initial Decision Maker**~~

~~The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~

§ 1.1.4 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.

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

§ 1.1.8 Initial Decision Maker
The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.
§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Miscellaneous Other Words
§ 1.1.10.1 Business Day
The term "business day" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner's Superintendent of Schools for inclement weather or other reason. Days on which the Administration Building is normally closed are Thanksgiving Break, Winter Break, Spring Break, and Summer Break, as well as other federal, state or local days specified in the calendar approved by the Owner's Board of Trustees on an annual basis. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or special events.

§ 1.1.10.2 Calendar Day
A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

§ 1.1.10.3 Holidays
Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

§ 1.1.10.4 Work Day
Work days include all calendar days except Holidays, Saturdays and Sundays.

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§ 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.

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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.

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whom the notice is addressed and shall be deemed to have been duly served if delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given in person, by mail, by courier, or by electronic transmission if a method for electronic transmission ~~is set forth in the Agreement.~~(e-mail or facsimile) or other
commercially reasonable means and will under any of these circumstances, be effective when actually received. Any address for notice may be changed by written notice delivered as provided in this Section 1.6.

...

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, 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.

...

~~Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model 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.~~

...

§ 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~~

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~~matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority.~~ 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.~~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

...

§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work..

§ 2.2.2 ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~

§ 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.~~

§ 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.~~

...

§ 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.

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§ 2.3.5 ~~The Owner shall furnish information~~ Information or services required of the Owner by the Contract Documents ~~with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.~~shall be furnished by the Owner within a reasonable time following actual receipt of a written request

§ 2.3.6 ~~Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.~~The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

§ 2.3.7 Owner's personnel or consultant may, but are not required to be present at the construction site during progress of the Work to assist the Architect in the performance of his duties, and to verify the Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and the equipment used in the performance of the Work for purpose of verification of Contractor's Applications for Payment.

§ 2.3.8 The Owner (either directly or by contract with the Architect) may furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 2.3.9 The Owner, (directly or by contract with the Architect), when such services are required, in the professional opinion of the Architect, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 2.3.10 The Owner will contract for, independently of the Contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for the acceptance of the Work by the Owner as required by the Texas Government Code, Section 2269.058.
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If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by ~~Section 12.2~~ Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, 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

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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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§ 3.2.1 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,~~ 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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§ 3.2.5 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.

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§ 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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§ 3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq., and shall require any applicable subcontractor to comply all such procedures. Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

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

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

§ 3.3.7 Contractor acknowledges that the Work may be performed in connection with an educational facility which is currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other contractors and Subcontractors

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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 or qualified, careful, and efficient workers and labor, eligible to work in accordance with state and federal law. Contractor shall appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Before ordering any material or doing any Work, Contractor shall verify all dimensions and check all conditions in order to assure Contractor that they are the same as those in the Drawings, Specifications, and other Construction Documents. Any inconsistency shall be brought to the attention of the Architect. In the event that discrepancies occur between ordered material and actual conditions and Architect was not notified beforehand, then costs to correct such discrepancies shall be borne by Contractor. In accordance with Texas Government Code §2269.054, these Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization. In accordance with Texas Government Code §2269.0541, these Contract Documents shall also not prohibit, require, discourage or encourage a person, or discriminate against a person bidding on this contract from entering into or declining to enter into, or adhering to, an agreement with a collective bargaining organization relating to this Project.

~~**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.~~

§ 3.4.2 Prevailing Wages

§ 3.4.2.1 The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.2.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications and attached to the AIA Document A101-2017, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction.

§ 3.4.2.3 A Contractor or Subcontractor who violates the provisions of Sections 3.4.2.1 or 3.4.2.2 shall pay to Owner the sum of Sixty Dollars and No/100 ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as

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required by Texas Government Code Section 2258.023(b).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.

§ 3.4.3 ~~The Contractor shall enforce strict discipline and good order among the Contractor's employees and other~~ **Substitutions**

§ 3.4.3.1 If the Contract Documents (including the Instructions to Proposers and /or Offerors) specifically permit the submission by Contractor of requests for substitutions, Contractor may, within thirty (30) days after the Contract has been executed, make written request for the substitution of products in place of those specified in the Contract Documents to the Owner and the Architect. Any request for substitution shall be submitted to the Architect in writing, with appropriate shop drawings, product data, and certified test results substantiating the proposed product equivalence as required by this Section 3.4.3.1 and Section 3.4.3.2 and will be rejected if not so submitted.

§ 3.4.3.2 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and any modifications to the construction schedule; and (v) an affidavit stating that (a) the proposed substitution confirms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect; (c) the cost breakdown presented with Contractor's request is complete and includes all related costs, except for the Architect's redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent;(d) that the Contractor will coordinate and supervise the installation of the proposed substitute, making such changes as may be required for the Work to be complete in all respects; and (e) the Contractor will reimburse the Owner and for review or redesign services associated with any re-approval by applicable governmental authorities related to the substitution.

§ 3.4.3.3 By making requests for substitutions pursuant to Section 3.4.3 (and all subsections), the Contractor represents and certifies that: (1) Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to the product specified; (2) Contractor will provide the same warranty for the substitution product that the Contractor would have provided for the product specified; (3) the cost breakdown presented with the request is complete and includes all related costs, except for the Architect's redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent; (4) Contractor will coordinate and supervise the installation of the proposed substitute, making such changes as may be required for the Work to be complete in all respects; and (5) will reimburse Owner and Architect for review or redesign services associated with any re-approval by applicable governmental authorities related to the substitution.

3.4.3.4 Owner and the Architect may accept or reject any such request for substitution in their sole discretion, based on cost, time, or other considerations. Requests for substitutions submitted after such thirty (30) day period will not be considered unless a product becomes impossible to obtain due to circumstances beyond the Contractor's control.

§ 3.4.3.5 Regardless of acceptance or rejection of substitution, the Contractor shall be responsible for amounts paid by the Owner to the Architect, to evaluate the Contractor's proposed substitutions and any amounts paid to the Architect to make agreed upon changes in the Specifications and Drawings made necessary by the Owner's acceptance of such substitutions. The Owner shall be entitled to deduct such amounts from the Contract Sum.

§ 3.4.4 Responsibility for Subcontractors

§ 3.4.4.1 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other 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

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IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.4.4.2 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Work may be performed in connection with an operational educational facility or the Project site may be adjacent to a public-school campus. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb or disrupt Owner's normal operations or facilities. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working at or near an operational campus and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum.

§ 3.4.5 Criminal History Records Checks

§ 3.4.5.1 For purposes of this Section 3.4.5 (and all subsections), the following definitions shall be applicable:
.1 "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.
.2 "Covered Employees", shall mean, all employees of Contractor, as well as employees of Contractor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

§ 3.4.5.2 Unless otherwise exempt from providing such information by any provision in Texas Education Code, Section 22.08341 (the "Statute"), the Contractor agrees, that prior to commencement of work under this Agreement, using the form promulgated by the Owner or such other form approved by the Owner, Contractor will arrange with the Owner to obtain any national criminal history record information ("CHRI") required pursuant to the Statute on all of Contractor's employees, independent contractors, agents, or Subcontractors, Contractor's Subcontractors of every tier ("Subcontractors"), Subcontractors' employees, independent contractors, agents, or sub-subcontractors, if any of these persons is a "Covered Employee" as defined in Section §3.4.5.1 and shall reimburse the Owner for the costs and expenses associated with obtaining the required CHRI.

§ 3.4.5.3 For purposes of this Section 3.4.5 a person does not have the opportunity for direct contact with students if:
.1 the public work does not involve the construction, alteration, or repair of an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code ("Instructional Facility);
.2 for a public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first date the facility will be used for instructional purposes; or
.3 for a public work that involves an existing Instructional Facility:
(a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and
(b) the Contractor adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

§ 3.4.5.4 Any Covered Employee that has during the preceding thirty (30) years, been convicted of one of the following offenses, if at the time of the offense the victim was under eighteen (18) or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense to (a) or (b) under federal law or the laws of another state ("Disqualifying Criminal History Offense") shall be disqualified and prohibited from performing any contract duties or services and neither the Contractor nor its Subcontractor may permit such person to provide services at an instructional facility. If a Covered Employee is determined by the Owner's review of the CHRI

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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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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.

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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

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manufacturer's warranties. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations. The warranties provided in this Section 3.5 or otherwise provided in the Contract Documents or by law, shall in no way limit or abridge the warranties provided by the suppliers of equipment and systems which are to comprise a portion of the Work. A complete set of all warranties required from contractors, manufacturers, or suppliers as appropriate, on the manufacturer's or supplier's approved forms, executed by Contractor as required, with a Warranty Commencement Date noted as required, and in the form required by Subparagraph 3.5.6 shall be submitted to the Architect for delivery to the Owner, as a condition precedent to Final Payment.

§ 3.5.6 Prior to receipt of Final Payment, Contractor shall: (1) obtain duplicate original warranties, executed by all subcontractors, and the warranties of suppliers and manufacturers, noting the Warranty Commencement Date on the face of each; (2) verify that the documents are in proper form and contain full information; (3) Co-sign warranties when required; (4) bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers; (5) label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the Title of the Project; name, address and telephone number of Contractor; and name of its responsible principal; (6) include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified; (7) include the Schedule of Warranty Commencement Dates required by Subparagraph 3.5.3; (8) separate each warranty with index tab sheets keyed to the Table of Contents listing; and (9) deliver warranties in the form described in this Subparagraph 3.5.6, to the Architect for review same prior to submission to the Owner.

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

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.

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at the time bids 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.~~
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 ~~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

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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.

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~~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~~ 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 ~~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.~~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.

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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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§ 3.8.3 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

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fewer than three (3) written proposals and shall provide the Work on the basis of the best value for the Owner, as directed by the Architect following Owner's written approval of the cost proposal.

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communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall ~~notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~furnish a list to the Architect a list of all engineers, consultants, job-site superintendents, subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner. The Owner shall have the right, at any time, to require a change in any engineer, consultant, job-site superintendent, subcontractor or supplier if their performance is deemed unsatisfactory in its sole discretion.

§ 3.9.3 The Contractor shall ~~not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

§ 3.9.4 Owner shall be notified as soon as Contractor becomes aware, but in no event fewer than twenty-four (24) hours before the time of that the Superintendent is required to be present at the site, that the Superintendent will not be present at the site for any reason, except illness. If the reason is due to illness, then Owner shall be notified as soon as the Contractor obtains the information, but in no event later than the beginning of the day that the Superintendent will be absent from the site. In such event of such absence, the Contractor will designate a person as acting superintendent and Contractor promptly notify the Owner of the identity and contact information for the designated acting superintendent.

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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.~~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;

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(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, 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.~~

§ 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

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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.

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

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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

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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.~~
Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so

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Documents. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Construction Documents and the Contract Documents remain the Contractor's responsibility.

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have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to
this~~Section 3.12.10,~~
Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the

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Documents. A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this paragraph, Contractor shall require that the licensed design professional carry commercial general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

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

~~**The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances,**~~ **§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, 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. All areas requiring~~
its parts fit together properly, provided, however, that any such cutting, fitting or patching can only be performed if the

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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

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.

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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 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.§ 3.18 Indemnification**

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§ 3.18.1 ~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY,
DEFEND (EXCEPT AS LIMITED BELOW) AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES (HEREINAFTER IN THIS SECTION 3.18 "OWNER"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18.

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§ 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.

§ 3.18.3 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

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

§ 3.18.6 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

§ 3.18.7 Contractor shall promptly advise the Owner, in writing, of any claim or demand against the Owner or Contractor, known to the Contractor related to or arising out of Contractor's activities under this Contract.

§ 3.18.8 The provisions in this Section 3.18 in its entirety shall survive the completion, termination or expiration of this contract and are solely for the benefit of the parties hereto and not intended to create or grant any rights,

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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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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.

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

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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,

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any other persons or entities performing portions of the Work. This does not, however, relieve Architect of Architect's responsibilities under this Agreement. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed by the Contractor at no additional cost to Owner. In addition, the Contractor shall reimburse the Owner for compensation paid to the Architect (whether performed by the Architect or its Consultants) or the Owner's Consultants, for additional site visits made necessary by the fault, neglect, the request of the Contractor or made necessary by the Contractor's construction defect or nonconforming Work. Any amount subject to reimbursement under this Section may be required by Owner to be deducted from the next Payment Application submitted by the Contractor and any subsequent Payment Application until paid, and if any amount remains unpaid, the balance shall be paid by the Contractor as a condition to Final Payment.

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~~The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications~~ Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters relating to the Contract and the Project. However, the Owner reserves the right to communicate directly with the Contractor and Subcontractors. Communication by and with the Architect's consultants shall be through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications

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Contractors shall be through the Owner.~~The Contract Documents may specify other communication protocols.~~

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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

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Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a

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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.

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in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal~~schedule, with reasonable promptness while allowing~~
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.
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The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under~~Sections 3.3,~~
Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any

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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 may order minor changes in the Work as provided in Section 7.4.~~ 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 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.~~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; issue Certificates of Substantial Completion pursuant to Section 9.8;~~ 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; and issue a final
Certificate for Payment pursuant to Section 9.10. for approval by the Owner.

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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.~~
expressed in the Contract Documents and not expressly overruled in writing by the Owner.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with

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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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§ 5.2.4 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 or Architect If neither the Owner nor Architect submits a reasonable objection to such proposed substitution within ten (10) days following their receipt of written notice the Contractor may proceed with the substitution. If either Owner or Architect submit an objection, the Subcontractor shall proceed in accordance with Section 5.2.3 above.

§ 5.2.5 Each Contractor or subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in Contract Sum shall be allowed for failure to so inspect or investigate.

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~~**By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to**~~ **§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to

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Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. The terms and conditions of the Contract Documents shall be incorporated by reference into each Subcontract agreement, included as provided below. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in an amount commensurate with the Work to be performed by the Subcontractor.

§ 5.3.2 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.3 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

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.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

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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.~~
relating to the Contract; and.

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

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§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall 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,~~ 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.~~
successor contractor or other entity. Owner shall only be responsible for compensating subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

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

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§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this ~~Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.~~Contract.
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§ 6.1.4 ~~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.~~

§ 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

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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

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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.

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completed construction or to property of the Owner or Separate ~~Contractor as provided in Section 10.2.5.~~Contractor.

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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. A Construction Change Directive requires~~
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.~~ 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.

...

Methods used to determine adjustments to the Contract Sum 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.

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Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes ~~in~~ in. the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract

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Sum and Contract Time being adjusted ~~accordingly.~~as provided in Section 7.3.3.

...

.2 Unit prices stated in the Contract Documents or subsequently agreed upon; (additional mark-ups for ~~.3~~ 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~~ **.3** As provided in Section 7.3.4.

...

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 shall be limited to the following:~~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, ~~fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;~~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 ~~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 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 Actual documented Costs of supervision and field office personnel directly attributable to the ~~change.~~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 , allowed in any Change Directive, the Contractor may make a Claim in accordance with applicable

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

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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.

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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.

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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
PAGE 38

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.~~15..

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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

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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.

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§ 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 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.~~

§ 8.1.3 Substantial and Final Completion

§ 8.1.3.1 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.3.2 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) days after the date of Substantial Completion

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...

the Work prior to the effective date of insurance required to be furnished by the Contractor ~~and Owner.~~The date of commencement of the Work shall not be changed by the effective date of such insurance..

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§ 8.2.4 Liquidated Damages

§ 8.2.4.1 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set out in the AIA Document A101 (2017) or the AIA Document A133 (2019) into which these General Conditions are incorporated and executed concurrently with these General Conditions, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.4.2 In the event Substantial Completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor all liquidated damages, if any, due Owner in accordance with the Contract Documents.

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

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

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by ~~(1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties,~~ war, civil commotion, pandemic, epidemic, federal, state or local declared disaster or public emergency, act of God, governmental restrictions, regulations, orders, or interference, fire or other unavoidable casualty, material changes ordered in the Work; adverse weather conditions documented in accordance with Section ~~15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution;~~ 15.1.6 by delay authorized in writing by the Owner prior to the happening of the delay event; or (5) by other causes that the Contractor asserts, and the Architect ~~determines,~~ and Owner determine, justify delay, then the Contract Time ~~shall be extended for such reasonable time as the Architect may determine.~~may be extended for such reasonable time as the Architect and Owner may determine based upon documentation by the Contractor.

§ 8.3.1.1 The adjustment of the Contract Time for delay, disruption, and interference described in this Section 8.3.1 is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time and Contractor's timely delivery of the notice and claim as set out in this Section 8.3.1. An adjustment to the Contract Time shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Section 8.3.1, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for Owner-caused delays.

§ 8.3.1.2 Notice and Claim for Extension. In the event of a delay in the commencement or progress of the Work as a result of any of the circumstances in this Section 8.3.1, the Contractor may receive an extension of time for completion of the Work equal to the delay, if the Contractor delivers a written notice and claim to the Owner and Architect delivered in any manner provided in Section 1.6.1 of this Agreement. The Notice shall identify and provide a reasonably detailed description of the circumstances causing the delay, disruption, or interference to the Contractor's performance or progress of the Work on or before the due date of Contractor's Application for Payment covering the period in which the delay began. Claims for an extension of time shall be stated in whole or half calendar

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days, as applicable. The actual date on which the delay(s) began and/or the date the delay ended, if applicable, must be stated in the Claim Notices as applicable.

§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Article 15.~~In the case of claims for extension of time because of unusually inclement weather, such extension of time may be granted only if the Contractor files a claim in accordance with the requirements set out in Section 15.1.6.

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~Contractor shall not be entitled to an adjustment in the Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

§ 8.3.4 Any adjustment of the Contract Time authorized under Section 8.3 shall be conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time and Contractor's submission of a timely and properly documented Notice and Claim for additional time in accordance with Section 8.3.

§ 8.3.5 Adjustments to the Contract Time addressed in this Section 8.3 shall apply only to requests for extensions of time based upon delay, disruption, or interference to the Contractor's performance or progress of the Work and shall have no applicability to requests for adjustment of the Contract Time due to other changes in circumstance, including but not limited to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services or materials required, beyond those specified by the Contract Documents. Claims for an adjustment of the Contract Time resulting from these kinds of changes shall be authorized only pursuant to a written order or directive from Owner authorizing Contractor to proceed with a change in the Work in accordance with the Contract Documents.

§ 8.4 No Damages or Other Compensation for Delay or Acceleration

This Agreement does not permit recovery by the Contractor of damages or additional compensation for delay, acceleration, disruption, or interference to the Contractor's performance or progress of the Work Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time including but not limited to delay, disruption, or interference caused by the Owner the Architect, of an employee of either, or of a Separate Contractor, any of the circumstances set out in Section 8.3.1 or acceleration of the Work required by the Owner in accordance with the terms of this Agreement. Contractor's sole remedy for delay disruption, or interference in its performance or progress of the Work or any required acceleration of the Work shall be the grant of an extension of time for completion equal to a delay or such reasonable time as the Owner and Architect may determine in their sole discretion.

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§ 9.1.1 The Contract Sum is stated in the Agreement ~~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.

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inequity to the Owner or Contractor, the applicable unit prices shall be equitably ~~adjusted.~~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,**~~ the Contractor shall submit a schedule of values to the Architect before the

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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.

...

Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under ~~Section 9.2,~~
Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all

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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
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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~~
Contractor has not been invoiced by a Subcontractor or supplier, unless such Work has ~~been performed by others whom the Contractor intends to pay.~~was self-performed in such
case, only portions of Work actually performed shall be included on the Contractor's request for payment.

§ 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~~ 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 ~~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;

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.5 provision of documentation that the facility where the materials and/or equipment will be stored is an adequately insured commercial warehouse, where the materials and equipment stored will be sheltered from the weather and outside elements and are stored in accordance with the manufacturer's instructions, including proper temperature and humidity controls and that the materials and equipment have been physically separated and marked for the Project;

.6. its agreement to bear the cost of Owner and/or Architect's visits to the off-site storage facility to confirm compliance with these requirements and review the stored contents, and Contractor shall agree to allow such costs to be offset from Progress Payments;

.7 agreement that payment of any costs related to compliance with the procedures and requirements for storage of materials and equipment on or off-site, shall not be subject to charges for overhead or profit;

.8 submission of bills of sale or other documentation acceptable to the Owner, showing proof of delivery and establishing the Owner's title to the materials or equipment and/or otherwise protecting the Owner's interest, including naming the Owner as additional insured on the required insurance policy (naming the specific materials or equipment stored and their location) and providing proof of delivery for those materials and equipment;

.9 agreeing that, in the event of termination of the Contract or default by the Contractor, the material and equipment stored on or off-site shall be immediately turned over to the Owner by delivery to the location designated by the Owner and that the operator of the storage facility is aware of this agreement and willing to honor it; and

.10 agreeing that all such stored materials and equipment, to the extent they include mechanical components, will be maintained by the Contractor kept in good working condition and ready for immediate installation, to the same extent they would have been, had they been delivered "just in time" for installation, that Contractor will be solely responsible for assuring any manufacturer's warranty will commence on date of completion of installation and/or start-up of the material or equipment and for repairs required prior to installation to assure performance in accordance with the Contract Documents.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY A SUPPLIER, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR ORSUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS PREVIOUSLY MADE BY THE OWNER TOCONTRACTOR 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

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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

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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

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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

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qualifications expressed by the ~~Architect.~~ Architect in writing to the Owner. However, the issuance of a Certificate for Payment

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reviewed copies of requisitions received from Subcontractors and suppliers and other data unless requested by the

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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

§ 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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.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 may submit a Claim in accordance with Article ~~15.~~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,~~ Section 9.5.1.3, the Owner may, at its sole option,

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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, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment. 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'~~ § 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, ~~stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the~~

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~~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.~~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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its intended use. provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

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§ 9.8.3 Upon receipt of the Contractor's list, the Architect accompanied by the Owner or Owner's representative, at the Owner's option, will make an inspection to determine whether the Work or designated portion thereof is

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utilize the Work or designated portion thereof for its intended use, then the Contractor shall, before issuance of the

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the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, as defined by the Contract

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Documents, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of

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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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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

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security, maintenance, heat, utilities, damage to the Work resulting from such occupancy, use or installation, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of~~warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the~~ warranties on the partially completed portion of the Work, as required by the Contract Documents Consent of the be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of~~the Architect.~~
the Architect. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

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§ 9.9.3 Unless otherwise agreed ~~upon,~~ 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.~~
of the Contract Documents , nor shall it constitute evidence of Substantial Completion or Final Completion.

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§ 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

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payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in~~Section 9.10.2~~
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.

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the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other ~~indebtedness~~ liabilities connected with the
Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by t.

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warranties or specific Subcontractor warranties, and ~~(6) if required~~ (6 except for amounts previously withheld by the Owner, other

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the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may have
been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to ~~indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.~~discharge any such lien or
indemnify the Owner from liability; (7) In addition, the following items must be completed and received by the Owner before Final Payment will be due:

.1 Written certifications required by Sections 10.5, 10.6, and 10.7 herein;
.2 Final list of subcontractors (AIA Document G705-2001);
.3 Contractor's Certification of Project Compliance required by 16 Texas Administrative Code, Section 61.1036, located at: https://tea.texas.gov;
.4 Contractor's warranties, organized as required elsewhere in the Contract Documents;
.5 Maintenance and Instruction Manuals;
.6 Owner's Certificate of Final Completion; and
.7 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, 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~~

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~~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.~~

§ 9.10.6 The Contractor shall not permit any actual or purported lien, charge or claim to attach or attempt to attach to the Work, the site or any amounts due or to become due to the Contractor under the Contract Documents. If any such lien, charge or claim is so asserted, the Contractor shall promptly procure its release and indemnify the Owner against all damage and expense incident thereto. Upon completion of the Work and before any final payment and settlement, the Contractor shall provide evidence satisfactory to the Owner of payment and release of all debts, taxes, liens, charges, obligations and claims for or relating to labor, materials, Subcontractors and Sub-subcontractors; provided, however, that if the Contractor has not paid for any of the aforesaid as a result of a bona fide dispute, and payment of such is guaranteed and covered by the payment bond provided by the Contractor, then the Contractor shall not be required to pay such claim as a condition to final payment and settlement, but instead shall be required to provide Owner with written consent to final payment executed by such surety, expressly acknowledging the existence of such unpaid claim, and agreeing that full and final payment to the Contractor shall not impair any of the Owner's rights or the surety's obligations under the bond.

§ 9.11 Audit

Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

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The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in~~**connection with the performance of the Contract.**~~
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

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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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.1 employees on the ~~Work and~~ 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;.

~~.2~~ **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.

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the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and

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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

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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.~~
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** 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.~~

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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,

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shall be given to the other party within a reasonable time not exceeding ~~**21**~~ 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.

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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
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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.

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§ 10.3.3 To the ~~fullest extent permitted by law, the Owner shall indemnify and~~ extent permitted by the laws and Constitution of the State of Texas, the Owner shall indemnify and

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bodily injury or death as described in ~~Section 10.3.1~~ Section 10.3.1 and has not been rendered harmless, provided that such claim,

...

or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. ~~The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

§ 10.3.5 ~~The Contractor shall reimburse~~ Except to the extent that the cost and expense are due to the Owner's fault or negligence, if Contractor imports
hazardous materials onto the Project site, the Contractor shall indemnify and hold harmless the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, ~~or~~ (2) where the Contractor fails to perform its obligations under ~~Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.~~Section 10.3.1; and (3) any
fines or penalties of government agencies directly resulting from the Contractor's importation of the hazardous materials onto the Project site.
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~~**§ 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.~~

~~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.

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§ 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.
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§ 11.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain in force, insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the table below the Agreement or elsewhere in the Contract Documents. No Work will be commenced, and no equipment or materials may be shipped, until all requirements of Article 11 have been satisfied, satisfactory evidence of insurance has been provided, and all required insurance is in full force and effect. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the~~jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.~~
State of Texas.

Workmen's Compensation:	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

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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.	

§ 11.1.2 The ~~Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.~~required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner..

§ 11.1.3 ~~Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~The General Liability and Automobile policies so issued in the name of Contractor shall also name the Owner
as additional insured. The coverage afforded to the additional insured under the policy or policies shall be primary insurance. It is the intent of the parties to this Agreement that the General Liability coverage (and associated Umbrella Coverage) required herein shall be primary to and shall seek no contribution from all insurance available to Owner, with Owner's insurance being excess, secondary and non-contributing. The Commercial General Liability coverage provided by Contractor shall be endorsed to provide such primary and non-contributing liability. If the additional insured has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis.

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§ 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.~~

§ 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

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no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar day's prior written notice to Owner. Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 11.1.1. If Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance and the provisions of Section 11.1.8 hereof shall apply.

§ 11.1.7 Contractor and its Subcontractors shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of Contractor and its Subcontractors are in force and the necessary certificates and statements pursuant to Section 11.1.6 hereof have been received by Owner and the Architect has issued a written notice to proceed.

§ 11.1.8 As an alternative and at Owner's option and expense, Owner may elect to furnish or to arrange for any part or all of the insurance required by Section 11.1 hereof. If Owner so elects, it shall notify, in writing, Contractor and issue a Change Order therefor, but no adjustment to the scheduled completion date or the Contract Sum shall be allowed.

§ 11.1.9 Workers' Compensation Insurance Coverage.

.1 Definitions:

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

.1.2 Duration of the Project. Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code §406.096). Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracts directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

.2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.

.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

.4 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

.5 The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:

.5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.5.2 no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

.7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

.8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify

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coverage and report lack of coverage.

.9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:

.9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;

.9.2 provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

.9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.9.4 obtain from each other person with whom it contracts, and provide to the Contractor:
(a) a certificate of coverage, prior to the other person beginning work on the Project; and
(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

.9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.

.10 By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Department of Insurance, Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

.11 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [28 TAC §110.110(c)(7)]

~~**§ 11.2.1** 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.~~

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~~**§ 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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§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

~~**§ 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.~~**11.4.1** 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 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.~~

§ 11.4.2 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.

§ 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

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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.

~~**§ 11.5.1** 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

...

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

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and recovering such Work and additional costs of correction, if any, caused by covering the Work prior to inspection.
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replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the~~Contractor's expense.~~
Contractor's expense and will be subject to offset by the Owner at Final Payment..

...

§ 12.2.2.1 In addition to the Contractor's obligations under ~~Section 3.5,~~ 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,~~
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

...

Contractor a written acceptance of such ~~condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for~~ condition in its non-conforming state. During the one-year period for correction, the Owner waives the rights to require correction by the Contractor ~~and to make a claim for breach of warranty. If the Contractor fails~~ 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.~~Section 2.5.

...

§ 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.

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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.

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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.

...

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

...

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing

...

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.~~
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

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additional testing, inspection, or approval not included under ~~Section 13.4.1,~~ Section 13.4.1, the Architect will, upon written

...

except as provided in ~~Section 13.4.3,~~ 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.

...

such failure, including but not limited to those of repeated procedures and compensation for the Architect's services

...

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~~Payments~~ Undisputed payments due and unpaid under the Contract Documents shall bear interest **~~from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~**in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth (46th) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

§ 13.6 Equal Opportunity In Employment

§ 13.6.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

§ 13.6.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law.

§ 13.7 Contractors Records

§ 13.7.1 Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office or the principal offices of the Contractor, at the sole option of the Owner.

§ 13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

§ 13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.7.1.

§ 13.7.5 Contractor shall keep all Construction Documents related to the Project, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

§ 13.7.6 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 No Third-Party Beneficiaries

There are no third-party beneficiaries to this agreement.

§ 13.9 Proprietary Interests And Confidential Information

§ 13.9.1 Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo

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or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

§ 13.9.2 Neither Architect nor Contractor shall disclose any confidential information of Owner which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to: pending real estate purchases, exchange, lease, or value; information related to litigation; detailed layouts of the Owner's Facilities; the location and deployment of security devices; security access codes; student likenesses; student record information; employee information; or any other information deemed confidential by law.

§ 13.9.3 The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Section 552.001, et seq., and the Texas Open Meetings Act, Texas Government Code, Section 551.001, et seq.

§ 13.10 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

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§ 14.1.1 ~~The Contractor may terminate the Contract if~~ If the Work is stopped for a period of ~~30~~ thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of~~the Work, for any of the following reasons:~~ the Work under direct or indirect contract with the Contractor for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

...

.3 Because ~~the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because~~ the Owner has not made payment ~~on a Certificate for~~ of undisputed sums due on an approved Certificate for

.4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

§ 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,

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entire Work by the Owner as described in ~~Section 14.3,~~ 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~~ 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..

...

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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Section 14.1.3.

...

.4 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents;

.5 fails to furnish the Owner, upon written request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;

.6 engages in or permits serious or repeated worker misconduct in violation of Article 3.3;

.7 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or

.8 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action, the Owner~~ subject to any prior rights of the surety, the Owner

...

.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 Contractors premises and remove the same therefrom. No election herunder shall be construed as a waiver of any rights or remedies of the Onwe 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,~~ 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, 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~~
the Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the~~Contract.~~
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

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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 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

...

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.~~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.

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~~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.~~

...

§ 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 under this~~ 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.~~
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.

...

after expiration of the period for correction of the Work set forth in ~~Section 12.2.2,~~ 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. .

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...

§ 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 and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party 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. Claims relating to an emergency endangering life or property arising under ~~**Section 10.4.**~~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 were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.~~

§ 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.

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.1 ~~damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~No indirect or consequential damages will be allowed.

.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or ~~**.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.~~any other analysis that is used to show damages indirectly.

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.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
.4 No damages will be allowed for home office overhead or other home office changes or any Eichleay formula calculation.

~~This 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~~ 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.~~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~~ to mediation of any 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.

...

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.~~

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~~**§ 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.~~

~~**§ 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.~~

§ 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 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

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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.

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*)		CONTRACTOR (*Signature*)
, President		
(Printed Name and Title)		*(Printed Name and Title)*

APPROVED AS TO FORM
Johnathan Ball, McAllen ISD Staff Attorney

By: _____

~~**§ 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~~

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be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Discussion and Possible Action on Findings Made upon Approval of Contract for Legal Services under Texas Government Code § 2254.1036(b)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District decided to hire outside legal counsel to represent the District in pursuing property damage insurance claims related to storm damage that occurred on or about the month of April 2023. The District solicited qualification statements for legal services. On December 10, 2024, the Board of Trustees passed a motion to enter into negotiations with Millin & Millin, PLLC on a contingent fee contract.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District finds that:
(1) there is a substantial need for the legal services;
(2) the legal services cannot be adequately performed by the attorneys and supporting personnel of the political subdivision; and
(3) the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained or because the political subdivision does not have funds to pay the estimated amounts required under a contract providing only for the payment of hourly fees.

LEGAL REVIEW:

The Resolution has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the Findings Made upon Approval of Contract for Legal Services under Texas Government Code § 2254.1036(b)

Attachment: ☑

SUBMITTED BY: Andres Silva

SUPERVISOR: Alberto Canales
Alberto Canales (Jan 8, 2025 10:08 CST)

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 (Jan 8, 2025 10:26 CST)

Superintendent of Schools

FINDINGS MADE UPON APPROVAL OF CONTRACT FOR LEGAL SERVICES UNDER TEXAS GOVERNMENT CODE § 2254.1036(b)

WHEREAS, McAllen Independent School District decided to hire outside legal counsel to represent the District in pursuing property damage insurance claims related to storm damage that occurred on or about the month of April 2023.

WHEREAS, in order to receive proposals by potential legal counsel, McAllen Independent School District posted Bid Event 2025-1025, titled Legal Services for Property Damage Claim.

WHEREAS, at a regular called meeting on December 10, 2024, after reviewing the proposals submitted by multiple law firms, the McAllen Independent School District Board of Trustees passed a motion to enter into negotiations on a contingent fee contract for legal services with Millin & Millin, PLLC.

WHEREAS, in connection with same, McAllen Independent School District finds that:

(1) there is a substantial need for the legal services;
(2) the legal services cannot be adequately performed by the attorneys and supporting personnel of the political subdivision; and
(3) the legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained or because the political subdivision does not have funds to pay the estimated amounts required under a contract providing only for the payment of hourly fees.

THEREFORE, having made these findings, McAllen Independent School District approves a contingent fee contract with Millin & Millin, PLLC.

McALLEN INDEPENDENT SCHOOL DISTRICT

_____ Date:_____

By: SOFIA M. PEÑA
Position: President, McAllen ISD
Board of Trustees

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Discussion and Possible Action on Contingent Fee Contract for Legal Services with Millin & Millin, PLLC

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen Independent School District decided to hire outside legal counsel to represent the District in pursuing property damage insurance claims related to storm damage that occurred on or about the month of April 2023. The District solicited qualification statements for legal services. On December 10, 2024, the Board of Trustees passed a motion to enter into negotiations with Millin & Millin, PLLC on a contingent fee contract.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

McAllen Independent School District finds that there is a substantial need for the legal services. Administration is recommending that the Board of Trustees approve an agreement with the law firm Millin & Millin, PLLC as special counsel to perform all legal services necessary to recover damages, court costs, and penalties as provided in the Texas Insurance Code, the Texas Civil Practice and Remedies Code, and other Texas statutory and common law claims for breaches of contract, tort claims (including negligence, misrepresentations, and/or fraud), violations of the Texas Insurance Code, and common law bad faith on a contingency fee basis.

LEGAL REVIEW:

The Contract has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the legal services contract with the law firm Millin & Millin, PLLC on a contingency fee basis.

Attachment: ☑

SUBMITTED BY: Andres Silva

SUPERVISOR: Alberto Canales
Alberto Canales (Jan 8, 2025 10:31 CST)

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 (Jan 8, 2025 14:39 CST)

Superintendent of Schools

CONTINGENT FEE LEGAL SERVICES CONTRACT

This Agreement ("Agreement") is made on the 14th day of January, 2025, between McAllen Independent School District, hereinafter referred to as “CLIENT” and Millin & Millin PLLC, hereinafter referred to as "FIRM." In consideration of the mutual promises herein contained, the parties hereto agree as follows:

I. PURPOSE OF REPRESENTATION

1.1. CLIENT has found a substantial need to employ FIRM to provide professional legal services in connection with litigation, arbitration, and/or appraisal, and to pursue all remedies available to the CLIENT regarding property damage to CLIENT’S property caused by the hail and windstorms of April 2023 and any related proceedings involving CLIENT and their insurance carriers, agents and other parties referred to as (collectively, “Defendants”) whether by litigation, arbitration, or appraisal. (the matter referred to as “the Representation”).

1.2. CLIENT hereby retains and employs FIRM. CLIENT has, by its approval of this Agreement, found that CLIENT has a substantial need for these legal services which cannot be adequately performed by CLIENT’S attorneys or other government attorneys, and, because of the nature of the matter for which services will be obtained, and CLIENT’S budgetary constraints, they cannot be reasonably obtained from attorneys in private practice under a contract providing only for the payment of hourly fees without contingency, without regard to the outcome of the matter. The estimated amount that may be recovered from any litigation is expected to exceed $100,000.00.

1.3. CLIENT hereby authorizes and directs FIRM, subject to the supervision, direction and control of the CLIENT, to handle the Representation and to take all actions necessary to prosecute and assist in the prosecution of the ongoing claim and/or any new civil case or additional case(s) on behalf of CLIENT against potential Defendants as identified by the FIRM. In the Representation, FIRM may seek necessary and appropriate injunctive relief, damages, civil penalties, and attorney's fees, and such other pecuniary recovery as may be provided for by the laws of the State of Texas and/or any relevant local, state and/or federal statutory and/or common law against any and all potentially responsible parties.

1.4. CLIENT has determined pursuant to Education Code §44.031 that this Agreement is for *professional services,* requiring work that is predominantly mental or intellectual, rather than physical or manual, requiring special knowledge or attainment and a high order of learning, skill, and academic intelligence, and the services of FIRM are being retained pursuant to all applicable laws.

1.5. The term of this Agreement shall end after the conclusion of the Representation unless either party extends or terminates this Agreement in accordance with its provisions.

1.6. The primary attorney handling this representation employed by FIRM will be John A. Millin IV, and he agrees to perform necessary legal work with reference to the Representation, and will work at the direction of CLIENT, consistent with FIRM'S professional obligations. FIRM shall prosecute the action on behalf of CLIENT against Defendants and seek necessary and appropriate temporary and permanent injunctive relief, damages, civil statutory penalties, including penalties under Section 542 of the Texas Insurance Code, and attorney's fees and such other monetary recovery as may be provided for by the laws of the State of Texas and/or any relevant local, state, federal statutory and/or common law in connection with the activities of Defendants. FIRM shall furnish the services for the Representation. FIRM agree to perform necessary legal work with reference to the Representation and will work specifically with the CLIENT or its designee. FIRM will work under the supervision, direction, and control of CLIENT or its designee.

1.7. To enable FIRM to provide effective representation, CLIENT agrees to do the following: (1) disclose to FIRM, fully and accurately and on a timely basis, all facts and documents within CLIENT'S knowledge that are or might be material, or that FIRM may request, (2) keep FIRM apprised on a timely basis of all developments relating to the Representation that are or might be material, (3) attend hearings, trial, meetings, conferences, and other proceedings when it is reasonable to do so, (4) provide all files, documents, evidence, work product, and results of investigation related to the Representation that were created or obtained prior to the FIRM being hired, and (5) otherwise cooperate fully with FIRM.

1.8. Neither party shall assign, in whole or in part, any duty or obligation of performance under this Agreement without the express written permission of the other parties, unless otherwise authorized in this Agreement.

1.9. The person or entity that FIRM represents is CLIENT, and FIRM'S attorney-client relationship does not include any related persons or entities. If any potential conflict arises with respect to the Representation, FIRM will make full disclosure of the possible effects of such Representation on the professional judgment of each individual associated with FIRM working on Representation. Such disclosure shall be made in writing to CLIENT, or any other attorney as designated by the CLIENT and/or its designee.

1.10. It is understood and agreed that FIRM'S engagement is limited to the Representation unless otherwise stated in another agreement.

1.11. Any expressions on FIRM'S part concerning the outcome of the Representation, or any other legal matters, are based on FIRM'S professional judgment and are not guarantees. Such expressions, even when described as opinions, are necessarily limited by FIRM'S knowledge of the facts and are based

on FIRM'S views of the state of the law at the time they are expressed. FIRM has made no promises or guarantees to CLIENT about the outcome of the Representation, and nothing in these terms of engagement shall be construed as such a promise or guarantee.

1.12. After completing the Representation, changes may occur in the applicable laws or regulations that could affect CLIENT'S future rights and liabilities in regard to the Representation. Unless FIRM is actually engaged after the completion of the Representation to provide additional advice on such issues, FIRM has no continuing obligation to give advice with respect to any future legal developments that may pertain to the Representation other than the continuing obligations set out in this Agreement.

1.13. At the conclusion of the Representation, FIRM will return to CLIENT any documents that FIRM is specifically requested to return. As to any documents so returned, FIRM may elect to keep a copy of the documents in FIRM'S stored files. CLIENT owns all final work product generated from the Representation.

1.14. Any notice required or permitted to be given by CLIENT to FIRM hereunder may be given by hand delivery, or certified United States Mail, postage prepaid, return receipt requested, addressed to:

Attn: John A. Millin IV
MILLIN & MILLIN, PLLC
4107 N. 22ND ST.
McALLEN, TEXAS 78504

1.15. Any notice required or permitted to be given by FIRM to CLIENT hereunder may be given by hand delivery or certified United States Mail, postage prepaid, return receipt requested, addressed to:

Attn: Dr. Rene Gutierrez
Superintendent
McAllen Independent School District
2000 N. 23rd St.
McAllen, Texas 78501

1.16. Such notices shall be considered given and complete upon successful transmission or upon deposit in the United States Mail.

1.17. FIRM affirmatively consents to the disclosure of its email addresses that are provided to CLIENT. This consent is intended to comply with the requirements of the Texas Public' Information Act, Tex. Gov't Code Ann. § 552.137, *et seq.,* as amended, and shall survive termination of this Agreement. This consent shall apply

to email addresses provided by FIRM and agents acting on FIRM'S behalf and shall apply to any email address provided in any form for any reason whether related to this Agreement or otherwise.

1.18. It is expressly understood that FIRM has no authority to settle or otherwise compromise the position of the CLIENT or any of its officers. CLIENT retains all authority to settle the case or any part thereof.

1.19. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of CLIENT.

1.20. FIRM shall provide CLIENT's general counsel with reports on the status of the Representation as requested by CLIENT. No settlement of any claim, suit, or proceeding shall be entered into without the approval of the CLIENT.

II. FIRM'S COMPENSATION AND OTHER MATTERS

2.1 In consideration of the legal services to be provided to CLIENT by FIRM pursuant hereto, subject to the limitations in this Agreement, CLIENT hereby assigns and grants unto FIRM attorney's fees as follows:

2.2 Any fee payable to FIRM will be from the portion of any award, judgment, and/or settlement allocated by law to CLIENT, whether realized before or after litigation commences or through the appraisal process. This Agreement shall not confer upon FIRM any rights to any portion of any sum awarded to the State of Texas as a result of the Representation.

2.3 In the event of a recovery against the Defendant(s) resulting from the Representation, the CLIENT agrees to pay FIRM the lesser of 33 1/3% of the amount recovered or four times FIRM'S base fee computed in accordance with Subchapter C, Chapter 2254 of the Texas Government Code more fully discussed below, and the contingent fee owed under this Agreement will not exceed the lesser of 33 1/3% of the amount recovered or four times FIRM'S base fee.

2.4 The contingent fee set forth in this section will be subject to the limitations set forth in this Agreement pursuant to Subchapter C, Chapter 2254 of the Texas Government Code.

2.5 The amount recovered for purposes of the contingent fee computation in paragraphs 2.3 and 2.4 is the total amount obtained, including any recovery of attorney's fees, statutory civil penalties, expenses, and damages of any kind, before reimbursable expenses are deducted.

2.6 This Contract is not for mixed hourly and contingent fee services. The amount of the contingent fee and reimbursement of expenses under this Agreement will be computed in accordance with Subchapter C, Chapter 2254 of the Texas Government

Code. Because of the expected difficulties in performing the work under this Agreement, the amount of expenses expected to be risked by FIRM, the expected risk of no recovery, and the expected long delay in recovery, a reasonable multiplier for the base fee in this matter is four. FIRM'S reasonable hourly rate for the work performed under the Agreement, based on the reasonable and customary rate in Hidalgo County for this type of litigation and on the relevant experience, demonstrated ability, and standard hourly billing rate for these attorneys, paralegals, and law clerks for this type of work, is:

John A. Millin IV, Senior Counsel:	$450/hour
Gina K. Millin, Senior Counsel:	$450/hour
All Associates:	$350/hour
All Paralegals:	$150/hour
All Law Clerks:	$150/hour

These rates apply to the subcontracted work performed, if any, by an attorney, law clerk, or paralegal. The base fee will be computed pursuant to Chapter C, Section 2254 of the Texas Government Code by multiplying the number of hours the attorney, paralegal or law clerk worked in providing legal or support services for the CLIENT times the reasonable hourly rate for the work performed by the attorney, paralegal or law clerk. The base fee is computed by adding the resulting amounts. The computation of the base fee does not include hours or costs attributable to work performed by a person who is not employed by FIRM or a partner, shareholder, or employee of FIRM. There are no differences in the method by which the contingent fee is computed if the matter is settled, tried, or tried and appealed.

2.7 Reimbursement of subcontracted work, if any, under Texas Government Code Section 2254.107 shall meet the requirements of Subchapter C, Chapter 2254 of the Texas Government Code, without regard to the expected or actual amount of recovery under this Agreement.

2.8 Payment of the contingent fee and reimbursement of expenses under this Agreement will be paid and limited by the requirements set forth in Subchapter C, Chapter 2254 of the Texas Government Code, including Section 2254.105(5) and all other applicable sections.

2.9 FIRM assumes responsibility for the Representation. If there is a recovery, then upon recovery, the CLIENT will instruct ATTORNEYS as to how to transfer the recovered funds in writing.

2.10 Payment of reimbursable expenses is contingent on the outcome of this matter and are reimbursable solely from the amount recovered in the matter. CLIENT shall have the absolute right to settle the case for no recovery of damages, expenses, or attorney's fees, which would yield no contingent fee or payment of any kind to FIRM. Client will not be liable for reimbursable expenses in the event that CLIENT settles the case for no recovery of damages and makes no recovery of expenses or attorney's fees

or the case otherwise results in no recovery of damages and makes no recovery of expenses or attorney's fees. FIRM will be responsible for paying all expenses of litigation directly to the vendor, such as, expert witness fees, deposition expenses, and other court costs/fees. CLIENT will not be required to advance any litigation expenses under this Agreement.

2.11 The fee to be paid under this Agreement shall come exclusively out of any recovery (including but not limited to any attorney's fees and expenses) awarded in any way resulting from the Representation and CLIENT shall be liable to ATTORNEYS for no more than the fee and reimbursable expenses as described herein. CLIENT has specifically allocated and made available from currently budgeted funds the sum of $0 to discharge any obligation that CLIENT may incur arising out of this Agreement.

2.12 It is expressly understood that the fee described above shall be the sole source of compensation to FIRM for overhead costs and expenses (with the exception of the reimbursable expenses listed below) and includes, but is not limited to, all costs for clerical work, including overtime, computer time, meals, clerical filing, and proofreading. FIRM agrees that they are neither authorized to seek reimbursement nor is CLIENT obligated to pay for mileage within Hidalgo County, parking fees, local facsimile (fax) transmissions, use of law library, or other costs or expenses (similar or dissimilar) except for those for which reimbursement is specifically provided for in this Agreement, if any. Expert witness fees, mediation fees, expenses associated with depositions and hearings or trial (such as costs of the transcript, and court reporter or videographer fees), travel outside Hidalgo County, research and investigation related fees and expenses, finance expenses, Westlaw legal research expenses, and expenses associated with creating demonstrative exhibits or other means of evidence presentation during trial or hearings (such as trial graphics) shall constitute the reimbursable expenses ("the Reimbursable Expenses"). FIRM shall advance all the Reimbursable Expenses. Reimbursable Expenses shall be recovered by FIRM out of the CLIENT'S portion of any settlement or judgment that arises out of the Representation.

2.13 FIRM has been engaged to provide legal services in connection with the Representation, as specifically defined in this Agreement. After completion of the Representation, changes may occur in the applicable laws or regulations that could affect CLIENT'S future rights and liabilities in regard to the Representation. Unless FIRM is actually engaged after the completion of the Representation to provide additional advice on such issues, FIRM has no continuing obligation to give advice with respect to any future legal developments that may pertain to the Representation other than the obligations set out in this Agreement.

2.14 It is the intention of the parties that this Agreement shall be in all respects in compliance with the requirements of Subchapter C of Chapter 2254 of the Texas Government Code. To the extent any provision of the Agreement is held in whole or in part to be not in compliance with the requirements of Subchapter C of Chapter 2254 of the Texas Government Code, then such provision will be modified to bring the provision

into compliance with the requirements of Subchapter C of Chapter 2254 of the Texas Government Code.

2.15 If any provision of this Agreement is held in whole or in part to be unenforceable, void, or voidable for any reason, then such provision will be modified to reflect the parties' intention and to make the provision enforceable. It is the parties' intention that the suit against Defendants shall continue regardless of whether any single part of this Agreement is unenforceable, void or voidable. In the event that one or more provisions of this Agreement is held unenforceable, all remaining provisions of this Agreement that have not been determined by a court as being unenforceable, void, or voidable, shall remain in full force and effect.

III. OTHER PROVISIONS

3.1 This Agreement is effective only after review and approval by the Office of the Attorney General for the State of Texas. No legal services will be or have been performed under this contract unless and until the contract is approved pursuant to Tex. Gov't Code § 2254(b)-(c).

3.2 FIRM must and shall keep current and complete written time and expense records that describe in detail the time and money spent each day in performing the contract (this Agreement) as required by Section 2254.104(a) Texas Government Code.

3.3 FIRM shall permit CLIENT or CLIENT'S attorney or CLIENT'S governing body or other governing officials, the Attorney General for the State of Texas, the State Auditor, or any other appropriate official, to inspect or obtain copies of the time and expense records kept in accordance with Section 3.2, at any time on request, as required by Section 2254. 104(b) Texas Government Code. FIRM shall provide CLIENT interim statements that describe the job-to-date time and expense records of FIRM, plus the expenses that are subject to reimbursement.

3.4 Upon conclusion of any matter for which FIRM was retained, FIRM shall provide CLIENT with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows FIRM'S computation of the amount of the contingent fee, and contains the final complete time and expense records required by Section 2254.104(c) Texas Government Code. The complete written statement required under this section is public information under Chapter 552 of the Texas Government Code and may not be withheld from a requester under that chapter under Section 552.103 or any other exception form required disclosure.

3.5 All time and expense records required by Section 3.2 are public information subject to required disclosure under Chapter 552 of the Texas Government Code. Information contained in the time and expense records may be withheld from a member of the public under Section 552.103 only if, in addition to meeting the requirements of Section 552.103, the chief legal officer or employee of CLIENT

determines that withholding the information is necessary to protect the CLIENT'S strategy or position in pending or reasonably anticipated litigation. If any information is withheld from public disclosure in accordance with this subsection, CLIENT shall segregate said information from information that is subject to required public disclosure.

3.6 Once approved under Section 2254.1036 Texas Government Code, this contract is public information under Chapter 552 of the Texas Government Code and may not be withheld from a requestor under Section 552.103 or any other exception from required disclosure.

3.7 The amount recovered for purposes of the contingent fee computation is the amount obtained before Reimbursable Expenses are deducted.

3.8 Any subcontracted legal or support services performed by a person who is not FIRM or a partner, shareholder, or employee of FIRM is a Reimbursable Expense only after receiving written permission from CLIENT and only in accordance with Subchapter C, Chapter 2254 of the Texas Government Code.

3.9 FIRM, pursuant to Tex. Gov't Code§ 2254.1032. agrees to indemnify and hold harmless the political subdivision from claims and liabilities resulting from negligent acts or omissions of Millin & Millin, PLLC or any of their employees or agents as allowed under Tex. Gov't Code § 2254.1034.

3.10 No Fee payment or expense reimbursement to FIRM shall occur until the provisions of Tex. Gov't Code§ 2254.108 are met. Prior to the payment of fees or expenses, at a public meeting, the political subdivision must review the appropriate documents, determine whether the expenses were reasonable, proper, necessary, actually incurred on behalf of the political subdivision, and paid for by FIRM and verify that the hours of work on which the fee computation is based were actually worked in performing reasonable and necessary services for the political subdivision under this contract.

3.11 Pursuant to Section 81.079 of the Texas Government Code, we provide the following notification and information to CLIENT: "The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar's Office of Chief Disciplinary Counsel will provide you with information about how to file a complaint. For more information, you may call 1-800-932-1900. This is a toll-free call."

AGREED:

CLIENT:
McALLEN INDEPENDENT SCHOOL DISTRICT

_____ Date:_____
By: SOFIA M. PEÑA
Position: President, McAllen ISD
Board of Trustees

Approved as to form:

By: JOHNATHAN BALL (Jan 7, 2025 08:57 CST)
Johnathan Ball, Staff Attorney

FIRM:

_____ Date:_____
John A. Millin, IV for
Millin & Millin PPLC

APPROVED BY:
OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS:

By:_____ Effective Date:_____
Attorney General or his designee

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

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 December 10, 2024 5:30 PM
School Safety and Security Committee Meeting January 09, 2025 12:00 PM

Attachment: ☑

SUBMITTED BY: _____ **SUPERVISOR:** Sofia Nerced Pena (Jan 8, 2025 19:08 CST)

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 (Jan 9, 2025 08:13 CST)

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

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 (Jan 8, 2025 10:54 CST)

SUPERVISOR:

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 8, 2025 14:46 CST)

Superintendent of Schools

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

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

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 (Jan 7, 2025 10:34 CST)

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 (Jan 7, 2025 11:43 CST)

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT: Discussion and Possible Action of Recommendation for James Nikki Rowe High School Athletic Coordinator/ Head Football Coach 2024-2025

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The James Nikki Rowe High School Athletic Coordinator/ Head Football Coach position vacancy notice was posted as of November 22, 2024.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Interviews were conducted on Friday, December 13th and Monday, December 16, 2024. The interview committee made their recommendation to the Superintendent. Recommendation will be presented under separate cover.

LEGAL REVIEW:

Not Applicable.

BUDGETARY CONSIDERATIONS:

Budgeted Position.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the Superintendent's recommendation for the position of James Nikki Rowe High School Athletic Coordinator/ Head Football Coach.

Attachment: ☐

SUBMITTED BY: Alberto Canales (Jan 8, 2025 10:57 CST)

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 (Jan 8, 2025 14:44 CST)

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: January 14, 2025

SUBJECT:Discussion and Possible Action Regarding Superintendent's Employment Contract

REFERENCE: McAllen Independent School District Board Policy BJCD (LEGAL): Superintendent Evaluation

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:
According to McAllen ISD Board Policy BJCD (LEGAL), the Board shall appraise the Superintendent annually. McAllen ISD Board Policy BJCD (LOCAL) states, the instrument used to evaluate the Superintendent shall be based on the Superintendent's job description and performance goals and shall be adopted by the Board.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
Provided under separate cover to the board is a copy of the Superintendent's Employment Contract

LEGAL REVIEW: None

BUDGETARY CONSIDERATIONS: None

RECOMMENDED BOARD ACTION:
That the Board of Trustees approve the Superintendent's Employment Contract of Superintendent Dr. René Gutiérrez.

SUBMITTED BY: _____ **SUPERVISOR:** _____

For further information contact:
Name: Sofia M. Peña
Office:(956) 618-6094
eMail: sofia.pena1@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Jan 10, 2025 14:41 CST)

Superintendent of Schools