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, September 8, 2026, 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. **CONSENT AGENDA ITEMS**

A) Discussion and Possible Action on Request for Proposal No. 2024-1018 Library Books, Audiovisual Supplies & Equipment, Software and Related Products and Services (Round 14) 6
Item Submitted: Jeanette Nino, Associate Superintendent for Instructional Leadership

Presenter: Dr. René Gutiérrez, Superintendent

B) Discussion and Possible Action on Agreement No. 2027-039 Data Management for Assessment and Curriculum ("DMAC") Software License 8
Item Submitted: Jeanette Nino, Associate Superintendent for Instructional Leadership

Presenter: Dr. René Gutiérrez, Superintendent

C) Discussion and Possible Action on Memorandum of Understanding "MOU" No. 2027-121 Clinical Teaching Practicum Experience between McAllen Independent School District and Web-Centric Alternative Certification Program (WCACP) /eTools4Education, LLC 15
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

D) Discussion and Possible Action on Memorandum of Understanding "MOU" No. 2027-122 Community-Based Prekindergarten Provider with Gingerbread House Learning Center LLC dba Valley Kidz Academy 22
Item Submitted: Lorena Garcia, Deputy Superintendent for Business and Operations

Presenter: Dr. René Gutiérrez, Superintendent

E) Discussion and Possible Action on Request for Proposal No. 2024-1023 Catering, Entertainment, Field Trips, Fundraising, Food, Restaurants, and Rentals (Round 18) 29
Item Submitted: Lorena Garcia, Deputy Superintendent for Business and Operations

Presenter: Dr. René Gutiérrez, Superintendent

F) Discussion and Possible Action on Memorandum of Agreement No. 2027-127 Texas Student Data System ("TSDS") Public Education Information Management System ("PEIMS") Cooperative with Region One Education Service Center 31
Item Submitted: Lorena Garcia, Deputy Superintendent for Business and Operations

Presenter: Dr. René Gutiérrez, Superintendent

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

A) **Instructional Services/ Instructional Leadership Item(s)** (Jeanette Nino)

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

1. Report Regarding Self-Funded Health Plan Review 38
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

2. Discussion and Possible Action of the 2026-2027 List of Certified Texas Teacher Evaluation and Support System (T-TESS) Appraisers 50
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

3. Discussion and Possible Action Regarding McAllen ISD Board Policy CH (LOCAL)- Purchasing and Acquisition: Purchasing Authority (Second Reading) 52
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

4. Discussion and Possible Action Regarding McAllen ISD Board Policy CV (LOCAL)- Facilities Construction (Second Reading) 55
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

5. Discussion and Possible Action of McAllen ISD Board Policy DGBA (LOCAL)- Personnel Management Relations: Employee Complaints/Grievances (Second Reading) 60
   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 Annual Tax Collections for the Period of July 1, 2025 to June 30, 2026 69
   Item Submitted: Lorena Garcia, Deputy Superintendent for Business and Operations

   Presenter: Dr. René Gutiérrez, Superintendent

2. Discussion and Possible Action on Competitive Sealed Proposal No. 2027-1015 Central Kitchen Upgrades 98
   Item Submitted: Lorena Garcia, Deputy Superintendent for Business and Operations

   Presenter: Dr. René Gutiérrez, Superintendent

3. Discussion and Possible Action on Request for Qualifications No. 2027-1014 Bond Project Management Services 235
   Item Submitted: Lorena Garcia, Deputy Superintendent for Business and Operations

   Presenter: Dr. René Gutiérrez, Superintendent

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

1. Discussion and Possible Action on Approval of Board of Education Meeting Minutes 237
   Regular Meeting - August 25, 2026

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

A) Discussion of Human Resources Recommendation(s) for School Year 2026-2027

B) Discussion of Human Resources Employee Resignation(s) and Retirees for the School Year 2025-2026

C) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2026-2027

D) Discussion of Recommendation for the Director of College/Career/Counseling for the 2026-2027 School Year

E) Discussion of Recommendation for the Executive Director of Special Education Services for the 2026-2027 School Year

F) Discussion of Superintendent's Summative Evaluation

G) Discussion Regarding School Safety and Security

H) Pending and/or Potential Litigation

I) Possible Real Estate Acquisition

8. **RECONVENE IN OPEN SESSION**

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

A) Discussion and Possible Action of Human Resources Recommendation(s) for School Year 2026-2027 — 246
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 2025-2026 — 247
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

C) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2026-2027 — 248
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

D) Discussion and Possible Action on the Recommendation of the Director of College/Career/Counseling for the 2026-2027 School Year — 249
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

E) Discussion and Possible Action on Recommendation for the Executive Director of Special Education Services for the 2026-2027 School Year — 250
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer

Presenter: Dr. René Gutiérrez, Superintendent

F) Discussion and Possible Action of Superintendent's Summative Evaluation — 251

G) Discussion Regarding School Safety and Security

H) Pending and/or Potential Litigation

I) Possible Real Estate Acquisition

10. **SCHEDULED MEETINGS**
Special Board Meeting - September 22, 2026, 4:30 pm - Administration Building/Dr. Ricardo Chapa Board Room
Regular Meeting - September 22, 2026, 5:30 pm - Administration Building/Dr. Ricardo Chapa Board Room
Special Board Meeting - September 23, 2026, 5:30 pm - Administration Building/Dr. Ricardo Chapa Board Room

11. **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 Action on September 1, 2026 by 5:00 p.m.
Norma Ramirez, on behalf of Board of Trustees.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2024-1018 Library Books, Audiovisual Supplies & Equipment, Software and Related Products and Services (Round 14)

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 library books, audiovisual supplies & equipment, software and related products and services. This Request for Proposal ("RFP") is an extended response period, multiple award contract, solicited in accordance with the Financial Accountability System Resource Guide ("FASRG"), section 5.16, titled "Multiple/Catalog/Discount-from-List Contract Awards". This allows vendors to submit responses throughout the year through the contract term. Vendors are awarded on an incremental basis, upon the Board of Trustees ("Board") approval. One hundred four (104) vendors were previously awarded through this RFP.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Six hundred four (604) vendors were invited to submit proposals, and twenty-three (23) vendors responded, including ten (10) no bid responses, one (1) duplicate, and two (2) non-responsive. The evaluation committee, comprised of Jenny Ann Vega, Director of Digital Learning and Library Services; Laura Williams, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Corina Tijerina, Buyer, evaluated the proposals. Administration is recommending that the ten (10) vendors listed on the attached list be awarded for a total of one hundred fourteen (114) 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. 2024-1018 Library Books, Audiovisual Supplies & Equipment, Software and Related Products and Services (Round 14), and approve the companies on the attached list as qualified vendors, for a coterminous term through June 30, 2027.

Attachment: ☑

SUBMITTED BY: Jenny Ann Vega

SUPERVISOR: Jeanette Nino (Aug 28, 2026 07:43:49 CDT)

For further information contact:
Name: Mrs. Jenny Ann Vega, Director of Digital Learning and Library Services
Office: 956-972-5600
eMail: jennyann.vega@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 28, 2026 08:34:43 CDT)

Superintendent of Schools

RECOMMENDED VENDORS

Request for Proposal No. 2024-1018

Library Books, Audiovisual Supplies & Equipment, Software and Related Products and Services (Round 14)

No.	Vendor Name	City	State	Recommendation
1	Audio Enhancement, Inc.	West Jordan	UT	Qualified
2	Cinco Books Corp	Miami	FL	Qualified
3	Digital Theatre (US) LLC	Chicago	IL	Qualified
4	Howard Technology Solutions (Howard Industries Inc	Laurel	MS	Qualified
5	iDismiss, LLC	Chester	NH	Qualified
6	Insignia Software Corporation	Edmonton	AB	Qualified
7	Kaplan Early Learning Company	Lewisville	NC	Qualified
8	PrimerLibro	Arlington	TX	Qualified
9	Taylor & Francis Group, LLC	Boca Raton	FL	Qualified
10	The Creative Company	Mankato	MN	Qualified

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action on Agreement No. 2027-039 Data Management for Assessment and Curriculum ("DMAC") Software License

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The purpose of this agreement is to give McAllen ISD a limited license to use the TEKSReady assessment product developed by Region 10 Education Service Center and distributed through Region 7 Education Service Center.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

TEKSReady, the item bank, is housed within TAG, and the student assessment results are reported in TEKScore.

LEGAL REVIEW:

Legal has approved the agreement

BUDGETARY CONSIDERATIONS:

Funds for these services are budgeted through General Fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Agreement No. 2027-039 Data Management for Assessment and Curriculum "DMAC" Software License through August 31, 2027.

Attachment: ☑

SUBMITTED BY: _____ **SUPERVISOR:** Jeanette Nino (Aug 28, 2026 07:39:48 CDT)

For further information contact:
Name: Mrs. Jeanette Nino, Associate Superintendent for Instructional Leadership
Office: 956-657-6000
eMail: Jeanette.Nino@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 28, 2026 08:33:53 CDT)

Superintendent of Schools

Department of Purchasing Services

Contract No.: 2027-239

Contract Coversheet and Signature Form
for
Forms/Contracts Requiring Superintendent Approval

This form standardizes the contract process and is to be used as the cover sheet to ensure complete review by appropriate department(s)/campus(es).

Instructional Services
Department/Campus Name

Sponsor	Signature	Date
Campus Principal	Signature	Date
Jeanette Nino Department Director	Jeanette Nino (Aug 27, 2026 16:02:24 CDT) Signature	08/27/2026 Date

REGION 7 EDUCATION SERVICE CENTER
DMAC SOFTWARE LICENSE AGREEMENT - TEKSREADY

This Software License Agreement (the "Agreement") is entered into as of September 1, 2026 (the "Effective Date") by and between Region 7 Education Service Center ("REGION 7 ESC") and McAllen ISD (the "Licensee") and shall continue through August 31,2027.

1. **PURPOSE.**

Distributor has obtained rights from Region 10 Education Service Center ("Region 10") to distribute and sublicense access to the TEKSready product. Licensee desires to obtain a limited license to access and use TEKSready subject to the terms and conditions set forth herein.

This Agreement is intended to satisfy Distributor's obligation to assure that its Clients execute a written License Agreement with terms and conditions respecting TEKSready and Region 10 substantially similar to, and no less restrictive than, those required by Region 10.

2. **DEFINITIONS.**

"TEKSready" means the assessment product developed and owned by Region 10 Education Service Center, including individual items, materials associated with the items such as reading passages and graphics, and scoring materials.

"Items" means individual assessment items and all related materials included within TEKSready.

"Derivative Works" means all revisions, modifications, translations, adaptations, transformations, assessments created using TEKSready, and any other derivative works created from TEKSready or the Items.

"License" means the limited right granted under this Agreement to access and use TEKSready.

3. **DEFINITIONS.**

Distributor hereby grants to Licensee a limited, non-exclusive, non-transferable right and license to access and use TEKSready within the State of Texas (the state in which Licensee is organized, authorized, and resides) to provide non-commercial access to and use of any or all of the Items from Region 10's TEKSready materials to students enrolled within the Licensee's schools/district for the purpose of performing assessments of those students (the "License").

All rights, licenses, and privileges not expressly granted to Licensee under this License remain exclusive to Region 10.

Without limiting the foregoing, Licensee acknowledges that:

- Region 10 retains all rights under copyright and all other intellectual property rights in and to TEKSready;
- Region 10 retains all rights in and to the Items;
- Region 10 retains all rights in and to all Derivative Works.

Licensee shall not:

- Transfer, sublicense, assign, lease, sell, or distribute TEKSready or any Items;
- Use TEKSready for any commercial purpose;
- Use TEKSready outside the State of Texas;
- Modify Items without prior written approval from Region 10;
- Use TEKSready for any purpose other than student assessments.

4. TERM AND TERMINATION.

This License shall commence on the Effective Date and continue for the term specified in the applicable purchase documentation, unless earlier terminated.

Licensee's rights to access and use TEKSready, the Items, and all Derivative Works shall terminate upon the earlier of:

Termination of this Agreement between Licensee and Distributor granting this License; or

Termination of Distributor's right and license to sublicense TEKSready from Region 10.

Upon termination, Licensee shall immediately cease all use of TEKSready, the Items, and any Derivative Works.

Licensee acknowledges that use of TEKSready, the Items, or Derivative Works after termination is strictly prohibited and constitutes infringement of Region 10's intellectual property rights.

5. MODIFICATIONS BY REGION 10.

Throughout the term of the License, Region 10 shall have the right, in its sole discretion, to modify TEKSready, including the addition, modification, and deletion of specific Items and/or passages from TEKSready.

Licensee acknowledges that such modifications may occur without prior notice.

6. REGIONS 7 AND 10 REPRESENTATIONS, WARRANTIES, AND LIMITATIONS OF LIABILITY.

LICENSEE ACKNOWLEDGES AND AGREES THAT REGIONS 7 AND 10 MAKES NO WARRANTY WHATSOEVER, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NONINFRINGEMENT, OR TITLE.

REGIONS 7 AND 10 IS NOT RESPONSIBLE FOR THE VALIDITY, FAIRNESS, OR QUALITY OF ASSESSMENTS THAT
ARE ULTIMATELY PREPARED BY LICENSEE USING TEKSREADY.

REGIONS 7 AND 10 SHALL HAVE NO RESPONSIBILITY WITH RESPECT TO ANY USE OF TEKSREADY OR ANY ITEMS:

A. TO THE EXTENT THAT ANY ITEMS HAVE BEEN MODIFIED WITHOUT PRIOR WRITTEN APPROVAL BY REGION 10;

B. FOR ANY PURPOSE OTHER THAN STUDENT ASSESSMENTS; OR

C. FOR FAILURE TO USE THE ITEMS OR TEKSREADY IN ACCORDANCE WITH THIS AGREEMENT OR LICENSEE'S AGREEMENT WITH DISTRIBUTOR.

REGIONS 7 AND 10 ARE NOT RESPONSIBLE FOR THE CONTENT, ACCURACY, COMPLETENESS, OR ADEQUACY OF ANY STATE STANDARDS ACCESSIBLE THROUGH THE DELIVERY PLATFORM.

REGIONS 7 AND 10 SHALL HAVE NO LIABILITY UNDER THIS AGREEMENT.

IN NO EVENT SHALL REGIONS 7 AND 10 BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR OTHER INDIRECT DAMAGES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL REGIONS 7 AND 10 BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR DAMAGES IN EXCESS OF THE FEES PAID TO REGIONS 7 AND 10 BY OR ON BEHALF OF LICENSEE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM.

7. LIMITATION OF LIABILITY OF DISTRIBUTOR.

To the extent permitted by Texas law, Distributor's liability under this Agreement shall be limited to the amount paid by Licensee under this Agreement during the twelve (12) month period immediately preceding the event giving rise to the claim.

Nothing herein shall be construed as a waiver of governmental immunity or other protections afforded to Texas education service centers under applicable law.

8. **GOVERNING LAW; VENUE.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its conflicts of laws principles.

If any legal dispute arises under this Agreement that is not settled by negotiation, the parties agree to submit to the exclusive jurisdiction of the state or federal courts located in Dallas County, Texas.

Licensee waives any claim that such forum is inappropriate or inconvenient.

TEKSReady (2026-2027)

	Fee	Enrollment	Total
TEKSReady	**$1.75**	**18488**	**$32354**

LICENSEE: (required)

Superintendent of Schools

Title

Dr. Rene Gutierrez

Name (printed)

RENE GUTIERREZ (Aug 27, 2026 16:14:27 CDT)

Signature

08/27/2026

Signature Date

Approved as to form

by: JOHNATHAN BALL (Aug 27, 2026 16:07:21 CDT)

Johnathan Ball, Staff Attorney

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action on Memorandum of Understanding ("MOU") No. 2027-121 Clinical Teaching Practicum Experience between McAllen Independent School District and Web-Centric Alternative Certification Program ("WCACP") / eTools4Education, LLC.

REFERENCE: Goal 2 People Development, Strategy 5 Partnership with Business/Civic/Educational Organization

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

WCACP teaching candidates (“Clinical Teachers”) may complete unpaid clinical teaching practicum experiences required for initial Texas educator certification within the District's schools. WCACP is a state-approved Educator Preparation Program (EPP) operating under 19 TAC Chapter 228. Nothing in this Agreement shall be construed to create an employment, agency, partnership, or joint venture relationship between the parties or between the District and any Clinical Teacher.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

This MOU is to partner with clinical teachers who are independent adult learners enrolled in WCACP solely for the purpose of obtaining initial Texas educator certification.

LEGAL REVIEW:

Agreement has been approved by legal.

BUDGETARY CONSIDERATIONS:

None

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Memorandum of Understanding "MOU" No. 2027-121 Clinical Teaching Practicum Experience between McAllen Independent School District and Web-Centric Alternative Certification Program "WCACP" / eTools4Education through September 08, 2028.

Attachment: ☑

SUBMITTED BY: Alberto Canales (Aug 27, 2026 21:25:34 CDT)

SUPERVISOR: Lorena Garcia (Aug 28, 2026 09:10:51 CDT)

For further information contact:
Name: Dr. Albert Canales, Chief Human Resource Officer
Office: 956-618-6000
eMail: albert.canales@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 28, 2026 13:34:15 CDT)

Superintendent of Schools

Department of Purchasing Services

Contract No.: 2027-121

Contract Coversheet and Signature Form
for
Forms/Contracts Requiring Superintendent Approval

This form standardizes the contract process and is to be used as the cover sheet to ensure complete review by appropriate department(s)/campus(es).

Human Resources
Department/Campus Name

Sponsor	Signature	Date
Campus Principal	Signature	Date
Dr. Albert Canales Department Director	Alberto Canales (Aug 28, 2026 07:52:17 CDT) Signature	08/28/2026 Date

MEMORANDUM OF UNDERSTANDING
Clinical Teaching Practicum

Web-Centric Alternative Certi ication Program (WCACP) / eTools4Education, LLC

This Memorandum of Understanding ("Agreement") is entered into as of ***September 9, 2026*** ("Effective Date"), by and between:

School District/Campus: McAllen ISD ("District")

Web-Centric Alternative Certification Program (WCACP), operated by eTools4Education, LLC, a Texas limited liability company, TEA-accredited Educator Preparation Program ("ACP"), with offices at 9801 Westheimer Rd., Ste. 300 #1033, Houston, TX 77042.

1. Purpose

This Agreement establishes the terms and conditions under which WCACP teaching candidates ("Clinical Teachers") may complete unpaid clinical teaching practicum experiences required for initial Texas educator certification within the District's schools. WCACP is a state-approved Educator Preparation Program (EPP) operating under 19 TAC Chapter 228. Nothing in this Agreement shall be construed to create an employment, agency, partnership, or joint venture relationship between the parties or between the District and any Clinical Teacher.

2. Status of Clinical Teachers

Clinical Teachers are independent adult learners enrolled in WCACP solely for the purpose of obtaining initial Texas educator certification. Clinical Teachers are:

- NOT employees, agents, or representatives of WCACP or the District;
- NOT subject to the direction and control of WCACP in the day-to-day performance of their duties in the classroom;
- Individually responsible for their own conduct, professional judgment, and compliance with applicable law and District policy while on District premises.

WCACP's role is limited to academic oversight, certification requirements, and program compliance under TEA regulations. WCACP does not supervise Clinical Teachers in the classroom on a daily basis and does not exercise operational control over their classroom activities.

3. District Agrees To

- Consider offering, at the District's sole discretion, appropriate clinical teaching placements where Clinical Teachers may meet practicum requirements for certification.

- Assign each Clinical Teacher a qualified cooperating teacher with appropriate certification to serve as the on-site mentor and primary supervisor.
- Provide Clinical Teachers access to campus orientations, trainings, and appropriate District resources, including relevant online resources and professional development opportunities.
- Notify the WCACP liaison of any concerns regarding a Clinical Teacher's conduct or performance.
- Immediately notify WCACP if a Clinical Teacher is removed from a placement for cause.

4. WCACP Agrees To

- Recommend for placement only those candidates who have met TEA requirements under 19 TAC Chapter 227 and WCACP's internal program standards.
- Inform each Clinical Teacher of their obligations regarding professional conduct, FERPA, the Texas Educators' Code of Ethics, IDEA, Section 504, mandatory child abuse reporting under Texas Family Code Chapter 261, and applicable District policies prior to the start of any placement.
- Require each Clinical Teacher, as a condition of placement authorization, to acknowledge in writing that they have reviewed and agree to abide by District policies and applicable law.
- Require each Clinical Teacher to obtain and maintain active student membership with the Texas Classroom Teachers Association (TCTA) or equivalent organization providing professional liability insurance coverage of no less than $1,000,000 per occurrence, prior to the commencement of any clinical placement. TCTA student membership is available at no cost to candidates enrolled in SBEC-approved certification programs. Proof of membership/coverage must be submitted to WCACP before placement authorization is issued.
- Provide the District access to curriculum requirements, evaluation forms, candidate handbooks, and other materials necessary to support the clinical teaching experience.
- Work cooperatively with the District to address any performance concerns regarding a Clinical Teacher.
- Upon receiving notice from the District, a field supervisor, or other credible source that a Clinical Teacher has engaged in conduct that violates District policy, applicable law, or WCACP program standards, immediately suspend or revoke the candidate’s clinical placement authorization and initiate dismissal proceedings from the program. Such action is administrative in nature and does not constitute an assumption of liability for the candidate’s prior conduct.
- Upon notice of a Clinical Teacher's removal from or withdrawal from a placement, promptly confirm to the District in writing that the candidate has been instructed to return all District property and materials.

5. Mutual Agreements

- Both parties agree to maintain open, ongoing communication and to comply with all applicable state and federal laws and regulations.
- Both parties agree that this Agreement does not create any rights in favor of any third party, including individual Clinical Teachers.

6. Safety Provisions

- All Clinical Teachers must successfully pass a background check satisfactory to the District before beginning any on-site experience. The District may select its own background check vendor and establish evaluation standards. All costs for background checks are the sole responsibility of the Clinical Teacher.
- All Clinical Teachers must complete a Pre-Service Affidavit prior to beginning any campus placement, as required by Texas Education Code §22.055. WCACP shall collect and retain completed affidavits and shall not authorize any clinical placement until a valid affidavit has been received and documented on file.
- The District may immediately remove from its facilities any Clinical Teacher who fails to comply with District policies or poses a risk to student safety. A removed Clinical Teacher may not return without prior written consent of the District's designated liaison.
- WCACP shall instruct all Clinical Teachers that they are prohibited from photographing, video recording, or audio recording students or staff, or posting identifying information of students or staff on any public platform, without prior written District consent.

7. Insurance / Professional Liability

Each Clinical Teacher is individually responsible for maintaining professional liability insurance during the term of their clinical placement. WCACP shall require, as a condition of placement authorization, that each Clinical Teacher provide proof of active professional liability coverage (minimum $1,000,000 per occurrence) through TCTA student membership or an equivalent program. WCACP does not carry employer liability insurance on behalf of Clinical Teachers and makes no representation that any WCACP entity policy extends coverage to Clinical Teachers' in-classroom conduct.

The District acknowledges that each Clinical Teacher carries individual coverage and agrees that insurance claims arising from a Clinical Teacher's conduct shall be directed to the Clinical Teacher's individual policy.

8. Liability

Each Clinical Teacher is solely responsible for their own acts and omissions while participating in the clinical teaching practicum. WCACP's liability, if any, shall be limited to its own direct acts or omissions as

an EPP in its administrative capacity, and shall not extend to the day-to-day in-classroom conduct of Clinical Teachers over whom WCACP does not exercise operational supervision.

Nothing in this Agreement shall be construed to impose upon WCACP or eTools4Education, LLC any obligation to defend, indemnify, or hold harmless the District for any acts or omissions of individual Clinical Teachers. Each party is responsible for its own negligent or wrongful conduct. The District retains all governmental immunities to which it is entitled under Texas law, and nothing herein shall be construed to waive those immunities.

9. Confidentiality / Student Privacy

WCACP shall instruct all Clinical Teachers that they are required to protect student privacy in accordance with FERPA and applicable Texas law. Clinical Teachers shall not use, disclose, or retain any student information, records, or data for any purpose beyond the clinical teaching practicum without prior written District consent. This obligation survives the conclusion of any placement.

10. Liaisons / Points of Contact

FOR THE DISTRICT
Name: Dr. Albert Canales
Title: Chief Human Resources Officer
Address: 2000 N. 23rd St., McAllen, TX 78501
Email: albert.canales@mcallenisd.net
Phone: 956-618-6000

FOR WCACP / eTools4Education
Name: Bonnie Jordan
Title: Program Manager
Address: 9801 Westheimer Rd., Ste. 300 #1033, Houston, TX 77042
Email: bjordan@etools4education.com
Phone: (936) 271-9432

11. Term of Agreement

- This Agreement is effective upon execution by both parties and shall remain in effect for two (2) years from the Effective Date, unless sooner terminated.
- Either party may terminate this Agreement without cause upon thirty (30) days' prior written notice. Clinical Teachers actively enrolled in a practicum at the time of notice shall be permitted to complete their assignment, not to exceed the notice period, unless the District terminates for cause, in which case no continuation period applies.

12. Nondiscrimination

Both parties are committed to providing equal opportunity and access and shall comply with all applicable federal and state laws prohibiting discrimination and harassment in connection with this Agreement.

13. Miscellaneous

- This Agreement may be modified only in writing signed by authorized representatives of both parties.
- This Agreement is governed by the laws of the State of Texas. Venue for any dispute shall be in Harris County, Texas.
- This Agreement may not be assigned by either party without the prior written consent of the other party.
- If any provision of this Agreement is held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it enforceable, and the remaining provisions shall continue in full force and effect.
- This Agreement constitutes the entire understanding between the parties with respect to its subject matter and supersedes all prior representations, agreements, and understandings, whether written or oral.
- Nothing in this Agreement confers any governmental immunity upon WCACP or eTools4Education, LLC, nor waives any immunity of the District.

MCALLEN INDEPENDENT SCHOOL DISTRICT

By: Lucia Regalado (Aug 28, 2026 16:22:27 CDT)

Name: Lucia Regalado

Title: Board President

Date: 08/28/2026

Approved as to form

by: JOHNATHAN BALL (Aug 28, 2026 14:33:25 CDT)
Johnathan Ball, Staff Attorney

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action on Memorandum of Understanding "MOU" No. 2027-122 Community-Based Prekindergarten Provider with Gingerbread House Learning Center LLC dba Valley Kidz Academy.

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

House Bill 3, passed by the 86th Texas Legislature, allowed for the expansion of Prekindergarten programs into childcare and early learning centers. The District has been collaborating with qualified early learning centers within our community to place a certified MISD teacher on site, and provide a high quality Prekindergarten program to more children since 2020.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Through this MOU, the District and Gingerbread House Learning Center LLC dba Valley Kidz Academy develop and foster cohesive partnerships and provide a high quality early childhood program for children and their families. Both parties agree to communicate and share leadership responsibilities to maximize resources and to ensure that the program is developed, implemented, and reviewed annually to improve quality of services.

LEGAL REVIEW:

The MOU has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

Local Funds cover the teacher's salary, partially offset by partner center enrollment revenue.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve MOU No. 2027-122 Community-Based Prekindergarten Provider with Gingerbread Learning Center LLC dba Valley Kidz Academy commencing on the effective date through June 30, 2027, with one (1) optional one-year renewal by mutual agreement.

Attachment: ☑

SUBMITTED BY: Elizabeth Cavazos (Aug 27, 2026 11:07:21 CDT)

SUPERVISOR: Lorena Garcia (Aug 27, 2026 14:13:41 CDT)

For further information contact:
Name: Mrs. Elizabeth Cavazos, Director of Strategic Partnerships and Student Outreach
Office: (956) 687-6473
eMail: elizabeth.cavazos@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 27, 2026 16:55:13 CDT)

Superintendent of Schools

MEMORANDUM OF UNDERSTANDING
BETWEEN McALLEN INDEPENDENT SCHOOL DISTRICT AND
GINERBREAD HOUSE LEARNING CENTER LLC DBA VALLEY KIDZ ACADEMY
2026-2027

This Memorandum of Understanding ("MOU") is by and between **Gingerbread House Learning Center LLC dba Valley Kidz Academy**, a Community-Based Prekindergarten Provider ("CBPP") and the McAllen Independent School District ("MISD") to provide services to age-eligible and criteria-eligible prekindergarten children as per the guidelines established by the Department of Health and Human Services (DHHS) and the Texas Education Agency (TEA).

Whereas CBPP meets component number two (2) is a Texas Rising Star program, as described in subparagraph 1 of Program Requirements herein below.

The purpose of the Memorandum of Understanding is to develop and foster a cohesive working relationship with prekindergarten education providers to establish high quality early childhood programs in the community; to ensure that each party hereto assumes the responsibility to communicate with the other and share leadership responsibilities to maximize resources; and to ensure that these working relationships between MISD and the CBPP are developed, implemented, and reviewed annually to improve quality of services.

Each party hereto has received information regarding the nature and scope of the proposed working relationship and have approved and granted signatory authority to the individuals designated as authorized to bind their respective organizations. Signatory authorities are listed at the end of this MOU. Each designee shall ensure that their respective Board of Directors, Owners or Board of Trustees as applicable are informed of the various aspects and elements of this MOU.

The terms and conditions set forth in this MOU shall constitute the entire MOU between MISD and CBPP and may not be amended except by a written document signed by both entities.

Program Requirements:

This program can be provided at the childcare site as long as the following conditions are met:

1. the site meets at least one of the following high-quality components set by the Texas Education Agency: (1) is nationally accredited; or (2) is a Texas Rising Star program 3 or higher; or (3) is a Head Start provider; or (4) is a Texas School ready participant; or (5) meets the prekindergarten program requirements under TEC 29.1532
2. the site maintains a minimum of 15 students that meet prekindergarten eligibility rules and requirements set by the Texas Education Agency. The site has up to 60 days from the first day of school or from the date of this MOU to reach the minimum of 15 students.
   The CBPP and MISD agree that a fundamental requirement of this MOU obligation is to ensure the CBPP PreK classroom meets the minimum requirement of 15 eligible students. This may be accomplished by: 1.) a homogenous Pk3 or Pk4 enrollment at the center, or 2.) combined PK3 and PK4 students who are eligible to be served by MISD into one classroom for the purposes of meeting minimum requirements to continue providing a full-day teacher on-site.

Term:

The Term of this Memorandum of Understanding commences on the date of execution and ends on June 30, 2027 (the "Term") unless earlier terminated as herein provided. If this MOU is not terminated as herein provided, then MISD and CBPP may by mutual agreement extend the term for one (1) additional one-year term on the same terms and conditions stated herein.

Program Description:

Children that are 3 or 4 years old as of September 1 of the year of the term then in effect, and meet the prekindergarten eligibility criteria set forth by TEA will be dual-enrolled and served by **MISD** and **CBPP**. Collaboratively, the children attending **CBPP** will receive six (6) hours of instruction daily, in cognitive development by a certified **MISD** teacher, funded by **MISD,** in each classroom, and full day services by a **MISD** teacher and **CBPP** assistant teacher with credentials required by **CBPP** in a designed facility meeting Child Care licensing and **MISD** requirements.

Days and Hours of Operation:

Days of operation shall not be less than one-hundred eighty-seven (187) days, during the months of August through May ("Days of Operation"). The daily operations will be from 7:45 am to 4:15 pm. (Note: District Calendar will be developed and approved by both entities).

Center Sites:

The name and address of the **CBPP** site that will be serviced by **MISD** is:

Gingerbread House Learning Center LLC dba Valley Kidz Academy
Elsa Garcia, Owner
2400 Quince Ave
McAllen, TX 78501

Responsibilities:

A. **MISD** will:

- **Provide** appropriate educational and supportive services to ensure children and families are school ready per guidelines set by the Texas Education Agency (TEA);
- Assign a **MISD** principal, and/or program specialist, to the **CBPP** to provide supervision, oversight, support and evaluation of the **MISD** teachers;
- Provide certified early childhood teachers to deliver six (6) hours of instruction in cognitive development daily by a certified **MISD** teacher to participating children;
- Implement **MISD's** state adopted curriculum;
- Supplement health services, educational services, parental training and other services as required by the children and their families;
- Provide special education services to children who are identified in need of special services through the **MISD** Special Education Program;
- Provide instructional technology and resources that are essential to implement a

high quality comprehensive early childhood education program. Any instructional technology and/or resources that are provided for use at the **CBPP** for PreK classrooms shall remain the sole property of **MISD**. Such **MISD** provided instructional technology and resources may not be altered, used for purposes other than those for which they are intended, or removed. This includes, but is not limited to monitors, computers, iPads, and hotspot devices;

- Meet monthly or on a regular basis with designated personnel of **CBPP** to facilitate the instructional process and other services provided; and
- Provide an overview of the academic program with the participating Administrators.

B. The **MISD** Teacher/Staff will:

- Provide six (6) hours of daily instruction, in cognitive development of the **CBPP** children utilizing the State Adopted Curriculum (4-year-old); Pre-K Guidelines (4-year-old); and Three-Year-Old Early Learning Guidelines (3-year-old);
- Attend and/or assist in delivery of collaborative Professional Development for **MISD** and **CBPP** as deemed appropriate;
- Participate with the **CBPP** staff in the student recruitment process;
- Implement a curriculum which is planned, purposeful, playful and engaging designed to support the child's social, emotional, cognitive, and physical development;
- Attend **CBPP** meetings as deemed necessary during the school year;
- Complete and fulfill the required documentation for **MISD** and **CBPP** with the assistance of **MISD** and **CBPP**'s respective human resource departments;
- Work together with the **CBPP** teachers to provide high quality early childhood instruction and prevent a duplication of efforts;
- Inform **CBPP** when she/he is going to be absent;
- Follow established protocol with any issues or concerns which may arise;
- Follow **MISD** requirements, policies and procedures as well as the Texas Child Care Licensing Minimum Standards;
- Comply with any other responsibilities assigned by the teacher's immediate supervisor;
- Coordinate efforts with the **CBPP** staff to register the children online;
- Assigned **MISD** school teachers will travel to the **CBPP** site and provide instruction to students at such locations;

C. **CBPP** will:

- Provide classroom space in a state childcare licensed facility which meets the state guidelines and MISD's requirements, and is appropriately staffed and furnished to deliver **CBPP** services based on the qualifying standards set forth by the Texas Education Agency (TEA), Child Care Licensing and district, local, and state and MISD requirements;
- Provide a CBPP assistant teacher with the credentials required by CBPP;
- Coordinate efforts with **MISD** to identify children with special needs and follow the **MISD** referral process for identification and services;
- Identify personnel who will attend the ARDs conducted by **MISD;**

- Assist with the distribution, completion, and submission of the required **MISD** student enrollment documents within the first week of a child's enrollment;
- Provide assistance with daily attendance reporting and meeting attendance goals;
- Meet monthly or as needed with the designated **MISD** personnel;
- Schedule a time for the **CBPP** teacher and **MISD** teacher to plan weekly to implement a high-quality early childhood instruction and prevent a duplication of effort;
- Ensure that the classroom size meets the adult/child ratio as required by state and federal standards; and
- Coordinate with MISD staff to transition children to the public schools at the end of each school year.

D. Collaboratively **MISD** and **CBPP** will:

- Implement an early childhood program utilizing best early childhood practices;
- Coordinate and partner to plan for instruction, and share resources to meet the needs of eligible four-year- old (Pre-K children) and three- year-old children;
- Schedule a weekly planning time for lesson planning and preparation;
- Share information on upcoming workshops and conferences on Early Childhood Education;
- Review program operations to avoid duplication of efforts;
- Meet on a regular basis to discuss the progress of the program;
- Perform children's assessment and evaluation, and collaborative program evaluation, to meet **MISD** and **CBPP** requirements;
- Analyze and share data for program planning and improvement;
- Work together to meet attendance goals;
- Inform all stakeholders of the working relationship of the parties hereto and this Memorandum of Understanding (MOU);
- Provide family services, parent engagement activities and home visits;
- Support all events which promote the shared goals of MISD and CBPP;
- Organize and plan to sustain the program and promote a collaborative culture;

General Conditions:

- This Agreement shall not serve to create a principal agent relationship, partnership or joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party shall have any right or authority to assume, create, or incur any liability or any obligation of any kind, expressed or implied or in the name of or on behalf of the other party, except as agreed in this MOU. It is expressly understood and agreed that, in the execution of this Agreement, **MISD** and any other governmental entities named herein do not waive, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.
- CBPP shall provide and maintain during the term of the agreement liability

insurance coverage requested as per Texas Administration Code 746.203, at a minimum.

- CBPP shall furnish the MISD Certificates of Insurance evidencing such coverage and **MISD** must be named as an additional insured on the Certificate of Insurance.
- This Agreement shall be governed by and construed by the laws of the State of Texas and is performable in Hidalgo County, Texas and shall constitute the complete understanding of **MISD** and **CBPP and** may not be modified in any manner without the express written consent of all parties.
    - Notwithstanding those rules and regulations or standards set by both laws and regulatory agencies, the parties agree that if a dispute arises related to this MOU, the parties will not be required to submit the dispute to arbitration, but to non-binding mediation in Hidalgo County, Texas.
    - This Memorandum of Understanding is performable in Hidalgo County, Texas.
- Either party may terminate this Memorandum of Understanding, with or without cause by providing 30 days' written notice to the other party.
- Each party shall, to the extent allowed by law, hold harmless and indemnify the other party on claims or losses sustained by individuals directly or indirectly involved with performance of services in connection with this MOU.

Indemnification:

To the extent allowed by law, **CBPP** will and does hereby agree to indemnify, protect, defend with counsel approved by the Board of Trustees of MISD, and hold harmless **MISD** and their respective elected officials, employees, representatives and agents (collectively "**MISD Indemnitees**") from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively "**MISD Claims**") by any person or entity, arising out of, caused by, or resulting from **CBPP** performance under or breach of this MOU and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **CBPP**, anyone directly employed by **CBPP** or anyone for whose acts **CBPP** may be liable. The provisions of this section will not be construed to eliminate or reduce any other indemnification or right which any **MISD** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

To the extent allowed by law, **MISD** will and does hereby agree to indemnify, protect, defend with counsel approved by **CBPP** from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, including reasonable attorneys' fees incurred in investigating, defending or settling any of the foregoing (collectively **"CBPP claims")** by any person or entity, arising out of, caused by, or resulting from **MISD's** performance under or breach of this MOU and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of **MISD** employees, anyone directly employed by the **MISD** or anyone for whose acts **MISD** may be liable. The provisions of this paragraph will not be construed to eliminate or reduce any other indemnification or right which any **CBPP** Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

The below signed authorities agree to the statements in this document in order to develop a strong working relationship and an open communication system at all levels which will enable both

MISD and **CBPP** to provide the children the best services available. The date of this MOU shall be the later of the dates of the execution by the signatories shown below.

Criminal History Information:

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

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

Data Sharing Agreement

The Data Sharing Agreement between McAllen Independent School District and **Gingerbread House Learning Center LLC dba Valley Kidz Academy** is incorporated herein as Exhibit A.

Executed _____
DATE

McAllen Independent School District

By: _____
Lucia Regalado, Board President

CBPP
Gingerbread House Learning Center LLC dba Valley Kidz Academy

By: _____
Elsa Garcia, Owner

Approved as to form:

by: JOHNATHAN BALL (Aug 21, 2026 10:47:23 CDT)
Johnathan Ball, Staff Attorney

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action on Request for Proposal No. 2024-1023 Catering, Entertainment, Field Trips, Fundraising, Food, Restaurants, and Rentals (Round 18)

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' approval. Eighty-seven (87) vendors were previously awarded through this RFP.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Four hundred seventy-seven (477) vendors were invited to submit proposals, and twenty-one (21) vendors responded, including nine (9) no-bid responses, four (4) non-responsive, 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 Sandra Pulido, Buyer, evaluated the proposals. Administration is recommending that the six (6) companies on the attached list be awarded as a qualified vendors, for a total of ninety-three (93) vendors.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

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

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Request for Proposal No. 2024-1023 Catering, Entertainment, Field Trips, Fundraising, Food, Restaurants, and Rentals (Round 18), and approve the companies on the attached list as qualified vendors, for a coterminous term through June 30, 2027.

Attachment: ☑

SUBMITTED BY: Laura Williams

SUPERVISOR: Lorena Garcia
Lorena Garcia (Aug 28, 2026 09:08:19 CDT)

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 (Aug 28, 2026 13:32:39 CDT)

Superintendent of Schools

RECOMMENDED VENDORS
Request for Proposal No. 2024-1023
Catering, Entertainment, Field Trips, Fundraising, Food, Restaurants, and Rentals (Round 18)

No.	Vendor Name	City	State	Recommendation
1	Church's Texas Chicken (Cajun Operating Company)	Atlanta	GA	Qualified
2	Comida Rapida Tecnologica	Laredo	TX	Qualified
3	Creasy's Cravings (Lucinda I Creasy)	Mission	TX	Qualified
4	Luby's Restaurant Corporation (CAL Operation Corporation)	Houston	TX	Qualified
5	Omega 3 Nutrition (Omega 3 Nutrition, Inc.)	Bethesda	MD	Qualified
6	RGV Gaming (Family Outdoor Creations LLC)	Mercedes	TX	Qualified

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action on Memorandum of Agreement No. 2027-127 Texas Student Data System ("TSDS") Public Education Information Management System ("PEIMS") Cooperative with Region One Education Service Center

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The purpose of the Memorandum of Agreement between Region One Education Service Center ("Region One ESC") and McAllen Independent School District ("District") is to utilize Region One ESC TSDS PEIMS Cooperative service to assist the District staff with detailed training, technical support, issue identification and remediation.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Region One ESC TSDS PEIMS Cooperative will assist District staff in verifying and submitting TSDS PEIMS to Texas Education Agency ("TEA").

LEGAL REVIEW:

Memorandum of Understanding has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

Funds for these services are budgeted through General Fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve Agreement No. 2027-127 Texas Student Data System ("TSDS") Public Education Information Management System ("PEIMS") Cooperative with Region One Education Service Center for a period of one (1) year, beginning September 1, 2026 through August 31, 2027.

Attachment: ☑

SUBMITTED BY: _____

SUPERVISOR: Lorena Garcia
Lorena Garcia (Aug 28, 2026 09:09:38 CDT)

For further information contact:
Name: Ms. Angela Allen, Director for Student Operations
Office: 956-632-3625
eMail: angela.allen@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 28, 2026 13:33:34 CDT)

Superintendent of Schools

REGION ONE EDUCATION SERVICE CENTER

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

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

The purpose of the Agreement is to provide PEIMS services to the Participating District.

WITNESSETH:

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

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

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

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

1. Term of Contract:

The term of the agreement is 09/01/2025 to 08/31/2026

2. Termination of the Contract:

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

3. Role of Region One ESC:

Scope of work:

This commitment form is an agreement for Region One Education Service Center to provide technical assistance, support, and training as described in our attached TSDS PEIMS Cooperative Schedule of Services. In return for services, the district/charter will commit to payment of fees as stated below.

TSDS PEIMS Basic Services:
Services provided to all LEAs at no cost; Region 1 ESC PEIMS Staff provides the following services to all of our LEAs in this region:

- Designate ESC PEIMS contact person and alternate;
- Inform the districts of pertinent PEIMS and TSDS documents;
- Communicate TEA submission and resubmission deadlines;
- Provide listing of the required records, data elements, and required code tables;
- Forward change/update communications from TEA;
- Respond to TIMS tickets for support questions regarding PEIMS;
- Monitor the completion of Superintendent Approvals; and
- Accept LEA PEIMS submissions in TSDS.

TSDS PEIMS Coop - Schedule of Services (available via contract):
Members of the PEIMS Coop will receive basic services plus the following enhanced services:

- Provide training sessions related to PEIMS such as but not limited to:
  - Annual fall and spring update trainings;
  - PEIMS records overview for the four PEIMS submissions (Fall, Mid-Year, Summer, and Extended);
  - TSDS-PEIMS technical training as needed; and
- Present training sessions concerning TSDS Core Collections
  - Charter School Waitlist
  - ECDS
  - SPPI-14
  - Class Roster

    - RFT
    - Special Education Language Acquisition
    - Child Find
- Training and Support for TSDS Upgrade Ed-Fi
- Provide telephone support and technical assistance with TSDS Core Collection submissions
- Assist districts with TSDS data submission to the TSDS system in order to meet published deadlines;
- Access to the New PEIMS Coordinator Academy
- Access to the "PEIMS Coordinator Monthly Updates" webinar
- Provide consultation and technical telephone support to the district's PEIMS Coordinator and PEIMS-related personnel on:
    - Texas Education Data Standards;
    - Student Attendance Accounting Handbook;
    - TSDS PEIMS usage, reports, and errors; and
    - TSDS Unique ID discrepancies
    - Texas Records Exchange (TREx)
- Contingent on meeting ESC due dates, provide additional data analysis by:
    - Reviewing summary reports for data anomalies;
    - Providing Ad hoc reports;
    - Fall, Mid-Year, Summer, and Extended Collection custom reports as needed; provide submission summary reports to assist districts in determining that their submissions contain data for all records required by the collections;
- Access to the PEIMS Coop Sharepoint Site that includes
    - Resource Repository including Checklists and Data Layouts
    - Training Library
    - Calendar of Events
    - Archived LEA PEIMS Fall Disaggregation reports
- Access to Tableau Data Visualization and Analytics Dashboard Workbooks
    - Budgeting Tools – Student, Staff, and Actual Financial Data
    - PEIMS Data Dives – Student Fall, Discipline, CCMR
- Maintain a Regional database for five years (Region One associated LEA's);
- TSDS Incident Management System (TIMS) support in all components;

PEIMS Staff Development Services:

Districts and charters occasionally need ESC PEIMS personnel assistance on-site to conduct in-district information sessions for campus and district administrators and PEIMS personnel.

On-Site/virtual trainings will be assessed at half or full day sessions and are not included with Coop membership fee. Pricing is as follows: $1,500 daily rate per ESC specialist.

4. Role of Participating District:

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

5. Costs:

Annual Contract Cost $7,250.00
District will be invoiced on an annual basis.

Annual Subscription Breakdown

Item Description	Price
TSDS PEIMS Cooperative	7,250.00
Annual Subscription Grand Total	**7,250.00**

6. Limitation of Liability:

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

Authorization

Region One ESC	Participating District
Dr. Daniel P. King Executive Director	Lucia Regalado, Board of Trustees President
Date:	**Date:**
Email: dking@esc1.net	**Email:** lucia.regalado@mcallenisd.net
Phone: (956) 984-6005	**Phone:** 956-618-6000
	Contact Person: Angela Allen

Approved as to form:

by: JOHNATHAN BALL (Aug 27, 2026 14:33:29 CDT)

Johnathan Ball, Staff Attorney

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Report Regarding Self-Funded Health Plan Review

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

McAllen ISD's self-funded Health Plan has experienced a larger-than-projected shortfall for the 2025–2026 plan year, driven primarily by high-cost and catastrophic claims. This trend, combined with the District's ongoing effort to identify sustainable cost-containment strategies, is the basis for bringing a operating transfer.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The District will process an operating transfer.

LEGAL REVIEW:

None required.

BUDGETARY CONSIDERATIONS:

Funds for this are budgeted through the General Fund.

RECOMMENDED BOARD ACTION:

This item is for informational purposes only.

Attachment: ☑

SUBMITTED BY: Karina G. Perez

SUPERVISOR: Alberto Canales (Aug 26, 2026 14:53:56 CDT)

For further information contact:
Name: Karina Perez, Director of Employee Benefits and Risk Management
Office: (956) 618-6007
Email: Karina.Garza@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 26, 2026 15:50:00 CDT)

Superintendent of Schools

Self-Funded Health Plan Review

Ending Balance

2025-2026 Revenue & Expenses	July 2025 - June 2026 Projected Single Plan Model w/GLP-1 Tier	July 2025 - June 2026 Actual Single Plan Model w/GLP-1 Tier
2025-2026 Cost*	$31,732,984	$33,830,763
2025-2026 Revenue**	$24,812,904	$25,020,833
2025-2026 Rx Rebates	$1,300,000	$1,376,014
2025-2026 Stop Loss Reimbursements	$1,396,381	$1,796,381
2025-2026 Projected Shortfall +/(-)	**($4,223,699)**	**($5,638,930)**
Proposed Strategies	**$1,842,500**	
Fund Transfers Available		
Workers Compensation	$1,000,000	$1,000,000
Unemployment Fund	$133,000	$133,000
Budget Amendment Transfer		$1,248,199
Revenue Offsets		$618,459
Total Available Transers	**$1,133,000.00**	**$2,999,658**
2026 Projected Shortfall (with adjustments) +/(-)	**($1,248,199)**	**($2,637,877)**

KEY FACTOR:
Unexpected expenses have offset the strategy savings.

Financial Snapshot

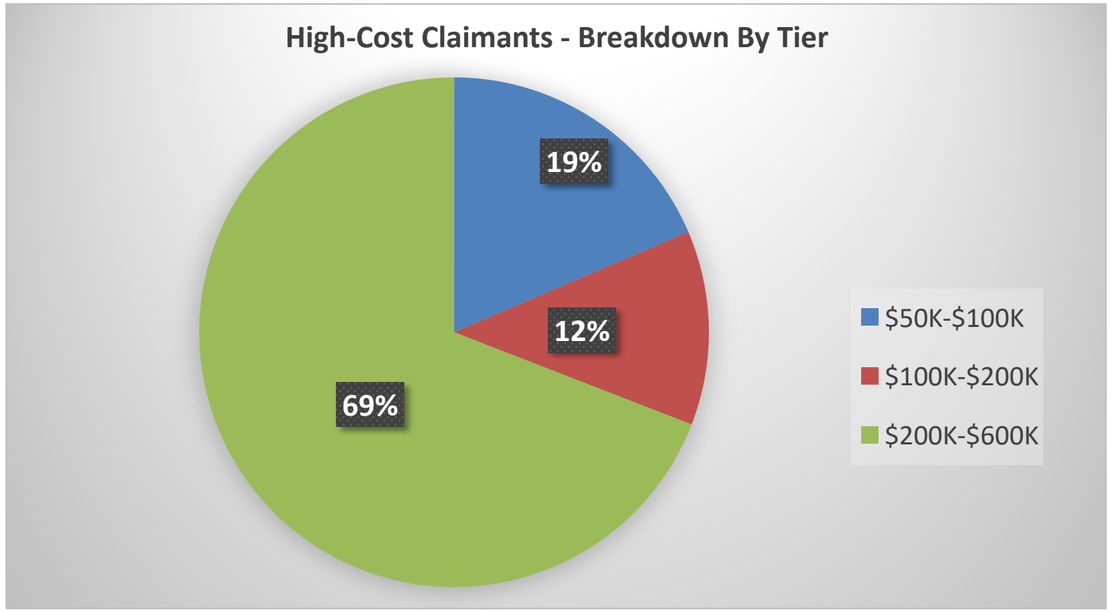
Key Cost Drivers (January-June 2026)

1	Emergency Room Claims	**$ 818,292.25**
2	High-Cost Claims ***Catastrophic/Specialty Claims***	**$ 3,011,537.73**

These account for the majority of unanticipated plan cost during the first half of 2026.

Large Claims Analysis

January-June 2026 – Unanticipated Costs



9 Claims | $50K - $100K
$558,929.70
19%

2 Claims | $100K - $200K
$371,509.50
12%

5 Claims | $200K - $600K
$2,081,098.53
69%

Total High Cost Claims $3,011,537.73 | 16 Total Claims

Claims Comparison

MONTH	2025 BCBS	2026 UHC
JANUARY	$2,650,950.60	$328,165.47
FEBRUARY	$1,173,861.87	$1,479,222.45
MARCH	$1,496,764.87	$1,550,422.75
APRIL	$2,459,717.27	$1,632,455.57
MAY	$1,998,446.03	$1,735,878.34
JUNE	$2,662,944.96	$2,200,845.00
JULY	$3,379,127.80	$3,609,948.22
TOTAL	**$15,821,813.40**	**$12,536,937.80**

Plan Year Excluding ***$2,550,864.29*** *In Runoff Claims from prior carrier (BCBS)*

Revenue Offsets

Credits and reimbursements reducing plan impact

+ **UHC Implementation Credit**	**$400,000.00**
+ **Stop Loss Reimbursement** ***(additional amount)***	**$174,244.59**
+ **BCBS Settlement Check**	**$ 38,214.31**
TOTAL REVENUE OFFSETS	**$ 612,458.90**

Plan Design Changes

Effective Plan Change

To help manage healthcare costs and preserve employee benefits, the Health Plan will no longer cover Emergency Room visits that are determined to be non-emergent.

✅ **Covered:** True medical emergencies

❌ **Not Covered:** Non-emergency ER visits

Non-emergency determinations will be based on the Plan's medical review guidelines and applicable benefit provisions.

For Non-Emergency Care, Use:

- Telehealth Services
- Primary Care Physicians (PCP)
- Urgent Care Centers

Why This Change Matters

- ✔ Reduces unnecessary ER utilization
- ✔ Helps control rising healthcare costs
- ✔ Protects the long-term sustainability of employee benefits

Proposed Effective Date 1/1/27

HMO & PPO Features

HMO

PROS OF A HEALTH MAINTENANCE ORGANIZATION (HMO)



- Lower premiums
- Low or no deductible

CONS OF A HEALTH MAINTENANCE ORGANIZATION (HMO)



- Usually required to select a Primary Care Physician (PCP)
- PCP referral typically required for care from a specialist
- No non-emergency coverage outside of network

PPO

PROS OF A PREFERRED PROVIDER ORGANIZATION (PPO)



- No need to select a Primary Care Physician (PCP)
- No referral needed to see a specialist
- Usually some out-of-network coverage

CONS OF A PREFERRED PROVIDER ORGANIZATION (PPO)



- Higher premiums
- Usually have a deductible

Rates

Health Plan Contribution & Rates Effective 01/01/2027			
Monthly Rates	**Basic Plan (HMO Plan)[1]**	**PPO Plan[1]**	**Alternate Plan[2]**
Employee Only	$65.00	$195.00	$0
Employee & 1 Child	$244.00	$488.00	N/A
Employee & Spouse	$543.00	$852.00	N/A
Employee & Children (3) Max	$436.00	$680.00	N/A
Employee & Family	$733.00	$1,042.00	N/A
2 Persons Employed-Family[3]	$335.00	$735.00	N/A

[1]Represents the monthly employee rate. Additionally, the District contributes $521.50 per employee per month toward the total cost of providing medical and $18 per employee per month toward the cost of providing dental benefits.

[2]The District provides an Alternate Plan and Employee Only Dental Coverage at no cost to the Employee. Alternate Plan option is available only to employees that waive medical coverage. The Alternate Plan is not a medical Plan. It is a limited, reimbursement-based benefit with a cap for eligible medical, pharmacy or other expenses.

[3]Represents the family rate when employee & spouse are both MISD employees.

Strategic Plan

No.	Priority	Target Area	Strategy	Pros (P) Cons (C)	Est Cost	Est Savings/ ROI	Timeline	*Remarks
1	1	Medical Plan	Employer Contribution Increase ($25 - $100 PEPM)	P- Increases funding C-None	PEPM: $25: $905,100 $50: $1,810,200 $75: $2,715,300 $100: $3,620,400	None	7/1/2027	Aligns with the average of surrounding School Districts Average Contribution: $585 PEPM
2	1	Medical Plan	Employee Premium Adjustments	P- Increases Funding C-Employee Discontent	None	5%: $269,773 10%: $539,547 15%: $809,321	1/1/2028	Aligns premiums to market levels.
3	1	Medical Plan	Offer an HMO plan option and a PPO (2) Plans	P-Lower Premiums Lower Cost to Plan C-No Out-of-Network PCP Required Narrow Network	None	5% Claim Cost Approx. $900,000	1/1/2027	Offer a lower cost plan to the employees.
4	1	Medical Plan	Issue a Competitive Stop Loss RFP / Renegotiate with Current Carrier Using RFP Results	P-Improve contract terms C-None	TBD	5–20% premium savings and/or improved coverage	1/1/2027	Identify cost savings, improve contract terms.

Questions?

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action of the 2026-2027 List of Certified Texas Teacher Evaluation and Support System (T-TESS) Appraisers

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Board Policy DNA(LOCAL) and (LEGAL) -Performance Appraisal: Evaluation of Teachers Chapter 150. Commissioner's Rules Concerning Educator Appraisal Sub-chapter AA. Teacher Appraisal Texas Education Code, 21.351.356. Under the existing T-TESS guidelines, the District Board of Trustees is required to approve annually the list of certified teacher appraisers.

Please note that the names of additional T-TESS appraisers will be forwarded to the Board of Trustees for approval as they become certified during the 2026-2027 school year.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The T-TESS support system currently in place includes, but is not limited to TEA, SBEC, TASB, Region I and Region XIII. Required materials and training have been budgeted within the Division of Curriculum and Instruction. The teacher appraisers have been verified by Human Resources and identified under separate cover.

LEGAL REVIEW:

Not Applicable

BUDGETARY CONSIDERATIONS:

Budgeted

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the 2026-2027 list of Certified Texas Teacher Evaluation and Support System (T-TESS) Appraisers.

Attachment: ☑

SUBMITTED BY: Alberto Canales
Alberto Canales (Aug 26, 2026 17:27:16 CDT)

SUPERVISOR: Lorena Garcia
Lorena Garcia (Aug 27, 2026 09:43:39 CDT)

For further information contact:
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Email: alberto.canales@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 27, 2026 10:45:07 CDT)

Superintendent of Schools

First Name	Last Name	Campus	Role	T1 Cert Status	Cert Year
Sandra	Saenz	Achieve	Assistant School Administrator	Certified	2026 - 2027
Nancy	Valenzuela	Garza	School Administrator	Certified	2026 - 2027
April	Lopez	Garza	Assistant School Administrator	Certified	2026 - 2027
Veronica	Partida	Sanchez	Assistant School Administrator	Certified	2026 - 2027
Veronica	Guerra	Roosevelt	School Administrator	Certified	2026 - 2027
Sergio	Tamez	Rowe	Assistant School Administrator	Certified	2026- 2027
Ernesto	Cardoza	Sam Houston	Assistant School Administrator	Certified	2026 - 2027
Aaron	Gracia	Travis	School Administrator	Certified	2026 - 2027
Melissa	Lara	Alvarez	School Administrator	Certified	2026 - 2027
Holly	De Leon	McHi	Assistant School Administrator	Certified	2026 - 2027
Jesus Miguel Angel	Lozano	Memorial	Assistant School Administrator	Certified	2026 - 2027
Elizabeth	Gonzalez	UTRGV Collegiate	School Administrator	Certified	2026 - 2027
Jennifer	Lopez	McHi	Assistant School Administrator	Certified	2026 - 2027
Brian	Canales	Memorial	Assistant School Administrator	Certified	2026 - 2027
Aida	Evans	Fossum	Assistant School Administrator	Certified	2026 - 2027
Marcos	Flores	Morris	School Administrator	Certified	2026 - 2027
Amanda	Ybarra	Thigpen-Zavala	Assistant School Administrator	Certified	2026 - 2027

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action of McAllen ISD Policy CH (LOCAL) – Purchasing and Acquisition: Purchasing Authority (Second Reading)

REFERENCE: Goal- Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Administration is recommending the proposed policy update to increase cost of any single, budgeted purchase of goods or services from $50,000 to $100,000.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The first reading allows the Board of Trustees the opportunity to review and discuss the proposed changes prior to consideration for adoption at a future meeting.

LEGAL REVIEW:

Recommendations will be reviewed by TASB Policy Services.

BUDGETARY CONSIDERATIONS:

None

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve McAllen ISD Policy CH (LOCAL) – Purchasing and Acquisition: Purchasing Authority (Second Reading)

Attachment: ☑

SUBMITTED BY: Alberto Canales (Aug 26, 2026 14:54:25 CDT)

SUPERVISOR: Lorena Garcia (Aug 26, 2026 14:57:59 CDT)

For further information contact:
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Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 26, 2026 15:50:42 CDT)

Superintendent of Schools

Purchasing Authority

The Board delegates to the Superintendent the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that costs ~~$50,000~~ $100,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place, except as otherwise provided in this policy.

The Superintendent shall not be required to obtain Board approval for the following types of budgeted purchases, regardless of cost, but shall report to the Board all purchases made under this authority:

1. A purchase made pursuant to a Board-approved interlocal contract, in accordance with law;
2. A purchase made through a cooperative purchasing program or state purchasing program that satisfies the District's obligation for competitive purchasing [see CH(LEGAL)];
3. A continuing or periodic purchase under a Board-approved bid or contract;
4. A purchase made in accordance with the sole-source exception in state law [see CH(LEGAL)]; or
5. A purchase of produce or fuel.

Exception for Emergency Contracts

In the event of a catastrophe, emergency, or natural disaster affecting the District, the Board delegates to the Superintendent the authority to contract for the replacement, construction, or repair of school equipment or facilities in accordance with law, if emergency replacement, construction, or repair is necessary for the health and safety of District students and staff. The Superintendent shall report to the Board at the next regular meeting any contract made under this authority. [See Disaster Exception, CH(LEGAL)]

The delegation regarding emergency contracts does not waive competitive purchasing requirements under Education Code Chapter 44. Only the Board is authorized to waive competitive purchasing requirements under limited circumstances in accordance with Education Code 44.031(h). [See Emergency Damage or Destruction, CH(LEGAL)]

Purchasing Procedures

The Superintendent shall develop purchasing procedures to implement the requirements of state and federal law. [See also CB, CBB, CH(LEGAL), and COA]

Purchasing Method

The Board delegates to the Superintendent the authority to determine the method of purchasing in accordance with CH(LEGAL) or CBB(LEGAL), as appropriate.

Competitive Bidding

If competitive bidding is chosen as the purchasing method, the Superintendent shall prepare bid specifications. All bids shall be in accordance with administrative regulations, and the submission of any electronic bids shall also be in accordance with Board-adopted rules. All bidders 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.

The District may reject any and all bids in accordance with state or federal law, as applicable.

Competitive Sealed Proposals

If competitive sealed proposals are chosen as the purchasing method, the Superintendent shall prepare the request for proposals and/or specifications for items to be purchased. All proposals shall be in accordance with administrative regulations, and the submission of any electronic proposals shall also be in accordance with Board-adopted rules. Proposals received after the specified time shall not be considered. Proposals shall be opened at the time specified, and all proposers shall be invited to attend the proposal opening. Proposals may be withdrawn prior to the scheduled time of opening. Changes in the content of a proposal, and in prices, may be negotiated after proposals are opened.

The District may reject any and all proposals in accordance with state or federal law, as applicable.

Electronic Bids or Proposals

Bids or proposals that the District has chosen to accept through electronic transmission shall be administered in accordance with Board-adopted rules. Such rules shall safeguard the integrity of the competitive procurement process; ensure the identification, security, and confidentiality of electronic bids or proposals; and ensure that the electronic bids or proposals remain effectively unopened until the proper time.

Responsibility for Debts

The Board shall assume responsibility for debts incurred in the name of the District so long as those debts are for purchases made in accordance with the adopted budget, state law, Board policy, and the District's purchasing procedures. [See CE] The Board shall not be responsible for debts incurred by persons or organizations not directly under Board control. Persons making unauthorized purchases shall assume full responsibility for all such debts.

Purchase Commitments

All purchase commitments shall be made by the Superintendent in accordance with administrative procedures, including the District's purchasing procedures.

Personal Purchases

District employees shall not be permitted to make purchases for personal use through the District's business office.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action Regarding McAllen ISD Board Policy CV(Local) - Facilities Construction (Second Reading)

REFERENCE: Goal 3 - Facility Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Board Policy CV(Local) - Facilities Construction deals with compliance with law, construction contracts, change orders, project administration and final payment. It was part of Update 126 and was issued on November 10, 2025.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Administration is recommending that the Board of Trustees review and discuss Board Policy CV(Local) - Facilities Construction and provide possible action.

LEGAL REVIEW:

Not Applicable.

BUDGETARY CONSIDERATIONS:

Not Applicable.

RECOMMENDED BOARD ACTION:

That the Board of Trustees discuss and provide possible action regarding McAllen ISD Board Policy CV(Local) - Facilities Construction (Second Reading).

Attachment: ☑

SUBMITTED BY: Alberto Canales (Aug 28, 2026 09:44:47 CDT)

SUPERVISOR: Lorena Garcia (Aug 28, 2026 09:57:43 CDT)

For further information contact:
Name: Dr. Albert Canales, Chief Human Resources Officer
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Email: albert.canales@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 28, 2026 13:42:53 CDT)

Superintendent of Schools

DISTRICT INITIATED PROPOSED REVISIONS

Governing Policy	The Board has adopted this policy for construction contracts, including renovations, alterations, new buildings, and other facilities construction. To the extent of any conflict, this local policy shall prevail over any other local policy relating to facilities construction only.
Delegation	The Superintendent has the authority to delegate any assigned duty allowed by law and reflected in this policy, except for duties expressly reserved to the Board.
Compliance with Law	All facilities within the District shall be operated, maintained, and constructed to comply with applicable laws, engineered design, and local building codes. The Superintendent shall establish procedures to document such compliance and provide information to the Board when requested or required by this policy. ~~The Superintendent shall establish procedures that ensure that all school facilities within the District comply with applicable laws and local building codes.~~
Purchasing Authority and Selection of Purchasing Method	Construction contracts valued at or above $100,000, including Job Order Contract (JOC) master agreements with a maximum aggregate contract price at or above $100,000, shall be submitted to the Board for approval. For any JOC master agreement approved by the Board, each job, task, or purchase order exceeding $500,000 shall also be submitted to the Board for approval, and JOC orders shall be reported to the Board on a quarterly basis. Construction contracts valued at less than $100,000 shall be approved consistent with existing Board policy and applicable law. [See also CH]
Construction Contracts	The Board shall approve the project delivery method to be used for each construction contract valued at or above $100,000. Prior to advertising, the Superintendent shall recommend the project delivery method that provides the best value to the District and shall provide the Board with sufficient information to evaluate the recommendation. [See CV series generally and CBB(LEGAL) for requirements if federal funds are involved.]
	~~The Board delegates to the Superintendent the authority to determine, prior to advertising, the project delivery/contract award method to be used for each construction contract valued at or above the competitive purchasing threshold established in law. [See CV series generally and CBB(LEGAL) for requirements if federal funds are involved.]~~
	Construction contracts valued at or above $100,000 shall be submitted to the Board for approval. Construction contracts valued at less than $100,000 shall be approved consistent with existing

Board policy. Upon recommendation by the Superintendent, the Board may delegate all or part of this approval as permitted by law and Board policy. [See also CH, CV(LEGAL), and CBB(LEGAL)]

~~For construction contracts valued at or above $50,000, the Superintendent shall submit the resulting contract to the Board for approval. Lesser expenditures for construction and construction-related materials or services shall be at the discretion of the Superintendent and consistent with law and policy. [See also CH and CBB(LEGAL)]~~

Note: For provisions regarding delegation of authority for construction contracts in the event of a catastrophe, emergency, or natural disaster affecting the District, see CH(LOCAL).

Contingency Allowance

Construction contracts may contain a contingency allowance, no greater than 10 percent, where appropriate as determined by the person administering the contract. The contingency allowance shall be used only for expenditures that do not require a change order and may be used to pay for changes in the work, including hidden or unforeseen conditions. Use of the contingency allowance must be authorized in advance by the Superintendent or designee and shall be included in periodic reporting to the Board.

Change Orders

If a proposed change order, individually or cumulatively, would increase the original contract amount by more than 25 percent, the District shall obtain legal and procurement review before authorizing the additional work. The additional work shall be separately procured or otherwise handled as required by law. The Board may not waive a requirement imposed by statute, regulation, grant condition, or other controlling law.

~~Change orders permitted by law shall be approved prior to any changes being made in the approved plans or the actual construction of the facility.~~

~~Change orders valued at or above $50,000 shall require Board approval. The Superintendent shall be authorized to approve change orders of a lesser amount.~~

Project Administration

All construction projects shall be administered by the Superintendent.

The Superintendent shall keep the Board informed by providing regular reports on construction projects, including updates on current projects, pending projects, project budgets, schedules, change

orders, contingency use, and substantive changes concerning construction projects. During any active bond-funded construction program, reports shall be provided at least quarterly and may be provided more frequently as directed by the Board. The Superintendent shall also provide appropriate information to the general public.

~~The Superintendent shall keep the Board informed concerning construction projects and also shall provide information to the general public.~~

Final Payment

Final payments for construction work on facilities and/or the supervision of such work in the District shall not be made until the work has been completed and authorization for final payment has been approved by the Board.

~~The District shall not make final payments for construction or the supervision of construction until the work has been completed and the Board has accepted the work.~~

Change Orders

Every construction contract shall contain a provision for change orders. Change orders shall be used to document any change in contract time or contract sum, or any material change in scope of work. Change orders permitted by law shall be approved prior to any changes being made in the approved plans or the actual construction of the facility, except as otherwise allowed by law and approved under this policy.

For construction contracts valued at less than $100,000, the Superintendent may authorize and approve a change order unless the change order would increase the value of the contract to $100,000 or more or, in the case of a JOC project, $500,000 or more, in which case Board approval is required.

For construction contracts valued at $100,000 or more, change orders valued at or above $100,000, material changes in scope, or changes that cause cumulative change orders to exceed 10 percent of the original contract amount shall require Board approval prior to the work covered by the proposed change order or change in the approved plans. The Superintendent shall be authorized to approve change orders of lesser amounts and shall report such change orders to the Board on a periodic basis.

Unless waived by the Board, if a change order would increase the value of the contract by more than 25 percent, the additional work shall be submitted to separate competitive procurement or otherwise handled as required by law.

Small, Local, and Historically Underutilized Business Participation in Construction Projects	When possible, the District shall foster participation by small, local, minority-owned, women-owned, veteran-owned, and historically underutilized businesses in the District's contracting and purchasing activities through race-neutral and legally compliant means. The Superintendent shall develop administrative procedures, consistent with law and Board policy, to encourage such participation in construction and construction-related professional services, including outreach, certification review, bid/proposal criteria where legally permissible, and periodic reporting to the Board. Any aspirational participation target or evaluation weighting shall be adopted or approved by the Board before inclusion in a solicitation.
Evaluation Criteria for Contractors in Construction Projects	The Superintendent shall determine relevant factors to be listed in solicitations in determining to whom to award a contract for a construction project, in addition to those specifically required by law. The criteria, applicable weighted value for each criterion, and the detailed methodology for scoring each criterion shall be included in the solicitation when required by law.
Selection of Professional Services	Professional services for construction projects, including architects, engineers, construction manager-agents, program management firms, and other professional service providers, shall be selected through a procurement process that selects qualified professionals in accordance with applicable law. Recommended vendors for professional services shall be presented to the Board for approval unless approval has been lawfully delegated by the Board.
Reporting of Concerns	All concerns related to a violation of this policy, whether by a District employee, Trustee, vendor, contractor, consultant, or professional service provider, should be reported through the District's established reporting channels. [See CAA(LOCAL)]

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action of MISD Policy DGBA (LOCAL) – Personnel Management Relations: Employee Complaints/Grievances (Second Reading)

REFERENCE:

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Administration is presenting MISD Policy DGBA (LOCAL) – Personnel Management Relations: Employee Complaints/ Grievances for second reading and possible action. The revisions are intended to ensure alignment with current legal requirements, district practices, and procedural clarity regarding the handling of employee complaints and grievances.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Administration is requesting proposed policy updates to provide clarification regarding grievance procedures, timelines, levels of review, and employee rights throughout the complaint resolution process. The revisions once submitted to TASB Policy Services will support consistency, transparency, and compliance in addressing employee concerns. The first reading allows the Board of Trustees the opportunity to review and discuss the proposed changes prior to consideration for adoption at a future meeting.

LEGAL REVIEW:

Recommendations will be reviewed by TASB Policy Services.

BUDGETARY CONSIDERATIONS:

None

RECOMMENDED BOARD ACTION:

The MISD Policy DGBA (LOCAL) – Personnel Management Relations: Employee Complaints/Grievances (Second Reading), Administration is recommending action on this item.

Attachment: ☑

SUBMITTED BY: Alberto Canales (Aug 28, 2026 09:47:40 CDT)

SUPERVISOR: Lorena Garcia (Aug 28, 2026 09:56:52 CDT)

For further information contact:
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Email: alberto.canales@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 28, 2026 13:36:32 CDT)

Superintendent of Schools

DISTRICT INITIATED PROPOSED REVISIONS

(see pages 6 & 7)

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 has been followed:

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 DIA.
2. Complaints alleging certain forms of harassment, including harassment by a supervisor and violation of Title VII, shall be submitted in accordance with DIA.
3. Complaints concerning retaliation related to discrimination and harassment shall be submitted in accordance with DIA.
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 and on the District’s website.

Informal Process

The Board encourages employees to discuss their concerns with their supervisor, principal, or other appropriate campus or District 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.

Filing Deadlines

If an employee has engaged in the informal process in an attempt to resolve the complaint with the District and has not reached a resolution during the process, the employee must file a complaint within 15 business 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.

Deadline Extensions

All deadlines shall be strictly followed unless otherwise required by law or modified by mutual written consent.

Formal Process

An employee may initiate the formal process described below by timely filing a written complaint form.

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.

The complaint form shall be filed with the lowest level administrator who has the authority to remedy the alleged problem. In most circumstances, the employee shall file Level One complaints with the campus principal for any complaint on a matter related to a campus. For a complaint that arises on a matter that is unrelated to a campus, the complaint shall be filed with the appropriate District-level administrator.

If the subject matter of the complaint requires a Board decision, is a complaint about a Board member, or is a complaint about the Superintendent, the complaint shall be initiated at the Board level. A preliminary hearing to develop a record or recommendation for the Board may be conducted by an appropriate administrator.

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.

Option to Continue Informal Process

Even after initiating the formal complaint process, the employee is encouraged to seek informal resolution of their concerns. An employee whose concerns are resolved may withdraw a formal complaint at any time.

Notice of Complaint

A District employee against whom a complaint has been filed shall be provided notice of the complaint in accordance with administrative regulations. The employee shall have sufficient opportunity to submit a written response to the complaint that shall be included in the record of the complaint.

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 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. Complaints alleging a violation of law by the Superintendent may be submitted directly to the Board or Board's designee.

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.

General Provisions

Filing

Complaint forms and appeal notices may be filed by hand-delivery, by electronic communication, 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 business days after the deadline.

Scheduling Hearings

The District shall make reasonable attempts to schedule hearings at a mutually agreeable time. If the employee fails to appear at a scheduled hearing, the District may hold the hearing and issue a decision in the employee's absence.

Decision

A "decision" shall mean a written communication to the employee from the appropriate administrator that provides an explanation of the basis of the decision, an indication of each document that supports the decision, and any relief or redress to be provided. A decision shall be issued on the merits of the concern raised in the complaint notwithstanding any procedural errors or the type of relief or redress requested.

The decision shall also include information regarding the filing of an appeal in accordance with this policy. After a hearing at Level Three, the decision shall include information on submitting an appeal to the commissioner.

A decision 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 decisions shall be timely if they are postmarked by U.S. Mail on or before the deadline.

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 the employee 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 business days' notice to the District before a scheduled hearing, the District may reschedule the 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

To promote efficiency in addressing complaints, the appropriate administrator shall determine if separate or serial complaints arising from an event or series of related events shall be consolidated.

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 on a form provided by the District.

Copies of any documents that support the complaint should be included with the complaint form. If the employee does not have copies of these documents, copies may be presented at the Level One hearing. After the Level One hearing, the employee may supplement the record with additional documents or include additional claims.

Record

A record of each complaint hearing shall be created and retained in accordance with this policy. The record shall include documents submitted by the employee who filed the complaint, documents determined relevant by District personnel, and the decision.

Remand

A complaint or appeal form that is incomplete in any material aspect shall be refiled, if at Level One, and remanded at all other levels in order to develop an adequate record of the complaint.

If an adequate record has not been developed, the appropriate administrator may remand the complaint to a lower level. The Board or Board committee may remand a complaint to a lower level if at the Board level of review an adequate record has not been developed.

Assignment of Hearing Officer

When a District employee is the subject of a complaint, the hearing shall be conducted by an administrator who is in a supervisory or higher organizational role. The District employee who is the subject of the complaint shall recuse themselves from reviewing the complaint at any level in the process.

Investigation

The District may conduct an investigation at any level in the complaint process. If the District and the employee mutually agree, all deadlines shall be suspended during an investigation.

Audio Recording

As provided by law, an employee shall be permitted to make an audio recording of a 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.

Complaint Levels

Level One

At Level One, the appropriate hearing officer shall hold a hearing with the employee within 10 calendar days after receipt of the written complaint. The hearing officer may set reasonable time limits for the hearing.

The hearing officer shall provide the employee a decision within 20 calendar days following the hearing. In reaching a decision, the hearing officer may consider information provided with the complaint form and any other relevant documents or information the hearing officer 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 decision has expired, the employee may request a hearing at Level Two to appeal the Level One decision.

The appeal notice must be filed in writing, on a form provided by the District, within 20 calendar days of the date of the Level One decision or, if no decision has been communicated to the employee, within 20 calendar days of the Level One decision deadline.

After receiving notice of the appeal, the Level One hearing officer shall prepare and forward a record of the Level One complaint to the Level Two hearing officer and provide a copy of the Level One record to the employee.

The Level One record shall include:

1. The original complaint form and any attachments.
2. Any other documents submitted by the employee at Level One.
3. If the complaint is against a District employee, the written response of the District employee, if any.

4. The decision issued at Level One and any attachments.

5. All other documents relied upon by the Level One hearing officer in reaching the Level One decision.

The hearing officer shall hold a hearing within 10 calendar days after the appeal notice is filed. The hearing officer may set reasonable time limits for the hearing.

The hearing officer shall provide the employee a decision within 20 calendar days following the hearing. In reaching a decision, the hearing officer may consider the Level One record, any additional information provided prior to the Level Two hearing, and any other relevant documents or information the hearing officer believes will help resolve the complaint.

Recordings of the Level One and Level Two hearings, 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 decision 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 20 calendar days of the date of the Level Two decision or, if no decision has been communicated to the employee, within 20 calendar days of the Level Two decision deadline.

Unless the Board delegates a committee in accordance with law, the Board shall hear the appeal of the Level Two decision.

After receiving notice of the appeal, the Board or Board committee shall hold a meeting to discuss the complaint no later than 60 calendar days after the date on which the Level Two decision was made.

The Superintendent shall inform the employee whether the Board or a Board committee will hear the appeal and of the date, time, and place of the meeting at which the complaint will be on the agenda for presentation to the Board or Board committee.

At least 10 calendar days before the Board or Board committee meeting, the Superintendent or administration shall provide the employee any information or documents the Superintendent or administration intends to rely on including the record created at the previous hearing levels, including any preliminary hearing. Any additional documents or information the employee intends to rely on that are not contained in the record shall be provided to the administration no later than five calendar days before the hearing. ~~At least five business days before the Board or Board committee~~

~~meeting, the Superintendent shall provide the employee a description of any information the Board intends to rely on that is not contained in the record created at the previous hearing levels, including any preliminary hearing.~~

If either party fails to comply with the timelines or deadlines established in this section, the other party shall be entitled, upon request, to have the Level Three hearing reset to a mutually agreeable date and time.

The Superintendent 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. Any other documents submitted by the employee at Level Two.
4. The decision issued at Level Two and any attachments.
5. All other documents relied upon by the administration in reaching the Level Two decision.

The employee may request that the complaint be heard in open or closed meeting. The District shall honor that request unless the Texas Open Meetings Act or other applicable law requires otherwise. [See BE]

At the meeting, 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 Board members.

In addition to any other record of the meeting required by law, the Board or Board committee 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 Board members with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

The hearing officer shall be responsible for recording the hearing. Human resources shall be responsible for maintaining the Level Three recording in accordance with the District's records management program, or as required by law. [See CPC]

The Board or Board committee shall then consider the complaint. It shall make a decision no later than 30 calendar days after the date of the Board or Board committee meeting at which the complaint was presented. The employee shall be provided a decision in accordance with this policy and state law.

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Report Regarding Annual Tax Collections for the Period of July 1, 2025 to June 30, 2026

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

In order to keep the Board of Trustees informed, the Hidalgo County Tax Office has prepared the enclosed Annual Tax Collection Report.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The report summarizes the results achieved by the Hidalgo County Tax Office on the tax collection efforts for the 2025-2026 fiscal year.

LEGAL REVIEW:

Not Required.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

The Report Regarding Annual Tax Collections for the Period of July 1, 2025 to June 30, 2026 is submitted to the Board for information purposes only and requires no Board action

Attachment: ☑

SUBMITTED BY: JOEL GARCIA

SUPERVISOR: lorena Garcia
lorena Garcia (Aug 28, 2026 11:14:46 CDT)

For further information contact:
Name: Joel Garica, Chief Financial Officer
Office: (956) 618-6016
Email: joel.garcia@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 28, 2026 13:43:53 CDT)

Acting Superintendent of Schools

Office of Tax Assessor-Collector

COUNTY of HIDALGO

Pablo "Paul" Villarreal, Jr. PCC.



P.O. Box 178
Edinburg, Texas 78540-0178
Ph. (956) 318-2157
Fax (956) 318-2733
www.hidalgocountytax.org

July 29, 2026

Joel Garcia
McAllen ISD, Chief Financial Officer
2000 N. 23rd Street
McAllen, TX 78501

Dear Mr. Garcia,

As per Sec. 31.10(b) of the Texas Property Tax Code, enclosed please find the Annual Report of all property taxes collected for the period of July 1, 2025 through June 30, 2026.

Please contact this office if you have any questions in regards to the report.

Very truly yours,

Pablo "Paul" Villarreal, Jr., PCC
Hidalgo County Tax Assessor-Collector

MCALLEN ISD
ANNUAL TAX COLLECTION REPORT

JULY 01, 2025 THRU JUNE 30, 2026

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PABLO “PAUL” VILLARREAL JR.
TAX ASSESSOR/COLLECTOR
2804 S. BUS. HWY 281
EDINBURG, TEXAS 78539

PART 1

ANNUAL TAX COLLECTIONS REPORT

PABLO "PAUL" VILLARREAL JR., TAX ASSR & COLL
MCALLEN ISD ANNUAL TAX REPORT
JULY 1, 2025 - JUNE 30, 2026

TAX COLLECTIONS	BASE	PEN & INT	ATTY FEE	
CURRENT	81,505,210.39	517,854.11	33,890.96	
DELINQUENT	1,737,833.52	712,609.71	465,511.93	
ROLLBACK	407,537.62	-	-	
TOTALS	83,650,581.53	1,230,463.82	499,402.89	
TOTAL COLLECTED 2025-2026 MCALLEN ISD				**85,380,448.24**

DISBURSEMENTS		
ATTORNEY FEES	499,402.89	
COMMISSIONS & COSTS	166,248.00	
HCAD RENDITON PENALTY FEE	6,215.86	
CURRENT YEAR REFUNDS	(1,368,058.36)	
PRIOR YEAR REFUNDS	(986,148.80)	
TOTAL REFUNDS NETTED FROM TAX COLLECTIONS	(2,354,207.16)	

RECAP

TOTAL CURRENT/DELINQUENT/ROLLBACK BASE	83,650,581.53	
TOTAL PENALTY & INTEREST	1,230,463.82	
TOTAL TAX COLLECTIONS	84,881,045.35	
TOTAL ATTORNEY FEES	499,402.89	
TOTAL	83,026,241.08	
LESS REFUNDS DISBURSED THRU FISCAL YEAR	(2,354,207.16)	
TOTAL COLLECTED 2025-2026	85,380,448.24	
LESS COMM. & COSTS, HCAD RENDITION FEE & CREDITS	172,463.86	
TOTAL REVENUE DISBURSED TO MCALLEN ISD		**85,207,984.38**
TOTAL DISBURSED MCALLEN ISD		**85,380,448.24**
	DIFF.	-

AFFIDAVIT

I, PABLO "PAUL" VILLARREAL JR., TAX ASSESSOR-COLLECTOR OF TAXES FOR MCALLEN ISD, DO SOLEMNLY SWEAR THAT THE ABOVE STATEMENT OF TAXES COLLECTED BY ME FOR THE FISCAL YEAR ENDING 2025-2026 IS CORRECT.

HIDALGO COUNTY ASSESSOR & COLLECTOR OF TEXAS

ASSESSOR- COLLECTOR OF TAXES FOR MCALLEN ISD

SWORN AND SUBSCRIBED BEFORE ME THIS 29TH DAY OF JULY 2026.

NOTARY PUBLIC, HIDALGO COUNTY, TEXAS

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

YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2025	M & O	.802200	70,138,897.21	.00	445,637.07	.00	70,584,534.28	33,890.96	.00	.00	70,618,425.24
	I & S	.130000	11,366,313.18	.00	72,217.04	.00	11,438,530.22	.00	.00	.00	11,438,530.22
	TOTAL	.932200	81,505,210.39	.00	517,854.11	.00	82,023,064.50	33,890.96	.00	.00	82,056,955.46
2024	M & O	.835000	1,089,436.86	.00	320,955.75	.00	1,410,392.61	315,676.88	.00	.00	1,726,069.49
	I & S	.161600	210,841.56	.00	62,115.68	.00	272,957.24	.00	.00	.00	272,957.24
	TOTAL	.996600	1,300,278.42	.00	383,071.43	.00	1,683,349.85	315,676.88	.00	.00	1,999,026.73
2023	M & O	.844800	95,845.08	.00	133,215.36	.00	229,060.44	91,806.50	.00	.00	320,866.94
	I & S	.156300	17,732.65	.00	24,646.65	.00	42,379.30	.00	.00	.00	42,379.30
	TOTAL	1.001100	113,577.73	.00	157,862.01	.00	271,439.74	91,806.50	.00	.00	363,246.24
2022	M & O	1.020600	165,279.18	.00	73,599.70	.00	238,878.88	34,821.06	.00	.00	273,699.94
	I & S	.075800	12,275.12	.00	5,466.20	.00	17,741.32	.00	.00	.00	17,741.32
	TOTAL	1.096400	177,554.30	.00	79,065.90	.00	256,620.20	34,821.06	.00	.00	291,441.26
2021	M & O	1.048600	48,496.16	.00	23,268.41	.00	71,764.57	8,938.29	.00	.00	80,702.86
	I & S	.088400	4,088.32	.00	1,961.56	.00	6,049.88	.00	.00	.00	6,049.88
	TOTAL	1.137000	52,584.48	.00	25,229.97	.00	77,814.45	8,938.29	.00	.00	86,752.74
2020	M & O	1.045000	25,457.71	.00	13,229.53	.00	38,687.24	4,492.95	.00	.00	43,180.19
	I & S	.093600	2,280.23	.00	1,184.97	.00	3,465.20	.00	.00	.00	3,465.20
	TOTAL	1.138600	27,737.94	.00	14,414.50	.00	42,152.44	4,492.95	.00	.00	46,645.39
2019	M & O	1.058600	18,044.79	.00	10,188.92	.00	28,233.71	2,961.21	.00	.00	31,194.92
	I & S	.094200	1,605.74	.00	906.69	.00	2,512.43	.00	.00	.00	2,512.43
	TOTAL	1.152800	19,650.53	.00	11,095.61	.00	30,746.14	2,961.21	.00	.00	33,707.35
2018	M & O	1.155000	12,575.90	.00	8,134.44	.00	20,710.34	1,746.64	.00	.00	22,456.98
	I & S	.000000	.00	.00	.00	.00	.00	.00	.00	.00	.00
	TOTAL	1.155000	12,575.90	.00	8,134.44	.00	20,710.34	1,746.64	.00	.00	22,456.98
2017	M & O	1.155000	9,782.98	.00	5,537.14	.00	15,320.12	834.14	.00	.00	16,154.26
	I & S	.000000	.00	.00	.00	.00	.00	.00	.00	.00	.00
	TOTAL	1.155000	9,782.98	.00	5,537.14	.00	15,320.12	834.14	.00	.00	16,154.26
2016	M & O	1.155000	4,258.54	.00	3,588.80	.00	7,847.34	793.12	.00	.00	8,640.46
	I & S	.000000	.00	.00	.00	.00	.00	.00	.00	.00	.00
	TOTAL	1.155000	4,258.54	.00	3,588.80	.00	7,847.34	793.12	.00	.00	8,640.46
2015	M & O	1.040000	2,163.66	.00	1,541.55	.00	3,705.21	252.02	.00	.00	3,957.23
	I & S	.115000	239.23	.00	170.44	.00	409.67	.00	.00	.00	409.67
	TOTAL	1.155000	2,402.89	.00	1,711.99	.00	4,114.88	252.02	.00	.00	4,366.90
2014	M & O	1.040000	3,214.77	.00	3,243.34	.00	6,458.11	673.96	.00	.00	7,132.07
	I & S	.125000	386.39	.00	389.81	.00	776.20	.00	.00	.00	776.20
	TOTAL	1.165000	3,601.16	.00	3,633.15	.00	7,234.31	673.96	.00	.00	7,908.27

YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2013	M & O	1.040000	1,662.72	.00	1,300.01	.00	2,962.73	48.68	.00	.00	3,011.41
	I & S	.125000	199.85	.00	156.26	.00	356.11	.00	.00	.00	356.11
	TOTAL	1.165000	1,862.57	.00	1,456.27	.00	3,318.84	48.68	.00	.00	3,367.52
2012	M & O	1.040000	1,640.39	.00	1,827.42	.00	3,467.81	267.99	.00	.00	3,735.80
	I & S	.125000	197.17	.00	219.63	.00	416.80	.00	.00	.00	416.80
	TOTAL	1.165000	1,837.56	.00	2,047.05	.00	3,884.61	267.99	.00	.00	4,152.60
2011	M & O	1.165000	2,575.15	.00	2,919.78	.00	5,494.93	308.79	.00	.00	5,803.72
	I & S	.000000	.00	.00	.00	.00	.00	.00	.00	.00	.00
	TOTAL	1.165000	2,575.15	.00	2,919.78	.00	5,494.93	308.79	.00	.00	5,803.72
2010	M & O	1.040000	1,177.60	.00	1,451.26	.00	2,628.86	176.79	.00	.00	2,805.65
	I & S	.125000	141.55	.00	174.44	.00	315.99	.00	.00	.00	315.99
	TOTAL	1.165000	1,319.15	.00	1,625.70	.00	2,944.85	176.79	.00	.00	3,121.64
2009	M & O	1.040000	976.27	.00	1,404.26	.00	2,380.53	254.26	.00	.00	2,634.79
	I & S	.125000	117.34	.00	168.79	.00	286.13	.00	.00	.00	286.13
	TOTAL	1.165000	1,093.61	.00	1,573.05	.00	2,666.66	254.26	.00	.00	2,920.92
2008	M & O	1.040000	1,829.15	.00	3,201.83	.00	5,030.98	645.92	.00	.00	5,676.90
	I & S	.105000	184.66	.00	323.28	.00	507.94	.00	.00	.00	507.94
	TOTAL	1.145000	2,013.81	.00	3,525.11	.00	5,538.92	645.92	.00	.00	6,184.84
2007	M & O	1.040000	1,340.77	.00	2,486.99	.00	3,827.76	504.93	.00	.00	4,332.69
	I & S	.105000	135.35	.00	251.09	.00	386.44	.00	.00	.00	386.44
	TOTAL	1.145000	1,476.12	.00	2,738.08	.00	4,214.20	504.93	.00	.00	4,719.13
2006	M & O	1.370000	236.87	.00	372.10	.00	608.97	63.96	.00	.00	672.93
	I & S	.108000	18.66	.00	29.34	.00	48.00	.00	.00	.00	48.00
	TOTAL	1.478000	255.53	.00	401.44	.00	656.97	63.96	.00	.00	720.93
2005	M & O	1.500000	274.81	.00	453.95	.00	728.76	72.89	.00	.00	801.65
	I & S	.115500	21.16	.00	34.95	.00	56.11	.00	.00	.00	56.11
	TOTAL	1.615500	295.97	.00	488.90	.00	784.87	72.89	.00	.00	857.76
2004	M & O	1.500000	143.44	.00	235.52	.00	378.96	30.26	.00	.00	409.22
	I & S	.040000	3.83	.00	6.28	.00	10.11	.00	.00	.00	10.11
	TOTAL	1.540000	147.27	.00	241.80	.00	389.07	30.26	.00	.00	419.33
2003	M & O	1.500000	186.51	.00	349.72	.00	536.23	52.00	.00	.00	588.23
	I & S	.040000	4.98	.00	9.34	.00	14.32	.00	.00	.00	14.32
	TOTAL	1.540000	191.49	.00	359.06	.00	550.55	52.00	.00	.00	602.55
2002	M & O	1.500000	168.19	.00	336.72	.00	504.91	50.53	.00	.00	555.44
	I & S	.042500	4.76	.00	9.53	.00	14.29	.00	.00	.00	14.29
	TOTAL	1.542500	172.95	.00	346.25	.00	519.20	50.53	.00	.00	569.73

TC298-D SELECTION: SYSTEM DEPOSIT DISTRIBUTION EXCLUDES AG ROLLBACK
RECEIPT DATE: ALL FROM: 07/01/2025 THRU 06/30/2026
LOCATION: LOCATION NAME NOT FOUND JURISDICTION: 0047 MCALLEN ISD

YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2001	M & O	1.500000	33.03	.00	97.78	.00	130.81	20.18	.00	.00	150.99
	I & S	.042500	.94	.00	2.77	.00	3.71	.00	.00	.00	3.71
	TOTAL	1.542500	33.97	.00	100.55	.00	134.52	20.18	.00	.00	154.70
1997	M & O	1.222800	1.46	.00	3.17	.00	4.63	.00	.00	.00	4.63
	I & S	.227200	.27	.00	.59	.00	.86	.00	.00	.00	.86
	TOTAL	1.450000	1.73	.00	3.76	.00	5.49	.00	.00	.00	5.49
1996	M & O	1.205700	107.78	.00	246.64	.00	354.42	.00	.00	.00	354.42
	I & S	.244300	21.84	.00	49.98	.00	71.82	.00	.00	.00	71.82
	TOTAL	1.450000	129.62	.00	296.62	.00	426.24	.00	.00	.00	426.24
1995	M & O	1.094100	70.29	.00	195.68	.00	265.97	17.98	.00	.00	283.95
	I & S	.251300	16.14	.00	44.94	.00	61.08	.00	.00	.00	61.08
	TOTAL	1.345400	86.43	.00	240.62	.00	327.05	17.98	.00	.00	345.03
1993	M & O	1.053100	189.57	.00	502.04	.00	691.61	.00	.00	.00	691.61
	I & S	.273500	49.23	.00	130.38	.00	179.61	.00	.00	.00	179.61
	TOTAL	1.326600	238.80	.00	632.42	.00	871.22	.00	.00	.00	871.22
1992	M & O	.116000	26.35	.00	72.96	.00	99.31	.00	.00	.00	99.31
	I & S	.310600	70.57	.00	195.35	.00	265.92	.00	.00	.00	265.92
	TOTAL	.426600	96.92	.00	268.31	.00	365.23	.00	.00	.00	365.23
ALL	M & O		71,626,093.19	.00	1,059,597.84	.00	72,685,691.03	499,402.89	.00	.00	73,185,093.92
ALL	I & S		11,616,950.72	.00	170,865.98	.00	11,787,816.70	.00	.00	.00	11,787,816.70
ALL	TOTAL		83,243,043.91	.00	1,230,463.82	.00	84,473,507.73	499,402.89	.00	.00	84,972,910.62
DLQ	M & O		1,487,195.98	.00	613,960.77	.00	2,101,156.75	465,511.93	.00	.00	2,566,668.68
DLQ	I & S		250,637.54	.00	98,648.94	.00	349,286.48	.00	.00	.00	349,286.48
DLQ	TOTAL		1,737,833.52	.00	712,609.71	.00	2,450,443.23	465,511.93	.00	.00	2,915,955.16
CURR	M & O		70,138,897.21	.00	445,637.07	.00	70,584,534.28	33,890.96	.00	.00	70,618,425.24
CURR	I & S		11,366,313.18	.00	72,217.04	.00	11,438,530.22	.00	.00	.00	11,438,530.22
CURR	TOTAL		81,505,210.39	.00	517,854.11	.00	82,023,064.50	33,890.96	.00	.00	82,056,955.46

TC298-D SELECTION: SYSTEM DEPOSIT DISTRIBUTION AG ROLLBACK ONLY
RECEIPT DATE: ALL FROM: 07/01/2025 THRU 06/30/2026
LOCATION: LOCATION NAME NOT FOUND JURISDICTION: 0047 MCALLEN ISD

YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2024	M & O	.835000	35,060.40	.00	.00	.00	35,060.40	.00	.00	.00	35,060.40
	I & S	.161600	6,785.34	.00	.00	.00	6,785.34	.00	.00	.00	6,785.34
	TOTAL	.996600	41,845.74	.00	.00	.00	41,845.74	.00	.00	.00	41,845.74
2023	M & O	.844800	125,058.71	.00	.00	.00	125,058.71	.00	.00	.00	125,058.71
	I & S	.156300	23,137.64	.00	.00	.00	23,137.64	.00	.00	.00	23,137.64
	TOTAL	1.001100	148,196.35	.00	.00	.00	148,196.35	.00	.00	.00	148,196.35
2022	M & O	1.020600	161,577.96	.00	.00	.00	161,577.96	.00	.00	.00	161,577.96
	I & S	.075800	12,000.40	.00	.00	.00	12,000.40	.00	.00	.00	12,000.40
	TOTAL	1.096400	173,578.36	.00	.00	.00	173,578.36	.00	.00	.00	173,578.36
2021	M & O	1.048600	40,502.68	.00	.00	.00	40,502.68	.00	.00	.00	40,502.68
	I & S	.088400	3,414.49	.00	.00	.00	3,414.49	.00	.00	.00	3,414.49
	TOTAL	1.137000	43,917.17	.00	.00	.00	43,917.17	.00	.00	.00	43,917.17
ALL	M & O		362,199.75	.00	.00	.00	362,199.75	.00	.00	.00	362,199.75
ALL	I & S		45,337.87	.00	.00	.00	45,337.87	.00	.00	.00	45,337.87
ALL	TOTAL		407,537.62	.00	.00	.00	407,537.62	.00	.00	.00	407,537.62
DLQ	M & O		362,199.75	.00	.00	.00	362,199.75	.00	.00	.00	362,199.75
DLQ	I & S		45,337.87	.00	.00	.00	45,337.87	.00	.00	.00	45,337.87
DLQ	TOTAL		407,537.62	.00	.00	.00	407,537.62	.00	.00	.00	407,537.62
CURR	M & O		.00	.00	.00	.00	.00	.00	.00	.00	.00
CURR	I & S		.00	.00	.00	.00	.00	.00	.00	.00	.00
CURR	TOTAL		.00	.00	.00	.00	.00	.00	.00	.00	.00

TC298-D SELECTION: SYSTEM DEPOSIT DISTRIBUTION INCLUDES AG ROLLBACK
RECEIPT DATE: ALL FROM: 07/01/2025 THRU 06/30/2026
LOCATION: LOCATION NAME NOT FOUND JURISDICTION: 0047 MCALLEN ISD

YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2025	M & O	.802200	70,138,897.21	.00	445,637.07	.00	70,584,534.28	33,890.96	.00	.00	70,618,425.24
	I & S	.130000	11,366,313.18	.00	72,217.04	.00	11,438,530.22	.00	.00	.00	11,438,530.22
	TOTAL	.932200	81,505,210.39	.00	517,854.11	.00	82,023,064.50	33,890.96	.00	.00	82,056,955.46
2024	M & O	.835000	1,124,497.26	.00	320,955.75	.00	1,445,453.01	315,676.88	.00	.00	1,761,129.89
	I & S	.161600	217,626.90	.00	62,115.68	.00	279,742.58	.00	.00	.00	279,742.58
	TOTAL	.996600	1,342,124.16	.00	383,071.43	.00	1,725,195.59	315,676.88	.00	.00	2,040,872.47
2023	M & O	.844800	220,903.79	.00	133,215.36	.00	354,119.15	91,806.50	.00	.00	445,925.65
	I & S	.156300	40,870.29	.00	24,646.65	.00	65,516.94	.00	.00	.00	65,516.94
	TOTAL	1.001100	261,774.08	.00	157,862.01	.00	419,636.09	91,806.50	.00	.00	511,442.59
2022	M & O	1.020600	326,857.14	.00	73,599.70	.00	400,456.84	34,821.06	.00	.00	435,277.90
	I & S	.075800	24,275.52	.00	5,466.20	.00	29,741.72	.00	.00	.00	29,741.72
	TOTAL	1.096400	351,132.66	.00	79,065.90	.00	430,198.56	34,821.06	.00	.00	465,019.62
2021	M & O	1.048600	88,998.84	.00	23,268.41	.00	112,267.25	8,938.29	.00	.00	121,205.54
	I & S	.088400	7,502.81	.00	1,961.56	.00	9,464.37	.00	.00	.00	9,464.37
	TOTAL	1.137000	96,501.65	.00	25,229.97	.00	121,731.62	8,938.29	.00	.00	130,669.91
2020	M & O	1.045000	25,457.71	.00	13,229.53	.00	38,687.24	4,492.95	.00	.00	43,180.19
	I & S	.093600	2,280.23	.00	1,184.97	.00	3,465.20	.00	.00	.00	3,465.20
	TOTAL	1.138600	27,737.94	.00	14,414.50	.00	42,152.44	4,492.95	.00	.00	46,645.39
2019	M & O	1.058600	18,044.79	.00	10,188.92	.00	28,233.71	2,961.21	.00	.00	31,194.92
	I & S	.094200	1,605.74	.00	906.69	.00	2,512.43	.00	.00	.00	2,512.43
	TOTAL	1.152800	19,650.53	.00	11,095.61	.00	30,746.14	2,961.21	.00	.00	33,707.35
2018	M & O	1.155000	12,575.90	.00	8,134.44	.00	20,710.34	1,746.64	.00	.00	22,456.98
	I & S	.000000	.00	.00	.00	.00	.00	.00	.00	.00	.00
	TOTAL	1.155000	12,575.90	.00	8,134.44	.00	20,710.34	1,746.64	.00	.00	22,456.98
2017	M & O	1.155000	9,782.98	.00	5,537.14	.00	15,320.12	834.14	.00	.00	16,154.26
	I & S	.000000	.00	.00	.00	.00	.00	.00	.00	.00	.00
	TOTAL	1.155000	9,782.98	.00	5,537.14	.00	15,320.12	834.14	.00	.00	16,154.26
2016	M & O	1.155000	4,258.54	.00	3,588.80	.00	7,847.34	793.12	.00	.00	8,640.46
	I & S	.000000	.00	.00	.00	.00	.00	.00	.00	.00	.00
	TOTAL	1.155000	4,258.54	.00	3,588.80	.00	7,847.34	793.12	.00	.00	8,640.46
2015	M & O	1.040000	2,163.66	.00	1,541.55	.00	3,705.21	252.02	.00	.00	3,957.23
	I & S	.115000	239.23	.00	170.44	.00	409.67	.00	.00	.00	409.67
	TOTAL	1.155000	2,402.89	.00	1,711.99	.00	4,114.88	252.02	.00	.00	4,366.90
2014	M & O	1.040000	3,214.77	.00	3,243.34	.00	6,458.11	673.96	.00	.00	7,132.07
	I & S	.125000	386.39	.00	389.81	.00	776.20	.00	.00	.00	776.20
	TOTAL	1.165000	3,601.16	.00	3,633.15	.00	7,234.31	673.96	.00	.00	7,908.27

YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2013	M & O	1.040000	1,662.72	.00	1,300.01	.00	2,962.73	48.68	.00	.00	3,011.41
	I & S	.125000	199.85	.00	156.26	.00	356.11	.00	.00	.00	356.11
	TOTAL	1.165000	1,862.57	.00	1,456.27	.00	3,318.84	48.68	.00	.00	3,367.52
2012	M & O	1.040000	1,640.39	.00	1,827.42	.00	3,467.81	267.99	.00	.00	3,735.80
	I & S	.125000	197.17	.00	219.63	.00	416.80	.00	.00	.00	416.80
	TOTAL	1.165000	1,837.56	.00	2,047.05	.00	3,884.61	267.99	.00	.00	4,152.60
2011	M & O	1.165000	2,575.15	.00	2,919.78	.00	5,494.93	308.79	.00	.00	5,803.72
	I & S	.000000	.00	.00	.00	.00	.00	.00	.00	.00	.00
	TOTAL	1.165000	2,575.15	.00	2,919.78	.00	5,494.93	308.79	.00	.00	5,803.72
2010	M & O	1.040000	1,177.60	.00	1,451.26	.00	2,628.86	176.79	.00	.00	2,805.65
	I & S	.125000	141.55	.00	174.44	.00	315.99	.00	.00	.00	315.99
	TOTAL	1.165000	1,319.15	.00	1,625.70	.00	2,944.85	176.79	.00	.00	3,121.64
2009	M & O	1.040000	976.27	.00	1,404.26	.00	2,380.53	254.26	.00	.00	2,634.79
	I & S	.125000	117.34	.00	168.79	.00	286.13	.00	.00	.00	286.13
	TOTAL	1.165000	1,093.61	.00	1,573.05	.00	2,666.66	254.26	.00	.00	2,920.92
2008	M & O	1.040000	1,829.15	.00	3,201.83	.00	5,030.98	645.92	.00	.00	5,676.90
	I & S	.105000	184.66	.00	323.28	.00	507.94	.00	.00	.00	507.94
	TOTAL	1.145000	2,013.81	.00	3,525.11	.00	5,538.92	645.92	.00	.00	6,184.84
2007	M & O	1.040000	1,340.77	.00	2,486.99	.00	3,827.76	504.93	.00	.00	4,332.69
	I & S	.105000	135.35	.00	251.09	.00	386.44	.00	.00	.00	386.44
	TOTAL	1.145000	1,476.12	.00	2,738.08	.00	4,214.20	504.93	.00	.00	4,719.13
2006	M & O	1.370000	236.87	.00	372.10	.00	608.97	63.96	.00	.00	672.93
	I & S	.108000	18.66	.00	29.34	.00	48.00	.00	.00	.00	48.00
	TOTAL	1.478000	255.53	.00	401.44	.00	656.97	63.96	.00	.00	720.93
2005	M & O	1.500000	274.81	.00	453.95	.00	728.76	72.89	.00	.00	801.65
	I & S	.115500	21.16	.00	34.95	.00	56.11	.00	.00	.00	56.11
	TOTAL	1.615500	295.97	.00	488.90	.00	784.87	72.89	.00	.00	857.76
2004	M & O	1.500000	143.44	.00	235.52	.00	378.96	30.26	.00	.00	409.22
	I & S	.040000	3.83	.00	6.28	.00	10.11	.00	.00	.00	10.11
	TOTAL	1.540000	147.27	.00	241.80	.00	389.07	30.26	.00	.00	419.33
2003	M & O	1.500000	186.51	.00	349.72	.00	536.23	52.00	.00	.00	588.23
	I & S	.040000	4.98	.00	9.34	.00	14.32	.00	.00	.00	14.32
	TOTAL	1.540000	191.49	.00	359.06	.00	550.55	52.00	.00	.00	602.55
2002	M & O	1.500000	168.19	.00	336.72	.00	504.91	50.53	.00	.00	555.44
	I & S	.042500	4.76	.00	9.53	.00	14.29	.00	.00	.00	14.29
	TOTAL	1.542500	172.95	.00	346.25	.00	519.20	50.53	.00	.00	569.73

TC298-D SELECTION: SYSTEM DEPOSIT DISTRIBUTION INCLUDES AG ROLLBACK
RECEIPT DATE: ALL FROM: 07/01/2025 THRU 06/30/2026
LOCATION: LOCATION NAME NOT FOUND JURISDICTION: 0047 MCALLEN ISD

YEAR	FUND	TAX RATE	LEVY PAID	DISCOUNT GIVEN	PENALTY INTEREST	TIF AMOUNT	DISBURSE TOTAL	ATTORNEY	OTHER FEES	REFUND AMOUNT	PAYMENT AMOUNT
2001	M & O	1.500000	33.03	.00	97.78	.00	130.81	20.18	.00	.00	150.99
	I & S	.042500	.94	.00	2.77	.00	3.71	.00	.00	.00	3.71
	TOTAL	1.542500	33.97	.00	100.55	.00	134.52	20.18	.00	.00	154.70
1997	M & O	1.222800	1.46	.00	3.17	.00	4.63	.00	.00	.00	4.63
	I & S	.227200	.27	.00	.59	.00	.86	.00	.00	.00	.86
	TOTAL	1.450000	1.73	.00	3.76	.00	5.49	.00	.00	.00	5.49
1996	M & O	1.205700	107.78	.00	246.64	.00	354.42	.00	.00	.00	354.42
	I & S	.244300	21.84	.00	49.98	.00	71.82	.00	.00	.00	71.82
	TOTAL	1.450000	129.62	.00	296.62	.00	426.24	.00	.00	.00	426.24
1995	M & O	1.094100	70.29	.00	195.68	.00	265.97	17.98	.00	.00	283.95
	I & S	.251300	16.14	.00	44.94	.00	61.08	.00	.00	.00	61.08
	TOTAL	1.345400	86.43	.00	240.62	.00	327.05	17.98	.00	.00	345.03
1993	M & O	1.053100	189.57	.00	502.04	.00	691.61	.00	.00	.00	691.61
	I & S	.273500	49.23	.00	130.38	.00	179.61	.00	.00	.00	179.61
	TOTAL	1.326600	238.80	.00	632.42	.00	871.22	.00	.00	.00	871.22
1992	M & O	.116000	26.35	.00	72.96	.00	99.31	.00	.00	.00	99.31
	I & S	.310600	70.57	.00	195.35	.00	265.92	.00	.00	.00	265.92
	TOTAL	.426600	96.92	.00	268.31	.00	365.23	.00	.00	.00	365.23
ALL	M & O		71,988,292.94	.00	1,059,597.84	.00	73,047,890.78	499,402.89	.00	.00	73,547,293.67
ALL	I & S		11,662,288.59	.00	170,865.98	.00	11,833,154.57	.00	.00	.00	11,833,154.57
ALL	TOTAL		83,650,581.53	.00	1,230,463.82	.00	84,881,045.35	499,402.89	.00	.00	85,380,448.24
DLQ	M & O		1,849,395.73	.00	613,960.77	.00	2,463,356.50	465,511.93	.00	.00	2,928,868.43
DLQ	I & S		295,975.41	.00	98,648.94	.00	394,624.35	.00	.00	.00	394,624.35
DLQ	TOTAL		2,145,371.14	.00	712,609.71	.00	2,857,980.85	465,511.93	.00	.00	3,323,492.78
CURR	M & O		70,138,897.21	.00	445,637.07	.00	70,584,534.28	33,890.96	.00	.00	70,618,425.24
CURR	I & S		11,366,313.18	.00	72,217.04	.00	11,438,530.22	.00	.00	.00	11,438,530.22
CURR	TOTAL		81,505,210.39	.00	517,854.11	.00	82,023,064.50	33,890.96	.00	.00	82,056,955.46

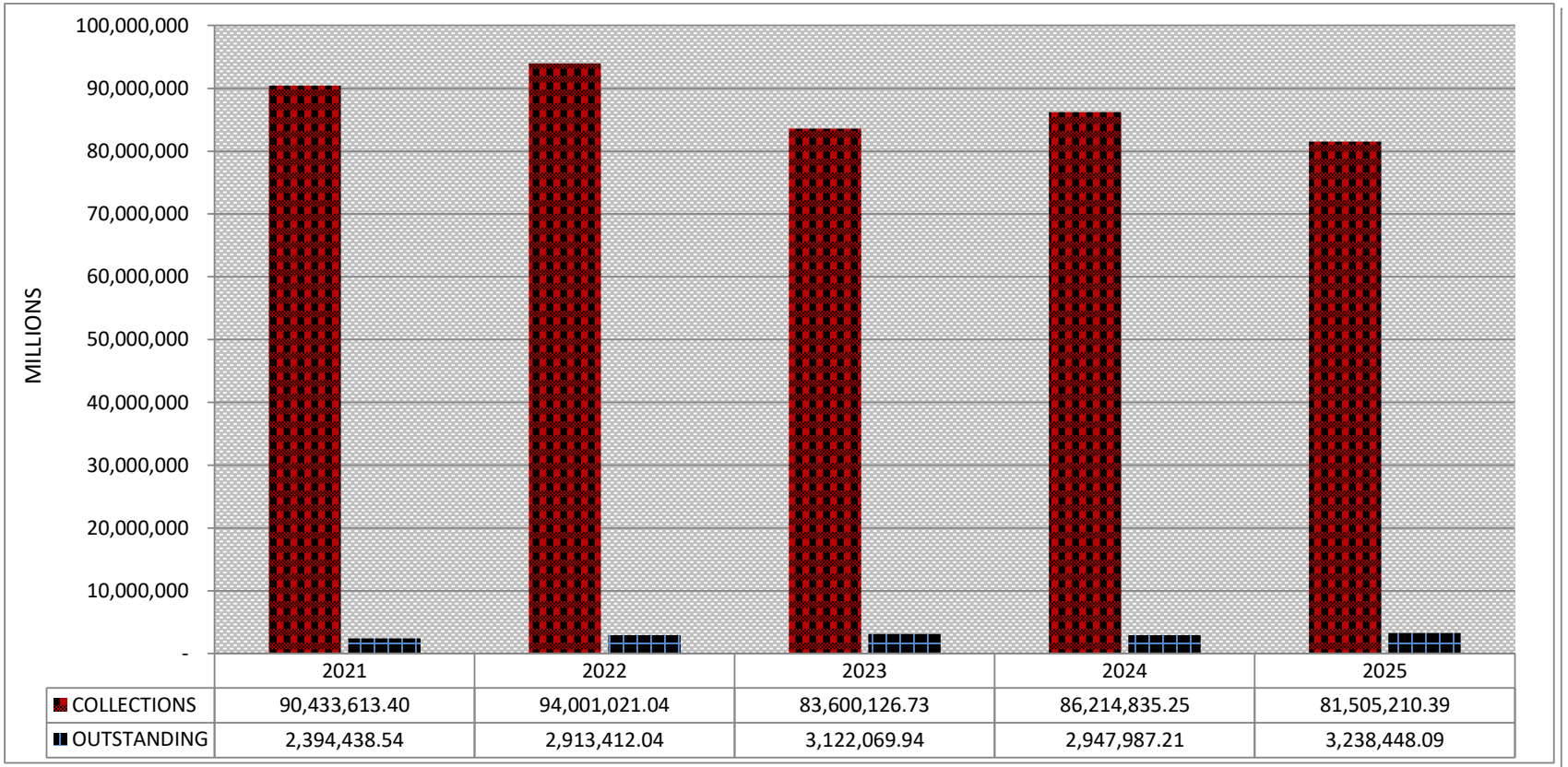
PART 2

CURRENT TAX COLLECTIONS

PABLO "PAUL" VILLARREAL JR., ASSESSOR & COLLECTOR
MCALLEN INDEPENDENT SCHOOL DISTRICT
TAX COLLECTION REPORT

AD VALOREM - MCALLEN ISD	**2025-2026**	**2024-2025**	**DIFFERENCE**
2025 CURRENT			
ORIGINAL LEVY	87,002,591.22	89,170,675.64	(2,168,084.42)
MODIFICATIONS	(2,258,932.74)	(7,853.18)	(2,251,079.56)
CURRENT LEVY	84,743,658.48	89,162,822.46	(4,419,163.98)
CURRENT COLLECTIONS THIS MONTH	335,755.61	395,575.64	(59,820.03)
CURRENT COLLECTIONS TO DATE	81,505,210.39	86,214,835.25	(4,709,624.86)
OUTSTANDING TO DATE	3,238,448.09	2,947,987.21	290,460.88
PERCENT COLLECTED/ORIGINAL	93.68%	96.69%	-3.01%
PERCENT COLLECTED/MODIFIED	96.18%	96.69%	-0.51%
TOTAL COLLECTIONS FISCAL YEAR	**81,505,210.39**	**86,214,835.25**	

MCALLEN ISD CURRENT TAX COLLECTION
5-YEAR COMPARISON CHART
JULY 1ST - JUNE 30TH

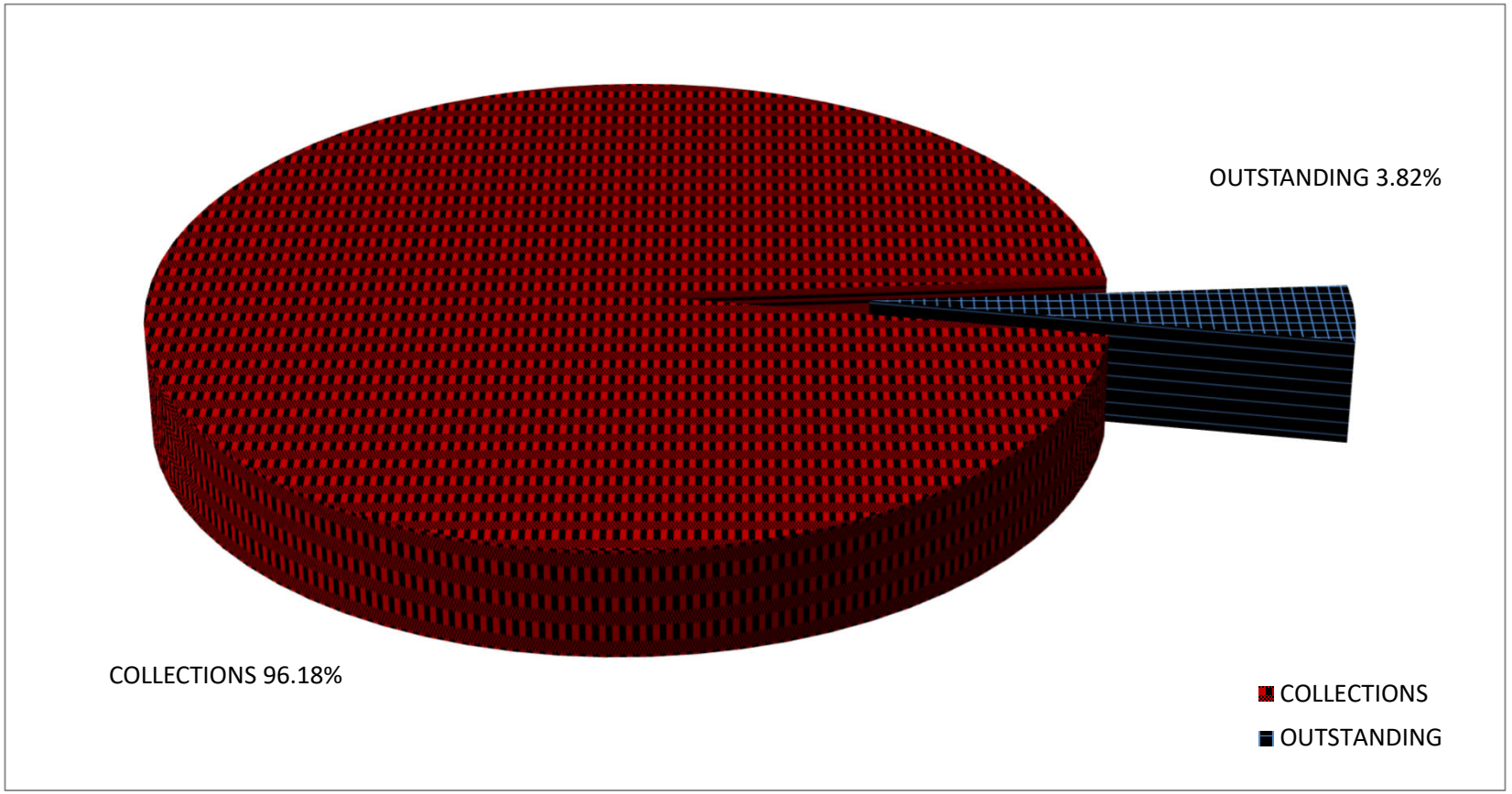


	2021	2022	2023	2024	2025
COLLECTIONS	90,433,613.40	94,001,021.04	83,600,126.73	86,214,835.25	81,505,210.39
OUTSTANDING	2,394,438.54	2,913,412.04	3,122,069.94	2,947,987.21	3,238,448.09

YEAR	PARCELS	ORIGINAL LEVY	MODIFICATIONS	ADJUSTED LEVY	COLLECTIONS	OUTSTANDING	PERCENT
2021	46,327	90,489,805.41	2,338,246.53	92,828,051.94	90,433,613.40	2,394,438.54	97.42%
2022	46,268	96,621,135.70	293,297.38	96,914,433.08	94,001,021.04	2,913,412.04	96.99%
2023	45,719	-	86,722,196.67	86,722,196.67	83,600,126.73	3,122,069.94	96.40%
2024	46,595	89,170,675.64	(7,853.18)	89,162,822.46	86,214,835.25	2,947,987.21	96.69%
2025	45,868	87,002,591.22	(2,258,932.74)	84,743,658.48	81,505,210.39	3,238,448.09	96.18%

Pablo "Paul" Villarreal Jr., PCC - McAllen ISD Tax Assr/Coll
Hidalgo County, Texas

MCALLEN ISD
2025 CURRENT TAX COLLECTION
JULY 1ST - JUNE 30TH



YEAR	ORIGINAL LEVY	MODIFICATIONS	ADJUSTED LEVY	COLLECTIONS	OUTSTANDING	PERCENT
2025	87,002,591.22	(2,258,932.74)	84,743,658.48	81,505,210.39	3,238,448.09	96.18%

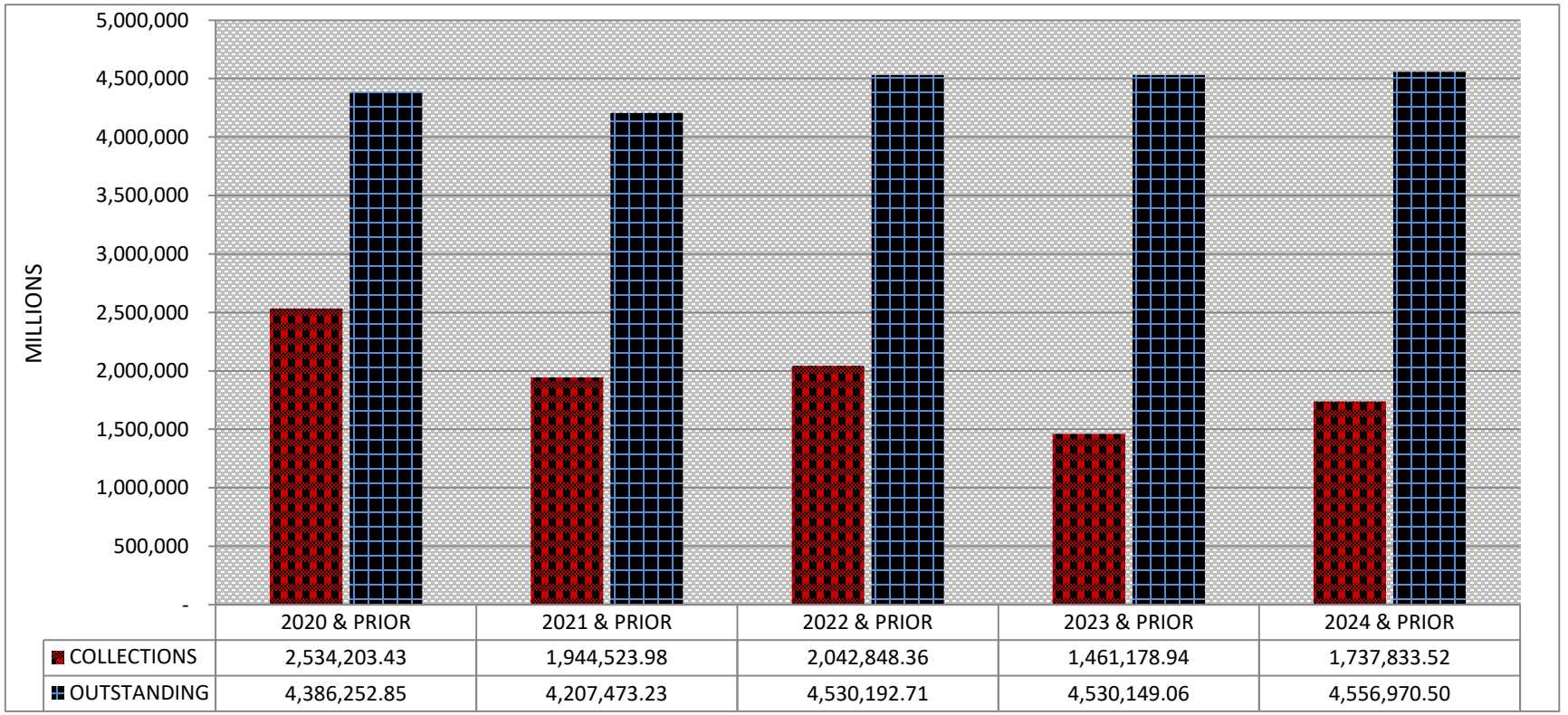
PART 3

DELINQUENT TAX COLLECTIONS

PABLO "PAUL" VILLARREAL JR., ASSESSOR & COLLECTOR
MCALLEN INDEPENDENT SCHOOL DISTRICT
TAX COLLECTION REPORT

AD VALOREM - MCALLEN ISD	**2025-2026**	**2024-2025**	**DIFFERENCE**
DELINQUENT			
ORIGINAL LEVY	7,478,136.27	7,652,262.65	(174,126.38)
MODIFICATIONS	(1,183,332.25)	(1,660,934.65)	477,602.40
DELINQUENT LEVY	6,294,804.02	5,991,328.00	303,476.02
DELINQUENT COLLECTIONS MONTHLY GROSS	111,312.11	123,716.32	(12,404.21)
DELINQUENT YEAR REFUNDS THIS MONTH	(1,469.83)	(47,486.12)	46,016.29
DELINQUENT COLLECTIONS THIS MONTH	109,842.28	76,230.20	33,612.08
DELINQUENT COLLECTIONS GROSS	2,723,982.32	2,654,323.14	69,659.18
DELINQUENT YEAR REFUNDS TO DATE	(986,148.80)	(1,193,144.20)	206,995.40
DELINQUENT COLLECTIONS TO DATE	1,737,833.52	1,461,178.94	276,654.58
OUTSTANDING TO DATE	4,556,970.50	4,530,149.06	26,821.44
PERCENT COLLECTED/ORIGINAL	23.24%	19.09%	4.15%
PERCENT COLLECTED W/REFUNDS	36.43%	34.69%	1.74%
PERCENT COLLECTED/MODIFIED	27.61%	24.39%	3.22%
TOTAL COLLECTIONS FISCAL YEAR	**1,737,833.52**	**1,461,178.94**	

MCALLEN ISD DELINQUENT TAX COLLECTION
5-YEAR COMPARISON CHART
JULY 1ST - JUNE 30TH



YEAR	ORIGINAL LEVY	MODIFICATIONS	ADJUSTED LEVY	COLLECTIONS	OUTSTANDING	PERCENT
2020 & PRIOR	7,560,005.85	(639,549.57)	6,920,456.28	2,534,203.43	4,386,252.85	36.62%
2021 & PRIOR	6,780,691.39	(628,694.18)	6,151,997.21	1,944,523.98	4,207,473.23	31.61%
2022 & PRIOR	7,120,885.27	(547,844.20)	6,573,041.07	2,042,848.36	4,530,192.71	31.08%
2023 & PRIOR	7,652,262.65	(1,660,934.65)	5,991,328.00	1,461,178.94	4,530,149.06	24.39%
2024 & PRIOR	7,478,136.27	(1,183,332.25)	6,294,804.02	1,737,833.52	4,556,970.50	27.61%

PABLO "PAUL" VILLARREAL JR., ASSESSOR & COLLECTOR
MCALLEN INDEPENDENT SCHOOL DISTRICT
TAX COLLECTION REPORT

AD VALOREM - MCALLEN ISD	**2025-2026**	**2024-2025**	**DIFFERENCE**
ROLLBACK			
ORIGINAL LEVY	215,441.43	17,450.24	197,991.19
MODIFICATIONS	273,265.03	271,291.35	1,973.68
ROLLBACK LEVY	488,706.46	288,741.59	199,964.87
ROLLBACK COLLECTIONS THIS MONTH	0.00	0.00	0.00
ROLLBACK COLLECTIONS TO DATE	407,537.62	73,300.16	334,237.46
OUTSTANDING TO DATE	81,168.84	215,441.43	(134,272.59)
PERCENT COLLECTED/ORIGINAL	189.16%	420.05%	-230.89%
PERCENT COLLECTED/MODIFIED	83.39%	25.39%	58.00%
TOTAL COLLECTIONS FISCAL YEAR	**407,537.62**	**73,300.16**	

PART 4

RECAP REPORTS

FISCAL START: 07/01/2025 END: 06/30/2026 JURISDICTION: 0047 MCALLEN ISD

	CERT TAXABLE VALUE	ADJUSTMENTS	ADJ TAX VALUE		TAX RATE	TAX LEVY	PAID ACCTS
CURRENT YEAR	9,499,629,695	147,184,562-	9,352,445,133	0	00.932200	84,743,658.48	44,666

YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE	COLL %	YTD UNCOLL
2025	87,002,591.22	2,258,932.74-	2,258,932.74-	81,505,210.39	81,505,210.39	3,238,448.09	96.18	0.00
2024	2,947,987.21	640,764.12-	640,764.12-	1,300,278.42	1,300,278.42	1,006,944.67	56.36	143.61-
2023	1,088,960.45	383,118.19-	383,118.19-	113,577.73	113,577.73	592,264.53	16.09	0.00
2022	711,067.23	10,491.37-	10,491.37-	177,554.30	177,554.30	523,021.56	25.34	0.00
2021	391,137.58	2,699.28-	2,699.28-	52,584.48	52,584.48	335,853.82	13.54	0.00
2020	326,605.04	69,908.42-	69,908.42-	27,737.94	27,737.94	228,958.68	10.81	0.00
2019	314,553.10	2,529.38-	2,529.38-	19,650.53	19,650.53	292,373.19	6.30	0.00
2018	186,943.36	368.83-	368.83-	12,575.90	12,575.90	173,998.63	6.74	29.40-
2017	155,003.45	487.93-	487.93-	9,782.98	9,782.98	144,732.54	6.33	0.00
2016	144,091.96	297.15-	297.15-	4,258.54	4,258.54	139,536.27	2.96	0.00
2015	141,108.89	2,326.49-	2,326.49-	2,402.89	2,402.89	136,379.51	1.73	0.00
2014	121,422.93	4,011.44-	4,011.44-	3,601.16	3,601.16	113,810.33	3.07	0.00
2013	113,687.84	8,293.67-	8,293.67-	1,862.57	1,862.57	103,531.60	1.77	0.00
2012	110,402.97	9,006.64-	9,006.64-	1,837.56	1,837.56	99,558.77	1.81	0.00
2011	103,197.13	7,247.42-	7,247.42-	2,575.15	2,575.15	93,374.56	2.68	0.00
2010	102,801.42	5,421.75-	5,421.75-	1,319.15	1,319.15	96,060.52	1.35	0.00
2009	105,067.02	11,063.61-	11,063.61-	1,093.61	1,093.61	92,909.80	1.16	0.00
2008	74,974.86	7,364.24-	7,364.24-	2,013.81	2,013.81	65,596.81	2.98	0.00
2007	60,162.92	4,308.29-	4,308.29-	1,476.12	1,476.12	54,378.51	2.64	0.00
2006	62,380.36	1,083.79-	1,083.79-	255.53	255.53	61,041.04	.42	0.00
2005	55,219.84	1,191.99-	1,191.99-	295.97	295.97	53,731.88	.55	0.00
2004	161,360.71	11,348.25-	11,348.25-	1,099.18	1,099.18	148,913.28	.73	0.00
****	94,480,727.49	3,442,264.99-	3,442,264.99-	83,243,043.91	83,243,043.91	7,795,418.59		173.01-
CURR	87,002,591.22	2,258,932.74-	2,258,932.74-	81,505,210.39	81,505,210.39	3,238,448.09		0.00
DELQ	7,478,136.27	1,183,332.25-	1,183,332.25-	1,737,833.52	1,737,833.52	4,556,970.50		173.01-

FISCAL START: 07/01/2025 END: 06/30/2026 JURISDICTION: 0047 MCALLEN ISD

	CERT TAXABLE VALUE	ADJUSTMENTS	ADJ TAX VALUE		TAX RATE	TAX LEVY	PAID ACCTS
CURRENT YEAR	0	0	0	0	00.000000	0.00	0

YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE	COLL %	YTD UNCOLL
2024	0.00	71,959.66	71,959.66	41,845.74	41,845.74	30,113.92	58.15	0.00
2023	62,512.09	115,859.56	115,859.56	148,196.35	148,196.35	30,175.30	83.08	0.00
2022	74,458.93	118,781.93	118,781.93	173,578.36	173,578.36	19,662.50	89.82	0.00
2021	77,253.29	33,336.12-	33,336.12-	43,917.17	43,917.17	0.00		0.00
2012	1,217.12	.00	0.00	0.00	0.00	1,217.12		0.00
****	215,441.43	273,265.03	273,265.03	407,537.62	407,537.62	81,168.84		0.00
CURR	0.00	.00	0.00	0.00	0.00	0.00		0.00
DELQ	215,441.43	273,265.03	273,265.03	407,537.62	407,537.62	81,168.84		0.00

FISCAL START: 07/01/2025 END: 06/30/2026 JURISDICTION: 0047 MCALLEN ISD

	CERT TAXABLE VALUE	ADJUSTMENTS	ADJ TAX VALUE		TAX RATE	TAX LEVY	PAID ACCTS
CURRENT YEAR	9,499,629,695	147,184,562-	9,352,445,133	0	00.932200	84,743,658.48	44,666

YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE	COLL %	YTD UNCOLL
2025	87,002,591.22	2,258,932.74-	2,258,932.74-	81,505,210.39	81,505,210.39	3,238,448.09	96.18	0.00
2024	2,947,987.21	568,804.46-	568,804.46-	1,342,124.16	1,342,124.16	1,037,058.59	56.41	143.61-
2023	1,151,472.54	267,258.63-	267,258.63-	261,774.08	261,774.08	622,439.83	29.61	0.00
2022	785,526.16	108,290.56	108,290.56	351,132.66	351,132.66	542,684.06	39.28	0.00
2021	468,390.87	36,035.40-	36,035.40-	96,501.65	96,501.65	335,853.82	22.32	0.00
2020	326,605.04	69,908.42-	69,908.42-	27,737.94	27,737.94	228,958.68	10.81	0.00
2019	314,553.10	2,529.38-	2,529.38-	19,650.53	19,650.53	292,373.19	6.30	0.00
2018	186,943.36	368.83-	368.83-	12,575.90	12,575.90	173,998.63	6.74	29.40-
2017	155,003.45	487.93-	487.93-	9,782.98	9,782.98	144,732.54	6.33	0.00
2016	144,091.96	297.15-	297.15-	4,258.54	4,258.54	139,536.27	2.96	0.00
2015	141,108.89	2,326.49-	2,326.49-	2,402.89	2,402.89	136,379.51	1.73	0.00
2014	121,422.93	4,011.44-	4,011.44-	3,601.16	3,601.16	113,810.33	3.07	0.00
2013	113,687.84	8,293.67-	8,293.67-	1,862.57	1,862.57	103,531.60	1.77	0.00
2012	111,620.09	9,006.64-	9,006.64-	1,837.56	1,837.56	100,775.89	1.79	0.00
2011	103,197.13	7,247.42-	7,247.42-	2,575.15	2,575.15	93,374.56	2.68	0.00
2010	102,801.42	5,421.75-	5,421.75-	1,319.15	1,319.15	96,060.52	1.35	0.00
2009	105,067.02	11,063.61-	11,063.61-	1,093.61	1,093.61	92,909.80	1.16	0.00
2008	74,974.86	7,364.24-	7,364.24-	2,013.81	2,013.81	65,596.81	2.98	0.00
2007	60,162.92	4,308.29-	4,308.29-	1,476.12	1,476.12	54,378.51	2.64	0.00
2006	62,380.36	1,083.79-	1,083.79-	255.53	255.53	61,041.04	.42	0.00
2005	55,219.84	1,191.99-	1,191.99-	295.97	295.97	53,731.88	.55	0.00
2004	161,360.71	11,348.25-	11,348.25-	1,099.18	1,099.18	148,913.28	.73	0.00
****	94,696,168.92	3,168,999.96-	3,168,999.96-	83,650,581.53	83,650,581.53	7,876,587.43		173.01-
CURR	87,002,591.22	2,258,932.74-	2,258,932.74-	81,505,210.39	81,505,210.39	3,238,448.09		0.00
DELQ	7,693,577.70	910,067.22-	910,067.22-	2,145,371.14	2,145,371.14	4,638,139.34		173.01-

PART 5

YEAR TO DATE MODIFICATIONS

HIDALGO COUNTY TAX OFFICE
PABLO "PAUL" VILLARREAL JR., TAX ASSESSOR & COLLECTOR
MODIFIED BILLS FROM 07/01/2025 TO 06/30/2026
MCALLEN ISD

CURR & PRIOR

YR	RATE	M&O	%	ADJ	M&O	I&S	%	I&S
2025	0.9322	0.8022	86.05%	(2,258,932.74)	(1,943,913.16)	0.1300	13.95%	(315,019.58)
2024	0.9966	0.8350	83.78%	(640,764.12)	(536,863.38)	0.1616	16.22%	(103,900.74)
2023	1.0011	0.8448	84.39%	(383,118.19)	(323,302.61)	0.1563	15.61%	(59,815.58)
2022	1.0964	1.0206	93.09%	(10,491.37)	(9,766.05)	0.0758	6.91%	(725.32)
2021	1.1370	1.0486	92.23%	(2,699.28)	(2,489.42)	0.0884	7.77%	(209.86)
2020	1.1386	1.0450	91.78%	(69,908.42)	(64,161.51)	0.0936	8.22%	(5,746.91)
2019	1.1528	1.0586	91.83%	(2,529.38)	(2,322.69)	0.0942	8.17%	(206.69)
2018	1.1550	1.1550	100.00%	(368.83)	(368.83)	-	0.00%	-
2017	1.1550	1.1550	100.00%	(487.93)	(487.93)	-	0.00%	-
2016	1.1550	1.1550	100.00%	(297.15)	(297.15)	-	0.00%	-
2015	1.1550	1.0400	90.04%	(2,326.49)	(2,094.85)	0.1150	9.96%	(231.64)
2014	1.1650	1.0400	89.27%	(4,011.44)	(3,581.03)	0.1250	10.73%	(430.41)
2013	1.1650	1.0400	89.27%	(8,293.67)	(7,403.79)	0.1250	10.73%	(889.88)
2012	1.1650	1.0400	89.27%	(9,006.64)	(8,040.26)	0.1250	10.73%	(966.38)
2011	1.1650	1.1650	100.00%	(7,247.42)	(7,247.42)	-	0.00%	-
2010	1.1650	1.0400	89.27%	(5,421.75)	(4,840.02)	0.1250	10.73%	(581.73)
2009	1.1650	1.0400	89.27%	(11,063.61)	(9,876.53)	0.1250	10.73%	(1,187.08)
2008	1.1450	1.0400	90.83%	(7,364.24)	(6,688.92)	0.1050	9.17%	(675.32)
2007	1.1450	1.0400	90.83%	(4,308.29)	(3,913.21)	0.1050	9.17%	(395.08)
2006	1.4780	1.3700	92.69%	(1,083.79)	(1,004.60)	0.1080	7.31%	(79.19)
2005	1.6155	1.5000	92.85%	(1,191.99)	(1,106.77)	0.1155	7.15%	(85.22)
2004	1.5400	1.5000	97.40%	(11,348.25)	(11,053.49)	0.0400	2.60%	(294.76)
			TOTAL	**(3,442,264.99)**	**(2,950,823.62)**			**(491,441.37)**

		M&O	I&S
CURRENT	**(2,258,932.74)**	**(1,943,913.16)**	**(315,019.58)**
DELINQUENT	**(1,183,332.25)**	**(1,006,910.46)**	**(176,421.79)**
TOTAL	**(3,442,264.99)**	**(2,950,823.62)**	**(491,441.37)**

ROLLBACK

YR	RATE	M&O	%	ADJ	M&O	I&S	%	I&S
2025	0.9322	0.8022	86.05%	-	-	0.1300	13.95%	-
2024	0.9966	0.8350	83.78%	71,959.66	60,291.31	0.1616	16.22%	11,668.35
2023	1.0011	0.8448	84.39%	115,859.56	97,770.61	0.1563	15.61%	18,088.95
2022	1.0964	1.0206	93.09%	118,781.93	110,569.90	0.0758	6.91%	8,212.03
2021	1.1370	1.0486	92.23%	(33,336.12)	(30,744.29)	0.0884	7.77%	(2,591.83)
			TOTAL	**273,265.03**	**237,887.53**			**35,377.50**

		M&O	I&S
CURRENT	**-**	**-**	**-**
DELINQUENT	**273,265.03**	**237,887.53**	**35,377.50**
TOTAL	**273,265.03**	**237,887.53**	**35,377.50**

JURISDICTION: 0047 MCALLEN ISD

	CERT TAXABLE VALUE	ADJUSTMENTS	ADJ TAX VALUE	TAX RATE	TAX LEVY	PAID ACCTS
CURRENT YEAR	9,499,629,695	147,184,562-	9,352,445,133	0.932200	84,743,658.48	44,666

YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE	COLL %	YTD UNCOLL
2025	87,002,591.22	2,258,932.74-	2,258,932.74-	81,505,210.39	81,505,210.39	3,238,448.09	96.18	0.00
ADJUSTMENT REFUNDS		1,368,058.36-	1,368,058.36-					
2024	2,947,987.21	640,764.12-	640,764.12-	1,300,278.42	1,300,278.42	1,006,944.67	56.36	143.61-
ADJUSTMENT REFUNDS		614,220.89-	614,220.89-					
2023	1,088,960.45	383,118.19-	383,118.19-	113,577.73	113,577.73	592,264.53	16.09	0.00
ADJUSTMENT REFUNDS		366,006.83-	366,006.83-					
2022	711,067.23	10,491.37-	10,491.37-	177,554.30	177,554.30	523,021.56	25.34	0.00
ADJUSTMENT REFUNDS		3,583.92-	3,583.92-					
2021	391,137.58	2,699.28-	2,699.28-	52,584.48	52,584.48	335,853.82	13.54	0.00
ADJUSTMENT REFUNDS		2,337.16-	2,337.16-					
2020	326,605.04	69,908.42-	69,908.42-	27,737.94	27,737.94	228,958.68	10.81	0.00
2019	314,553.10	2,529.38-	2,529.38-	19,650.53	19,650.53	292,373.19	6.30	0.00
2018	186,943.36	368.83-	368.83-	12,575.90	12,575.90	173,998.63	6.74	29.40-
2017	155,003.45	487.93-	487.93-	9,782.98	9,782.98	144,732.54	6.33	0.00
2016	144,091.96	297.15-	297.15-	4,258.54	4,258.54	139,536.27	2.96	0.00
2015	141,108.89	2,326.49-	2,326.49-	2,402.89	2,402.89	136,379.51	1.73	0.00
2014	121,422.93	4,011.44-	4,011.44-	3,601.16	3,601.16	113,810.33	3.07	0.00
2013	113,687.84	8,293.67-	8,293.67-	1,862.57	1,862.57	103,531.60	1.77	0.00
2012	110,402.97	9,006.64-	9,006.64-	1,837.56	1,837.56	99,558.77	1.81	0.00
2011	103,197.13	7,247.42-	7,247.42-	2,575.15	2,575.15	93,374.56	2.68	0.00
2010	102,801.42	5,421.75-	5,421.75-	1,319.15	1,319.15	96,060.52	1.35	0.00
2009	105,067.02	11,063.61-	11,063.61-	1,093.61	1,093.61	92,909.80	1.16	0.00
2008	74,974.86	7,364.24-	7,364.24-	2,013.81	2,013.81	65,596.81	2.98	0.00
2007	60,162.92	4,308.29-	4,308.29-	1,476.12	1,476.12	54,378.51	2.64	0.00
2006	62,380.36	1,083.79-	1,083.79-	255.53	255.53	61,041.04	.42	0.00
2005	55,219.84	1,191.99-	1,191.99-	295.97	295.97	53,731.88	.55	0.00
2004	161,360.71	11,348.25-	11,348.25-	1,099.18	1,099.18	148,913.28	.73	0.00
****	94,480,727.49	3,442,264.99-	3,442,264.99-	83,243,043.91	83,243,043.91	7,795,418.59		173.01-
ADJUSTMENT REFUNDS		2,354,207.16-	2,354,207.16-					

JURISDICTION: 0047 MCALLEN ISD

	CERT TAXABLE VALUE	ADJUSTMENTS	ADJ TAX VALUE	TAX RATE	TAX LEVY	PAID ACCTS
CURRENT YEAR	0	0	0	0.996600	71,959.66	3

YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE	COLL %	YTD UNCOLL
2024	0.00	71,959.66	71,959.66	41,845.74	41,845.74	30,113.92	58.15	0.00
ADJUSTMENT REFUNDS		614,220.89-	614,220.89-					
2023	62,512.09	115,859.56	115,859.56	148,196.35	148,196.35	30,175.30	83.08	0.00
ADJUSTMENT REFUNDS		366,006.83-	366,006.83-					
2022	74,458.93	118,781.93	118,781.93	173,578.36	173,578.36	19,662.50	89.82	0.00
ADJUSTMENT REFUNDS		3,583.92-	3,583.92-					
2021	77,253.29	33,336.12-	33,336.12-	43,917.17	43,917.17	0.00		0.00
ADJUSTMENT REFUNDS		2,337.16-	2,337.16-					
2012	1,217.12	.00	0.00	0.00	0.00	1,217.12		0.00
****	215,441.43	273,265.03	273,265.03	407,537.62	407,537.62	81,168.84		0.00
ADJUSTMENT REFUNDS		986,148.80-	986,148.80-					

JURISDICTION: 0047 MCALLEN ISD

	CERT TAXABLE VALUE	ADJUSTMENTS	ADJ TAX VALUE	TAX RATE	TAX LEVY	PAID ACCTS
CURRENT YEAR	9,499,629,695	147,184,562-	9,352,445,133	0.932200	84,743,658.48	44,666

YEAR	TAXES DUE	MONTH ADJ	ADJUSTMENT YTD	LEVY PAID	PAID YTD	BALANCE	COLL %	YTD UNCOLL
2025	87,002,591.22	2,258,932.74-	2,258,932.74-	81,505,210.39	81,505,210.39	3,238,448.09	96.18	0.00
ADJUSTMENT REFUNDS		1,368,058.36-	1,368,058.36-					
2024	2,947,987.21	568,804.46-	568,804.46-	1,342,124.16	1,342,124.16	1,037,058.59	56.41	143.61-
ADJUSTMENT REFUNDS		614,220.89-	614,220.89-					
2023	1,151,472.54	267,258.63-	267,258.63-	261,774.08	261,774.08	622,439.83	29.61	0.00
ADJUSTMENT REFUNDS		366,006.83-	366,006.83-					
2022	785,526.16	108,290.56	108,290.56	351,132.66	351,132.66	542,684.06	39.28	0.00
ADJUSTMENT REFUNDS		3,583.92-	3,583.92-					
2021	468,390.87	36,035.40-	36,035.40-	96,501.65	96,501.65	335,853.82	22.32	0.00
ADJUSTMENT REFUNDS		2,337.16-	2,337.16-					
2020	326,605.04	69,908.42-	69,908.42-	27,737.94	27,737.94	228,958.68	10.81	0.00
2019	314,553.10	2,529.38-	2,529.38-	19,650.53	19,650.53	292,373.19	6.30	0.00
2018	186,943.36	368.83-	368.83-	12,575.90	12,575.90	173,998.63	6.74	29.40-
2017	155,003.45	487.93-	487.93-	9,782.98	9,782.98	144,732.54	6.33	0.00
2016	144,091.96	297.15-	297.15-	4,258.54	4,258.54	139,536.27	2.96	0.00
2015	141,108.89	2,326.49-	2,326.49-	2,402.89	2,402.89	136,379.51	1.73	0.00
2014	121,422.93	4,011.44-	4,011.44-	3,601.16	3,601.16	113,810.33	3.07	0.00
2013	113,687.84	8,293.67-	8,293.67-	1,862.57	1,862.57	103,531.60	1.77	0.00
2012	111,620.09	9,006.64-	9,006.64-	1,837.56	1,837.56	100,775.89	1.79	0.00
2011	103,197.13	7,247.42-	7,247.42-	2,575.15	2,575.15	93,374.56	2.68	0.00
2010	102,801.42	5,421.75-	5,421.75-	1,319.15	1,319.15	96,060.52	1.35	0.00
2009	105,067.02	11,063.61-	11,063.61-	1,093.61	1,093.61	92,909.80	1.16	0.00
2008	74,974.86	7,364.24-	7,364.24-	2,013.81	2,013.81	65,596.81	2.98	0.00
2007	60,162.92	4,308.29-	4,308.29-	1,476.12	1,476.12	54,378.51	2.64	0.00
2006	62,380.36	1,083.79-	1,083.79-	255.53	255.53	61,041.04	.42	0.00
2005	55,219.84	1,191.99-	1,191.99-	295.97	295.97	53,731.88	.55	0.00
2004	161,360.71	11,348.25-	11,348.25-	1,099.18	1,099.18	148,913.28	.73	0.00
****	94,696,168.92	3,168,999.96-	3,168,999.96-	83,650,581.53	83,650,581.53	7,876,587.43		173.01-
ADJUSTMENT REFUNDS		2,354,207.16-	2,354,207.16-					

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action on Competitive Sealed Proposal No. 2027-1015 Central Kitchen Upgrades

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The District solicited proposals for central kitchen upgrades.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
Two hundred thirty-two (232) contractors were invited to submit proposals and nine (9) contractors responded, including five (5) no bid and two (2) non responsive On August 26, 2026, the evaluation committee, comprised of, Sonia Esquivel, Director for Child Nutrition; Roel Moroles, Assistant Director for Facilities, Maintenance, and Operations; Melissa Ortiz, Coordinator for Facilities, Maintenance, and Operations; Laura Williams, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing; 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 Federal Funds and General Fund.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees:
a.) approve the ranking for selection of General Contractor for Competitive Sealed Proposal No. 2027-1015 Central Kitchen Upgrades; and
b.) approve that Administration begin with negotiations with the highest-ranked Contractor. If the District is unable to negotiate a satisfactory contract with the selected Contractor, the District shall, formally and in writing, end negotiations with that Contractor; and proceed to the next Contractor in the order of the selection ranking until a contract is reached or all proposals are rejected; and
c.) authorize the Superintendent to execute a contract in accordance with the procedures set out in Texas Government Code, Section 2269.254, once Contractor negotiations have been successfully achieved.

Attachment: ☑

SUBMITTED BY: _____ **SUPERVISOR:** Lorena Garcia (Aug 31, 2026 12:36:34 CDT)

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 31, 2026 13:07:19 CDT)

Superintendent of Schools

CSP 2027-1015 Central Kitchen Upgrades
Evaluation Matrix

Vendor Names		Holchemont, Ltd. McAllen, TX	CRC Development & Construction Co. LLC McAllen, TX
Rank		**1**	**2**
Maximum points	**1000**	**919.58**	**855.00**
Price	**600**	**599.58**	**600**
Base Bid (Includes Contingency)		**$ 966,000.00**	**$ 965,320.00**
Offeror's experience and reputation	**190**	**110**	**75**
Three (3) K-12 reference forms	15	5	5
Rating of 2 or better; plus similar scope and size (2.5 pts for scope; 2.5 pts for size per reference) (BA 57-77)			
Three (3) Supplier Reference Letters (BA177)	15	15	0
Claims, judgments, arbitration proceedings or suits (BA78)	10	10	10
Three (3) current or past K-12 projects (BA 80-100)	120	80	40
Similar scope and size (20 pts for scope; 20 pts for size per reference)		*2 scope, 2 size*	*1 scope, 1 size*
Three (3) current or past Non K-12 projects (BA 102-122)	30	0	20
Similar scope and size (10 pts for scope; 10 pts for size per reference)			
Quality of the offeror's goods or services	**40**	**40**	**20**
MISD Projects (Historical Report for past 10 years)	20	20	0
Repeat business (BA123)	20	20	20
Offeror's safety record	**70**	**70**	**60**
Frequency of safety inspections (BA124)	20	20	20
"OSHA Form 300 Log (BA178)	10	10	0
Safety program manual and/or procedures. (BA179)	20	20	20
Drug/alcohol prevention policy and/or procedures. (BA180)	20	20	20
Offeror's Proposed Personnel	**60**	**60**	**60**
Staff experience (firm) (BA129-148)	30	30	30
Staff experience (industry) (BA129-148)	30	30	30
Whether the offeror's financial capability is appropriate to the size and scope of the project	**20**	**20**	**20**
Surety Letter (BA181)	10	10	10
Financial Statement (BA182)	10	10	10
Any other relevant factors specifically listed in the CSP	**20**	**20**	**20**
On-time project completion (BA 63; 64; 69; 70; 76,77; 85; 86; 92; 93; 99;100;107,108; 114; 115; 121,122)	5	5	5
Projects within budget (BA 61,68,75,84,91,98,106,113,120)	5	5	5
Projects currently in progress. (BA150-174)	10	10	10

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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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DRAFT

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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.

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~~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.

...

§ 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.
PAGE 32

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.

...

§ 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.

...

§ 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.
PAGE 35

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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

...

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.

...

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.

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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.

...

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.

...

§ 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.

...

.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,

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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

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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.

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§ 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

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§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing

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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.

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§ 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

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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.

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.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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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 Eleventh Day of March in the year Two Thousand Twenty-Five
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

McAllen Independent School District
2000 North 23rd Street
McAllen, TX 78501
956-618-6000

and the Contractor:
(Name, legal status, address and other information)

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

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

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 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

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NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to 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 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 hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

[ ] The date of this Agreement.

[ ] A date set forth in a notice to proceed issued by the Owner.

[X] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

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

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

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

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

[X] Not later than One Hundred (100) calendar days from the date of commencement of the Work.

[ ] By the following date:

§ 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:

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Portion of Work	Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be(AMOUNT) ($), this amount includes the contingency allowance listed on Section 4.3, and is 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)

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§ 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: ( ) ($).

§ 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

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parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each government party hereto pursuant to the provisions of Texas Local Government Code §271.903.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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

§ 5.1.3 The Contractor shall submit monthly Applications for Payment to the Architect not later than the last day of each month, on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. The Architect will have seven business days to approve the Contractor's Application and submit its Certificate for Payment to the Owner. The Architect may require from the Contractor any additional information required by the Contract Documents and deemed necessary to substantiate the Application for Payment. The Owner shall pay to the Contractor, the certified undisputed amounts in the Payment Application to the Contractor not later than 30 days from the Owner's receipt of the Certificate of Payment from the Architect if the Owner's Board meets twice a month or more, and 45 days from the Owner's receipt of the Certificate of Payment from the Architect if the Owner's Board meets only once per month.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- **.1** That portion of the Contract Sum properly allocable to completed Work; as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;
- **.2** If approved in advance by the Owner, that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, suitably stored off the site at a location agreed upon in writing; and
- **.3** That portion of Construction Change Directives that. the Architect determines, in the

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Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.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.)

§ 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 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.)

§ 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

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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:

§ 5.3 Interest

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

[X] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.
This Agreement is governed by the laws of the State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue shall be in Hidalgo County, Texas.

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§ 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.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:
(Name, address, email address, and other information)

§ 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 A101™–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 General Conditions of the Contract of Construction, and elsewhere in the Contract Documents. The original bonds required herein are attached to this Agreement as Exhibit C, upon execution of the Agreement. Each subcontractor on the public project shall provide a certificate of insurance coverage, or other such documentation establishing proof of insurance by the subcontractor, relating to the subcontractor's employees, to the general contractor. The general contractor shall then provide the subcontractor's certificate of insurance coverage to the governmental entity.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or 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

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$100,000 or more and if the Contractor has at least ten (10) full time employees, then the Contractor, by its execution of this Agreement represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.

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

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

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

§ 8.7.5 Contractor shall take all actions and shall comply with all federal, state, and local legal requirements.

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

§ 8.7.7 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at $100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade association 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 Drawings

The Drawings are those which are listed in the Index of Drawings attached hereto as **Exhibit A**, Which are incorporated herein by reference

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.5 Specifications

The Specifications are those which are listed in the Table of Contents attached hereto as **Exhibit B**, which are incorporated herein by reference.

.6 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.

.7 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:

(Insert the date of the E204-2017 incorporated into this Agreement.)

[ ] The Sustainability Plan:

Title	Date	Pages

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.8 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

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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)*

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BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action on Request for Qualifications No. 2027-1014 Bond Project Management Services

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The McAllen Independent School District solicited request for qualifications for Bond Project Management Services.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:
Sixty-one (61) firms were invited to submit and nine (9) firms responded, including one (1) no-bid. The Evaluation Committee met on multiple occasions to review, discuss, and complete the evaluation and ranking of the responding firms. On Friday, August 21, 2026, the Evaluation Committee, comprised of Lorena Garcia, Deputy Superintendent for Business and Operations; Ruben Trevino, Executive Director for Facilities, Maintenance, and Operations; Roel Moroles, Assistant Director for Facilities, Maintenance, and Operations; Melissa Ortiz, Coordinator for Facilities, Maintenance, and Operations; Eduardo Barnhart, Director of Transportation; Joel Garcia, Chief Financial Officer; Laura Williams, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Graciela Garza, Senior Buyer, evaluated the responding firms based on demonstrated competence and qualifications. The Committee subsequently met on Monday, August 24, 2026, and Friday, August 28, 2026, to continue the evaluation process and finalize the rankings.

LEGAL REVIEW:

Contract is being reviewed by legal counsel.

BUDGETARY CONSIDERATIONS:

Expenditures for these services will be funded through the Districts Bond Program.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the preliminary ranking of firms for Request for Qualifications (RFQ) No. 2027-1014 Bond Project Management Services, and proceed with the Board of Trustees interviews and final ranking process.

Attachment: ☑

SUBMITTED BY: _____ **SUPERVISOR:** Lorena Garcia
Lorena Garcia (Sep 1, 2026 11:19:08 CDT)

For further information contact:
Name: Mr. Ruben Trevino, Executive Director for Facilities, Maintenance, and Operations
Office: 956-618-6000
eMail: Ruben.Trevino@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Sep 1, 2026 11:54:47 CDT)

Superintendent of Schools

Request for Qualifications 2027-1014 Bond Project Management Services
Evaluation Matrix

No	Criteria	Max. Pts. 1000	B2Z Engineering, LLC Mission, TX	Brownstone Consultants McAllen, TX	Cumming Management Group, Inc Houston,TX	PROCEDEO, LLC Grapevine, TX	Project Control (Project Control of Texas, Inc.) San Antonio, TX	Project Management Services, Inc. Austin, TX	RGV Renovations LLC McAllen, TX	SDI Engineering, LLC Edinburg, TX
	Total Points	**1000**	**760**	**767**	**755**	**763**	**771**	**718**	**608**	**610**
	Ranking		**4**	**2**	**5**	**3**	**1**	**6**	**8**	**7**
1	**Price**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
2	**Firm Experience and Qualifications**	**200**	**157**	**149.5**	**133**	**137.5**	**166.5**	**128.5**	**72.5**	**63.5**
	Demonstrated experience serving as Bond Project Manager for public construction programs of similar scope and size for K-12 (BA 53-88)	50	21	24	26	30	29	32	0	1
	Demonstrated experience serving as Bond Project Manager for public construction programs of similar scope and size for non-K-12. (BA 89-124)	25	16	10.5	12	7.5	22.5	0.5	0	2.5
	Proximity of firm's local office and familiarity with MISD and RGV (BA 125)	20	20	20	0	20	20	5	20	20
	Experience coordinating FF&E, owner move-in/occupancy, technology coordination, and operational turnover for school facilities (BA 126)	25	25	25	25	25	25	25	25	0
	Experience working with public procurement, CSP/design-build delivery, and school district governance/reporting environments. (BA127)	25	25	25	25	25	25	25	12.5	12.5
	Experience managing projects in occupied school environments with attention to safety, phasing, campus operations, and minimizing disruption. (BA 128)	25	25	25	25	25	25	21	12.5	12.5
	Number of years the firm has been in business (BA 129)	20	20	20	20	5	20	20	2.5	15
	Past relationship with the District within the past ten (10) years. (BA 130)	10	5	0	0	0	0	0	0	0
3	**Key personnel and Staffing Plan**	**100**	**88**	**93**	**95**	**91**	**86**	**80**	**59**	**85**
	Qualifications, and direct relevant experience of the proposed project executive / principal in charge (BA 131-133)	25	20	18	25	20	22	20	20	22
	Qualifications and direct relevant experience of the proposed day-to-day project manager / owner's representative (BA134-136)	25	18	25	20	21	18	18	15	15
	Qualifications of supporting staff in estimating, scheduling, constructability review, field observation, closeout, and document control. (BA137-139)	25	25	25	25	25	23	21	12	23
	Clear staffing plan showing roles, responsibilities, reporting relationships, and level of effort for each project phase. (BA137-139)	25	25	25	25	25	23	21	12	25
4	**Project Understanding and Technical Approach**	**175**	**175**	**173**	**175**	**171**	**175**	**160**	**162**	**147**
	Approach to communication, coordination, meeting management, and maintaining effective relationships among Owner, Architect, Contractor, testing agencies, and other stakeholders. (BA 140)	25	25	23	25	25	25	25	25	25
	Approach to procurement support, contractor selection support, procurement method selection assistance, and contract negotiation support (BA 141)	25	25	25	25	25	25	25	25	23
	Approach to pre-construction services, including constructability reviews, design review, preconstruction conferences, staging, and milestone planning. (BA 142)	25	25	25	25	23	25	20	25	25
	Approach to construction phase services, including field observation, payment review, change management, RFI/submittal tracking, reporting, and deficiency tracking. (BA 143)	25	25	25	25	25	25	23	25	25
	Approach to closeout, turnover, training verification, warranty support, and completion of project record documents/O&M manuals/warranties. (BA 144)	25	25	25	25	23	25	21	25	25
	Use of systems, templates, software, dashboards, or reporting tools to track schedule, budget, changes, testing, observations, and closeout deliverables. (BA 145)	25	25	25	25	25	25	21	25	12
	History of successful completion of bond programs within budget and on schedule (BA 146)	25	25	25	25	25	25	25	12	12
5	**Cost Estimating, Budget, Schedule, and Change Management Capability**	**200**	**200**	**200**	**200**	**200**	**200**	**195**	**195**	**200**
	Capability to develop and validate detailed cost estimates during design and pre-construction (BA147)	40	40	40	40	40	40	40	40	40
	How does your firm calculate savings to the district? (BA 148)	40	40	40	40	40	40	35	35	40
	Experience reviewing schedules of values, cost breakdowns, construction schedules, and payment applications (BA149)	40	40	40	40	40	40	40	40	40
	Experience reviewing, negotiating, and recommending action on change orders and pricing proposals (BA 150)	40	40	40	40	40	40	40	40	40
	Ability to provide value engineering support and budget reconciliation while protecting project quality and scope (BA 151)	40	40	40	40	40	40	40	40	40
6	**Quality Assurance, Field Observation, Reporting, and Closeout Systems**	**100**	**100**	**100**	**100**	**100**	**100**	**94**	**100**	**100**
	Approach to field observation of work for general conformance with plans, specifications, and Architect/Engineer instructions. (BA 152)	20	20	20	20	20	20	17	20	20
	Process for reviewing testing reports, special inspections, nonconforming work, deficiency lists, and corrective actions (BA 153)	20	20	20	20	20	20	17	20	20
	Process for weekly site reports, photo documentation, issue logs, and communication of unusual events or project concerns. (BA 154)	20	20	20	20	20	20	20	20	20
	Process for review and tracking of project record documents, as-builts, Operations and Maintenance manuals, warranties, and training documentation (BA 155)	20	20	20	20	20	20	20	20	20
	Approach to punch list, final completion, turnover, and warranty follow-up support. (BA 156)	20	20	20	20	20	20	20	20	20
7	**References and Overall Confidence in Firm's Ability to Deliver**	**70**	**35**	**46**	**52**	**64**	**41**	**58**	**17**	**12**
	Quality of owner references from comparable projects, including satisfaction with communication, budget management, issue resolution, and closeout (BA 158-184 plus reference forms)	35	17.4	23.20	26.1	31.9	20.30	29	8.70	5.8
	Overall confidence in the firm's ability to represent the District's interests, work collaboratively, and successfully deliver assigned bond projects (BA 158-184 plus reference forms)	35	17.4	23.20	26.1	31.9	20.30	29	8.70	5.8
8	**Other Relevant Factor**	**5**	**5**	**5**	**0**	**0**	**3**	**3**	**3**	**3**
	District Community Involvement (BA 185)	5	5	5	0	0	2.5	2.5	2.5	2.5
	Have you ever sued a district to void a contract for project management services? (BA 186-187) * Please provide the case numbers in the state or federal courts where your firm was a plaintiff or defendant. * List the disposition and provide a brief summary. * The Board of Trustees reserves the right to disqualify a firm due to the severity of adverse legal actions.	0	0	0	0	0	0	0	0	0
9	**Interview / Presentation Scoring (The Distrct may short list firms)**	**150**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
	Demonstrated understanding of District needs and bond program challenges	20								
	Experience with Project Management experience with successful Bond Programs that were completed on-time and within budget in K-12 field	40								
	Quality of proposed communication and issue-resolution approach	20								
	Strength and preparedness of proposed key personnel	20								
	Quality of marketing plan to inform district stakeholders and the community at large of the project list, progress, and completion of projects.	20								
	Quality of plan for communicating with the Board of Trustees	10								
	Responsiveness to committee questions and overall confidence in team	20								

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

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

REFERENCE: N/A

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 approved, the minutes become the official Record for Board Action.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The meeting minutes have been prepared and reviewed for accuracy. Approval of these minutes ensures proper documentation of Board proceedings and compliance with record-keeping requirements.

LEGAL REVIEW:

No legal issues are anticipated with the approval of meeting minutes. This item is presented as a standard governance practice.

BUDGETARY CONSIDERATIONS:

There are no budgetary considerations associated with this item.

RECOMMENDED BOARD ACTION:

It is recommended that the Board approve the Board of Education meeting minutes as presented for the Regular Board Meeting - August 25, 2026.

Attachment: ☑

SUBMITTED BY: Norma Ramirez

SUPERVISOR: Lucia Regalado (Aug 28, 2026 14:37:37 CDT)

For further information contact:
Name: Norma Ramirez
Office: (956) 688-5418
Email: norma.ramirez@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 28, 2026 14:58:44 CDT)

Superintendent of Schools

Regular Meeting

Tuesday, August 25, 2026 5:30 PM

Dr. Ricardo Chapa Board Room/Administration Building of the McAllen Independent School District, 2000 North 23rd Street, McAllen, TX 78501

Attendance Taken at 5:30 PM.

Robert Carreon:	Present-Via Teams
Erica de la Garza-Lopez:	Present
Roberto Haddad:	Present
Lizzie Kittleman:	Present-Via Teams
Sofia Peña:	Present
Lucia Regalado:	Present
Aaron Rivera:	Present

1. **CALL MEETING TO ORDER**

Meeting was called to order at 5:30 pm.

2. **MOMENT OF SILENCE**
3. **PLEDGE OF ALLEGIANCE**
4. **PUBLIC COMMENT(S)**

The following community member(s) addressed the Board: None

5. **PROCLAMATION(S)**

A) Discussion and Possible Action to Adopt the Proclamation Regarding Deaf Awareness Month

Item Submitted: Jeanette Nino, Associate Superintendent for Instructional Leadership
Dr. René Gutiérrez, Superintendent

Motion to approve to adopt the Proclamation Regarding Deaf Awareness Month. This motion, made by Trustee Erica de la Garza-Lopez and seconded by Trustee Aaron Rivera, Passed.

Robert Carreon:	Yea
Erica de la Garza-Lopez:	Yea
Roberto Haddad:	Yea
Lizzie Kittleman:	Yea
Sofia Peña:	Yea

Lucia Regalado:	Yea
Aaron Rivera:	Yea

Yea: 7, Nay: 0

6. **CONSENT AGENDA ITEMS**

A) Discussion and Possible Action on Interlocal Cooperation Contract No. 2027-101 Texas Work Study Mentorship Program Collegiate G-Force with The University of Texas Rio Grande Valley (UTRGV)
Item Submitted: Jeanette Nino, Associate Superintendent for Instructional Leadership
Dr. René Gutiérrez, Superintendent

Motion to approve lnterlocal Cooperation Contract No. 2027-101 Texas Work Study Mentorship Program Collegiate G-Force with UTRGV for a term of one (1) year, beginning September 1, 2026 through May 31, 2027. This motion, made by Trustee Sofia Peña and seconded by Trustee Erica de la Garza-Lopez, Passed.

Robert Carreon:	Yea
Erica de la Garza-Lopez:	Yea
Roberto Haddad:	Yea
Lizzie Kittleman:	Yea
Sofia Peña:	Yea
Lucia Regalado:	Yea
Aaron Rivera:	Yea

Yea: 7, Nay: 0

B) Discussion and Possible Action on Request for Proposal No. 2027-1011 Mariachi Uniforms for Varsity and Junior Varsity Programs
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer
Dr. René Gutiérrez, Superintendent

Motion to approve Request for Proposal No. 2027-1011 Mariachi Uniforms for Varsity and Junior Varsity Programs, and award the vendors on the attached list, for an initial term of one (1) year with the option to renew for up to one (1) additional year upon mutual agreement of the parties. This motion, made by Trustee Sofia Peña and seconded by Trustee Erica de la Garza-Lopez, Passed.

Robert Carreon:	Yea
Erica de la Garza-Lopez:	Yea
Roberto Haddad:	Yea
Lizzie Kittleman:	Yea
Sofia Peña:	Yea
Lucia Regalado:	Yea
Aaron Rivera:	Yea

Yea: 7, Nay: 0

Request for Proposal No. 2027-1011 Mariachi Uniforms for Vasity and Junior Varsity Programs
Awarded Vendor List
(Qualified)

Term: 8/26/2026 - 8/25/2027
Renewal Option: an additonal one-year term

Participant Name	City	State	Contact	Email
Delgado Guitars, LLC	Nashville	TN	Larissa Moreno	admin@delgadoguitars.com
El Rodeo Country Corp	McAllen	TX	María de la Luz Garza	eluna.elrodeo@gmail.com
The Mariachi Connection Inc	San Antonio	TX	Josie G Benavidez	josie_benavidez@yahoo.com
Alberto Morales DBA The Mariachi Wearhouse	Edinburg	TX	Alberto Morales	mariachiwearhouse@gmail.com

C) Discussion and Possible Action on Request for Proposal No. 2024-1020 Professional Development, Site Licenses, Supplemental Materials, & Other Related Products and Services (Round 27)
Item Submitted: Lorena Garcia, Deputy Superintendent for Business and Operations
Dr. René Gutiérrez, Superintendent

Motion to approve Request for Proposal No. 2024-1020 Professional Development, Site Licenses, Supplemental Materials, & Other Related Products and Services (Round 27), and approve the companies on the attached list as qualified vendors, for a coterminous term through June 30, 2027. This motion, made by Trustee Sofia Peña and seconded by Trustee Erica de la Garza-Lopez, Passed.

Robert Carreon:	Yea
Erica de la Garza-Lopez:	Yea
Roberto Haddad:	Yea
Lizzie Kittleman:	Yea
Sofia Peña:	Yea
Lucia Regalado:	Yea
Aaron Rivera:	Yea

Yea: 7, Nay: 0

RECOMMENDED VENDORS

Request for Proposal No. 2024-1020 Professional Development, Site Licenses, Supplemental Materials, & Other Related Products and Services (Round 27)

No.	Vendor Name	City	State	Recommendation
1	Abstinence & Marriage Education Resources, Inc	Mount Prospect	IL	Qualified
2	American Ceramic Supply Company	Carrollton	TX	Qualified
3	Candor Consulting and Diagnostics, LLC	Belton	TX	Qualified
4	Douglass Learning and Technology Solutions	Farmington Hills	MI	Qualified
5	eReflect Inc	Las Vegas	NV	Qualified
6	Imagine Learning LLC	Tempe	AZ	Qualified
7	JETLLC (Julia Torres)	Brighton	CO	Qualified
8	Ladon Technologies PBC	San Jose	CA	Qualified
9	Leading Educators Inc	Chicago	IL	Qualified
10	Leading with LaKesha LLC (LaKesha Raynor)	Lancaster	TX	Qualified
11	Lift Every Voice LLC (Julia Torres)	Brighton	CO	Qualified
12	McGraw Hill LLC	Columbus	OH	Qualified
13	Minty Educational Services	Houston	TX	Qualified
14	National Inventors Hall of Fame, Inc.	North Canton	OH	Qualified
15	PIVOT: School Improvement Leaders	Nashville	TN	Qualified
16	ReadWorks, Inc	New York	NY	Qualified
17	RGV LEAD (RGV Linking Economic and Academic Development)	McAllen	TX	Qualified
18	Sandra C. Garza Consulting, LLC (Sandra C. Garza)	McAllen	TX	Qualified
19	School Rewards Me LLC	St. George	UT	Qualified
20	Sphero, Inc.	Boulder	CO	Qualified
21	Summit Professional Education, LLC	Nashville	TN	Qualified
22	Taylor & Francis Group, LLC	Boca Raton	FL	Qualified
23	Teachsmart LLC (Beatrice Gonzalez)	Palmview	TX	Qualified
24	The Perfect Performance LLC	Harlingen	TX	Qualified

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

A) **Instructional Services/ Instructional Leadership Item(s)** (Jeanette Nino)

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

1. Discussion and Possible Action of the 2026-2027 List of Certified Texas Teacher Evaluation and Support System (T-TESS) Appraisers

Item Submitted: Dr. Albert Canales, Chief Human Resources Officer
Dr. René Gutiérrez, Superintendent

Motion to approve the 2026-2027 list of Certified Texas Teacher Evaluation and Support System (T-TESS) Appraisers. This motion, made by Trustee Aaron Rivera and seconded by Trustee Sofia Peña, Passed.

Robert Carreon:	Yea
Erica de la Garza-Lopez:	Yea
Roberto Haddad:	Yea
Lizzie Kittleman:	Yea
Sofia Peña:	Yea

Lucia Regalado:	Yea
Aaron Rivera:	Yea

Yea: 7, Nay: 0

2. Discussion and Possible Action on Affiliation Agreement No. 2027-114 Clinical Teaching/Practicum Experience between McAllen Independent School District and Angelo State University
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer
Dr. René Gutiérrez, Superintendent
Motion to approve Affiliation Agreement No. 2027-114 Clinical Teaching/Practicum Experience between McAllen Independent School District and Angelo State University through August 24, 2030. This motion, made by Trustee Sofia Peña and seconded by Trustee Aaron Rivera, Passed.

Robert Carreon:	Yea
Erica de la Garza-Lopez:	Yea
Roberto Haddad:	Yea
Lizzie Kittleman:	Yea
Sofia Peña:	Yea
Lucia Regalado:	Yea
Aaron Rivera:	Yea

Yea: 7, Nay: 0

3. Discussion and Possible Action of McAllen SD Board Policy DGBA (LOCAL)- Personnel Management Relations: Employee Complaints/Grievances (Second Reading)
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer
Dr. René Gutiérrez, Superintendent
Item was pulled.

4. Discussion of McAllen ISD Board Policy CH (LOCAL)- Purchasing and Acquisition: Purchasing Authority (First Reading)
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer
Dr. René Gutiérrez, Superintendent
Motion to approve the Texas Association of School Board (TASB) Staffing Review. This motion, made by Trustee Roberto Haddad and seconded by Trustee Sofia Peña, Passed.

Robert Carreon:	Yea
Erica de la Garza-Lopez:	Yea
Roberto Haddad:	Yea
Lizzie Kittleman:	Yea
Sofia Peña:	Yea
Lucia Regalado:	Yea
Aaron Rivera:	Yea

Yea: 7, Nay: 0

5. Discussion and Possible Action Regarding Board Policy CV (LOCAL)- Facilities Construction (Second Reading)

Item Submitted: Dr. Albert Canales, Chief Human Resources Officer
Dr. René Gutiérrez, Superintendent
Motion to table MISD Board Policy CV(Local) - Facilities Construction (Second Reading) until further clarification on verbiage is resolved. This motion, made by Trustee Erica de la Garza-Lopez and seconded by Trustee Aaron Rivera, Tabled.

Robert Carreon:	Yea
Erica de la Garza-Lopez:	Yea
Roberto Haddad:	Yea
Lizzie Kittleman:	Yea
Sofia Peña:	Yea
Lucia Regalado:	Yea
Aaron Rivera:	Yea

Yea: 7, Nay: 0

6. Discussion of Texas Association of School Boards (TASB) Staffing Review
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer
Dr. René Gutiérrez, Superintendent
Motion to approve the Texas Association of School Board (TASB) Staffing Review. This motion, made by Trustee Roberto Haddad and seconded by Trustee Sofia Peña, Passed.

Robert Carreon:	Yea
Erica de la Garza-Lopez:	Yea
Roberto Haddad:	Yea
Lizzie Kittleman:	Yea
Sofia Peña:	Yea
Lucia Regalado:	Yea
Aaron Rivera:	Yea

Yea: 7, Nay: 0

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

1. Report Regarding the Sale of the McAllen Independent School District Unlimited Tax School Building Bonds, Series 2026
Item Submitted: Lorena Garcia, Deputy Superintendent for Business & Operations
Dr. René Gutiérrez, Superintendent
Item for information purposes only.
At this time Dr. Elizabeth Kittleman turned off camera for about 10 minutes.

2. Report Regarding the Intention to Apply for FY 2026 School Violence Prevention Program (SVPP) Grant
Item Submitted: Lorena Garcia, Deputy Superintendent for Business and Operations
Dr. René Gutiérrez, Superintendent
Item for information purposes only.

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

1. Discussion and Possible Action on Approval of Board of Education Meeting

Minutes
Regular Board Meeting - August 11, 2026

Motion to approve Board of Education meeting minutes as listed. This motion, made by Trustee Aaron Rivera and seconded by Trustee Sofia Peña, Passed.

Robert Carreon:	Yea
Erica de la Garza-Lopez:	Yea
Roberto Haddad:	Yea
Lizzie Kittleman:	Yea
Sofia Peña:	Yea
Lucia Regalado:	Yea
Aaron Rivera:	Yea

Yea: 7, Nay: 0

8. **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:**

Meeting recessed to close session at 6:17 pm.

A) Human Resources Recommendation(s) for School Year 2026-2027

B) Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2026-2027

C) Discussion Regarding School Safety and Security

D) Pending and/or Potential Litigation

E) Possible Real Estate Acquisition

9. **RECONVENE IN OPEN SESSION**

The meeting reconvened at 6:54 pm.
At that time, Trustee Robert Carreon and Trustee Dr. Elizabeth Kittleman did not log back into the meeting.

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

A) Discussion and Possible Action of Human Resources Recommendation(s) for School Year 2026-2027
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer
Dr. René Gutiérrez, Superintendent

Motion to approve Human Resources Recommendation(s) for School Year 2026-2027. This motion, made by Trustee Aaron Rivera and seconded by Trustee Sofia Peña, Passed.

Robert Carreon:	Absent
Erica de la Garza-Lopez:	Yea
Roberto Haddad:	Yea
Lizzie Kittleman:	Absent
Sofia Peña:	Yea
Lucia Regalado:	Yea
Aaron Rivera:	Yea

Yea: 5, Nay: 0 Absent: 2

B) Discussion of Human Resources Employee Resignation(s) and Retirees for School

Year 2026-2027
Item Submitted: Dr. Albert Canales, Chief Human Resources Officer
Dr. René Gutiérrez, Superintendent
For discussion only.

C) Discussion Regarding School Safety and Security

D) Pending and/or Potential Litigation

E) Possible Real Estate Acquisition

11. **SCHEDULED MEETINGS**

Regular Meeting - September 8, 2026, 5:30 pm - Administration Building/Dr. Ricardo Chapa Board Room

Regular Meeting - September 22, 2026, 5:30 pm - Administration Building/Dr. Ricardo Chapa Board Room

12. **ADJOURNMENT**

Motion to adjourn meeting at 6:55 pm. This motion, made by Trustee Roberto Haddad and seconded by Trustee Sofia Peña, Passed.

Robert Carreon:	Absent
Erica de la Garza-Lopez:	Yea
Roberto Haddad:	Yea
Lizzie Kittleman:	Absent
Sofia Peña:	Yea
Lucia Regalado:	Yea
Aaron Rivera:	Yea

Yea: 5, Nay: 0, Absent: 2

_____ _____

Board President Board Secretary

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action on Human Resources Recommendation(s) for School Year 2026-2027

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 2026-2027.

Attachment: ☐

SUBMITTED BY: Alberto Canales (Aug 25, 2026 16:20:52 CDT)

SUPERVISOR: Lorena Garcia (Aug 25, 2026 17:05:23 CDT)

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 (Aug 25, 2026 17:09:39 CDT)

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2025-2026

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 (Aug 28, 2026 09:46:01 CDT)

SUPERVISOR: Lorena Garcia (Aug 28, 2026 09:57:11 CDT)

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 28, 2026 13:36:48 CDT)

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2026-2027

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 (Aug 26, 2026 17:27:55 CDT)

SUPERVISOR: Lorena Garcia
Lorena Garcia (Aug 27, 2026 09:44:11 CDT)

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

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Aug 27, 2026 10:46:11 CDT)

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action on the Recommendation of the Director of College/Career/Counseling for the 2026-2027 School Year.

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The position of the Director of College/Career/Counseling is a vacancy for the 2026-2027 school year.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The director pool vacancy was posted on August 14, 2026 and interviews were conducted on August 31, 2026. The interview committee made their recommendation to the Superintendent. Recommendation will be presented under separate cover.

LEGAL REVIEW:

Not Applicable

BUDGETARY CONSIDERATIONS:

This is a budgeted position.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the Superintendent's Recommendation of the Director of College/ Career/ Counseling for the 2026-2027 School Year.

Attachment: ☐

SUBMITTED BY: Alberto Canales (Aug 31, 2026 11:12:10 CDT)

SUPERVISOR: Lorena Garcia (Aug 31, 2026 12:35:22 CDT)

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 (Aug 31, 2026 13:06:45 CDT)

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action on the Recommendation of the Executive Director of Special Education Services for the 2026-2027 School Year.

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The position of the Executive Director of Special Education Services is a vacancy for the 2026-2027 school year.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The director pool vacancy was posted on August 17, 2026 and interviews were conducted on September 2, 2026. The interview committee made their recommendation to the Superintendent. Recommendation will be presented under separate cover.

LEGAL REVIEW:

Not Applicable

BUDGETARY CONSIDERATIONS:

This is a budgeted position.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the Superintendent's Recommendation of the Executive Director of Special Education Services for the 2026-2027 School Year.

Attachment: ☐

SUBMITTED BY: Alberto Canales (Aug 31, 2026 09:29:41 CDT)

SUPERVISOR: Lorena Garcia (Aug 31, 2026 12:38:58 CDT)

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 (Aug 31, 2026 13:08:00 CDT)

Superintendent of Schools

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 8, 2026

SUBJECT: Discussion and Possible Action of Superintendent's Summative Evaluation

REFERENCE: McAllen Independent School District Board Policy BQ (LOCAL) Planning and Decision-Making Process

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

According to MISD Board Policy BQ (LOCAL), the Superintendent shall report periodically to the Board on the status of the planning process, including a review of the related administrative procedures, any revisions to improve the process, and progress on implementation of identified strategies.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Provided under separate cover to the board is a copy of the Superintendent's summative evaluation.

LEGAL REVIEW:

None.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the Superintendent's Summative Evaluation of Dr. René Gutiérrez, Superintendent.

Attachment: ☐

SUBMITTED BY: Alberto Canales
Alberto Canales (Sep 1, 2026 15:31:11 CDT)

SUPERVISOR: Lorena Garcia
Lorena Garcia (Sep 1, 2026 15:34:17 CDT)

For further information contact:
Name: Dr. Albert Canales, Chief Human Resources Officer
Office: 956-618-6005
Email: alberto.canales@mcallenisd.net

Approved for presentation to the Board of Education:

RENE GUTIERREZ (Sep 1, 2026 15:39:47 CDT)

Superintendent of Schools