Agenda of Special Board Meeting

The Board of Trustees
McAllen Independent School District

A Special Board Meeting of the Board of Trustees of the McAllen Independent School District will be held Monday, September 28, 2026, beginning at 12:00 PM Dr. Ricardo Chapa Board Room/Administration Building of the McAllen Independent School District, 2000 North 23rd Street, McAllen, TX 78501.

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

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

1. **CALL MEETING TO ORDER**
2. **PUBLIC COMMENTS**
3. **INTERVIEWS, RANKING, DISCUSSION AND POSSIBLE ACTION** **3**
   for Request for Qualifications No. 2027-1014 Bond Project Management Services; and Authorization for Staff to Negotiate an Agreement with the Highest Ranked Firm
   Item Submitted: Lorena Garcia, Deputy Superintendent Business and Operations

   Presenter: Dr. René Gutiérrez, Superintendent
4. **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 22, 2026 by 12:00 p.m.
Norma Ramirez, on behalf of Board of Trustees.

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 28, 2026

SUBJECT: Interviews, Ranking, Discussion and Possible Action for Request for Qualfications No. 2027-1014 Bond Project Management Services; and Authorization for Staff to Negotiate an Agreement with the Highest Ranked Firm

REFERENCE: Goal 4 - Facility 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.

The following eight (8) firms have been selected to participate in interviews with the Board of Trustees:

Firm Name	Time Slot
B2Z Engineering LLC	12:45PM
Brownstone Consultants	1:25PM
Cumming Management Group, Inc.	2:05PM
PROCEDEO, LLC	2:45PM
Project Control (Project Control of Texas, Inc)	3:25PM
Project Management Services Inc.	4:05PM
RGV Renovations, LLC	4:45PM
SDI Engineering LLC	5:25PM

LEGAL REVIEW:

A draft copy of the AIA contract has been approved by legal counsel and its subject to change at our discretion as District needs arise.

BUDGETARY CONSIDERATIONS:

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

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: September 28, 2026

RECOMMENDED BOARD ACTION:

Staff recommends that the Board of Trustees interview and rank the eight (8) firms from Request for Qualifications No. 2027-1014 Bond Project Management Services; and authorize Superintendent to negotiate an agreement with the highest-ranked firm. If negotiations are unsuccessful, staff will proceed with the next highest-ranked firm until an agreement is reached.

Attachment: ☑

SUBMITTED BY: _____ **SUPERVISOR:** Lorena Garcia
Lorena Garcia (Sep 22, 2026 11:06:22 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 22, 2026 11:21:19 CDT)

Superintendent of Schools

AIA Document C171™ – 2024

Standard Form of Agreement Between Owner and Program Manager

AGREEMENT made as of the day of in the year

(In words, indicate day, month, and year.)

BETWEEN the Program Manager's client identified as the Owner:

(Name, legal status, address, and other information)

McAllen Independent School District
2000 N. 23rd Street
McAllen, Texas 78501

and the Program Manager:

(Name, legal status, address, and other information)

[Insert Program Manager's full legal name, type of entity and state of organization, and address]

for the following Program:

(Name, location, and detailed description of the group of buildings and/or site improvement projects included in the Program)

McAllen Independent School District 2026 Bond

The Owner and Program Manager agree as follows.

TABLE OF ARTICLES

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2 PROGRAM MANAGER'S RESPONSIBILITIES
3 SCOPE OF PROGRAM MANAGER'S BASIC SERVICES
4 SUPPLEMENTAL AND ADDITIONAL SERVICES
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7 CLAIMS AND DISPUTES
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12 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Program Information and Initial Information set forth in Sections 1.2 and 1.3, as well as the documents further described in Section 12.2.

§ 1.2 Program Information *(Insert the requested Program Information below. For information that is not provided, insert a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*McAllen Independent School District 2026 Bond Referendum and the Projects thereunder more specifically described in attached Exhibit "A".

§ 1.2.1 Preliminary description of the projects comprising the Program:

(Identify proposed use, size, or other known information for each project in the Program.)

~~Will represent~~ The Program Manager will represent the Owner, McAllen Independent School District ("Owner," "District" or "McAllen ISD"~~)~~), as the Program Manager ("Owner's Representative") for those projects listed on the attached Exhibit "A" (each a "Project" and collectively the "Projects"). The buildings, grounds and sites at which the Projects are performed are the "Facilities." The services the Program Manager is required to perform under this Agreement are the "Services."

§ 1.2.2 Location of each project in the Program:

All projects are located within the geographical boundaries of the McAllen Independent School District.

§ 1.2.3 Preliminary assessment of the condition of existing facilities or sites, if any:

(Identify or describe written reports of the conditions of existing facilities or sites.)

None.

§ 1.2.4 *Funding source:*

(Identify anticipated funding sources, and deadlines or schedules related to funding, as well as whether funding is authorized.)

The Program funding will be from the sale of bonds from the 2026 bond referendum.

§ 1.2.5 The Owner's budget for the Program, including the budgets for each project in the Program:

(Provide the Owner's total budget for the Program and, if known, a line-item breakdown of all costs described in Section 3.4.1.)

See attached Exhibit "A".

§ 1.2.6 The Owner's intended procurement or delivery methods for design and construction of the projects in the Program.

(Identify method such as competitive bid, negotiated contract, multiple prime contracts or construction management.)

~~Procurement process will be determined by Owner's Board of Trustees or Designee, subject to their determination of best value for each project and applicable laws and rules of state procurement.~~The procurement or delivery method for each Project will be determined by the Owner's Board of Trustees, or by its designee to the extent authority has been delegated under Section 2269.053, Texas Government Code, and Board policy, based on the method that provides the best value to the District in accordance with Section 44.031, Texas Education Code, Chapter 2269, Texas Government Code, and Board policy.

§ 1.2.7 Anticipated scheduling information:

(Include overall Program duration and milestones. If known, include proposed dates for commencement and completion of design, commencement and completion of construction, occupancy, and any other critical scheduling information for each project in the Program.)

.1 *Anticipated dates of Program commencement and completion:*

.1 *Commencement of design, if other than the date of this Agreement:*

.2 *Completion of design:*

.3 *Commencement of construction*

.4 *Completion of construction*

.2 Other Program scheduling information:

This ~~Contract~~Agreement is effective ~~commencing~~ upon approval by the Owner's Board of Trustees and execution by both parties. The Program Manager's Services shall commence upon notice to proceed issued by ~~McAllen ISD~~the Owner to Program Manager, and this Agreement shall continue ~~for a period of five (5) years~~until all Projects listed in Exhibit "A" have reached final completion, including project closeout,

completion of warranty documentation, and final acceptance by the Owner, subject to Owner's right to earlier terminate this Agreement in accordance with Article 8 hereof. The Owner anticipates that the Program will span approximately five (5) years; the term continues for such additional time as is necessary to complete the Services, and the Program Manager's compensation for Basic Services is firm for the entire term regardless of its duration, except as provided in Section 10.2 for added Projects or Additional Services. The projects described in Exhibit A and the services related to each listed project may be performed in a phased approach, with some overlap on a project-by-project basis.

§ 1.2.8 Other information regarding the Program:

(Identify any other available studies or reports, as well as special characteristics or needs of the Program, such as environmentally responsible design or historic preservation requirements, not provided elsewhere.)

To be determined by Owner's Board of Trustees if applicable.

§ 1.3 Initial Information

(Insert the requested Initial Information below. For information that is not to be provided, insert a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.3.1 *The Owner will retain the following consultants and contractors:*

(List name, discipline, address and other information. If the Owner will retain a consultant or contractor for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)

To be determined by Owner's Administrative staff, subject to approval by the Owner's Board of Trustees.

§ 1.3.2 *The Program Manager will retain the consultants identified in Sections 1.3.2.1 and 1.3.2.2:*

§ 1.3.2.1 *Consultants retained under Basic Services:*

(List name, discipline, address and other information. If the Program Manager will retain a consultant for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)

§ 1.3.2.2 *Consultants retained under Additional Services:*

(List name, discipline, address and other information. If the Program Manager will retain a consultant for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)

§ 1.3.3 *The Owner identifies the following representative in accordance with Section 5.4:*

(List name, address and other information.)

[Insert name, title and address of the Owner's representative]

§ 1.3.4 *The persons or entities, in addition to the Owner's representative, who are required to review and approve the Program Manager's submittals to the Owner are as follows:*

(List name, address and other information.)

§ 1.3.5 *The Program Manager identifies the following representative in accordance with Section 2.4:*

(List name, address and other information.)

[Insert name, title and address of the Program Manager's representative]

§ 1.3.6 *Other Initial Information on which the Agreement is based:*

The Program Manager will provide program-wide services as described in this Agreement, including but not limited to overall program management, program review and evaluation, program scheduling, value engineering, procurement evaluation support, project analysis, cost-benefit analysis, constructability reviews, claims analysis and negotiation, construction observation and analysis, and program reports. The Program

Manager will provide program-wide services with personnel who maintain appropriate licenses and certifications that meet state requirements when such licenses are required by law.

The Program Manager acknowledges that certain Facilities are existing occupied school buildings and that District shall continue its normal operation and occupancy of the Facilities during the performance of the Services and that such continual operation and occupancy is of critical importance. ~~Consultant~~The Program Manager shall perform the Services so as to minimize to every extent reasonably possible any interference with the operation of the Facilities by District and the use and occupancy by the District.

§ 1.4 *The Owner and Program Manager may rely on the Program Information and Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Program Manager shall appropriately adjust the schedules~~, the Program Manager's services and the Program Manager's compensation.~~ and the Program Manager's services. Any adjustment to the Program Manager's compensation may be made only by written amendment to this Agreement in accordance with Sections 10.2 and 12.1.*

ARTICLE 2 PROGRAM MANAGER'S RESPONSIBILITIES

§ 2.1 The Program Manager shall provide the services as set forth in this Agreement.

§ 2.2 The Program Manager shall perform its services consistent with the skill and care ordinarily provided by program managers practicing in the same or similar locality under the same or similar circumstances. The Program Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Program.

The Program Manager agrees to provide at all times: (i) highly qualified personnel; (ii) an efficient business operation in terms of administration and accounting practices and procedures; (iii) services in a skilled, professional and efficient manner; (iv) cooperation with District so as to promote the best interests of District; and (v) performance of the Services in an expeditious, efficient, skillful and economical manner consistent with the best interests of District.

§ 2.3 The Program Manager, as soon as practicable after execution of the Agreement, shall confirm in writing to the Owner the names and qualifications of its proposed key staff members. Within 14 days of receipt of the names and qualifications of the Program Manager's proposed key staff members, the Owner may reply to the Program Manager in writing stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection. The Program Manager shall not staff any employees on the Program to whom the Owner has made reasonable and timely objection. The Program Manager shall not change its key staff members without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 2.4 The Program Manager shall identify a representative authorized to act on behalf of the Program Manager with respect to the Program.

§ 2.5 Except with the Owner's ~~knowledge and consent~~prior written consent, the Program Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Program Manager's judgment with respect to the Program. Without limiting the foregoing, and consistent with Section 2269.203, Texas Government Code, the Program Manager shall not self-perform any aspect of the construction, rehabilitation, alteration, or repair of any Project, shall not be a party to a construction contract or subcontract on any Project, shall not provide a performance or payment bond on any Project, and shall not have a financial interest in, or undisclosed business relationship with, any architect, engineer, contractor, subcontractor, supplier or other vendor performing work or providing goods or services on the Program.

§ 2.6 The Program Manager shall provide its services in cooperation with the services provided by the Owner and the Owner's consultants and contractors and shall coordinate its services with those services provided by the Owner and the Owner's consultants and contractors. The Program Manager shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants

and contractors. The Program Manager shall provide prompt written notice to the Owner if the Program Manager becomes aware of any error, omission or inconsistency in such services or information.

§ 2.7 The Program Manager shall maintain the following insurance for the duration of this Agreement. ~~If any of the requirements set forth below exceed the types and limits the Program Manager normally maintains, the Owner shall reimburse the Program Manager for any additional cost as set forth in Section 10.6.3.~~The cost of all required insurance is included in the Program Manager's compensation and is not reimbursable.

§ 2.7.1 Commercial General Liability Insurance (occurrence basis only) ~~$ 1,000,000 each claim and in the aggregate~~with limits of not less than $1,000,000 each occurrence and $2,000,000 general aggregate. The Owner, its Board of Trustees, officers, employees and agents shall be named as ~~an~~ additional insureds on the Program Manager's Commercial General Liability Insurance policy on a primary and non-contributory basis, with a waiver of subrogation in favor of the Owner.

§ 2.7.2 Business ~~Commercial or Personal~~ Automobile Liability Insurance ~~in the amounts specified by the Texas Tort Claims Act, Chapter 101 of the Texas Practices and Remedies Code for all owned, non-owned and hired vehicles; each person $100,000; each accident $ 300,000; and for property damage, each occurrence of $ 100,000; No deletions/exclusions from endorsement on the Contractor's policy as to the subject job.~~covering all owned, non-owned and hired vehicles with a combined single limit of not less than $1,000,000 each accident. The Owner shall be named as an additional insured on the Program Manager's Business ~~Commercial or~~ Automobile Liability policy.

§ 2.7.3~~.~~ Workers' Compensation at statutory limits and Employers' Liability with a policy limit of not less than five hundred thousand dollars ($ 500,000) with a waiver of subrogation ~~for McAllen ISD~~in favor of the Owner.

§ 2.7.4 Professional Liability covering the Program Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than ~~one million dollars ($ 1,000,000.00)~~two million dollars ($2,000,000.00) per claim and in the aggregate, with a retroactive date no later than the commencement of the Services, maintained throughout the term of this Agreement and for not less than three (3) years after final completion of the last Project.

§ 2.7.5 The Program Manager will provide a certificate of insurance ~~in Accord 25 form~~on ACORD 25 form, together with copies of the additional insured, primary and non-contributory, and waiver of subrogation endorsements, to the ~~Administrator of the Department~~Owner's Director of Purchasing Services evidencing such coverage and will notify the ~~Administrator~~Owner in writing immediately if any change in coverage occurs for any reason.

§ 2.7.6 Each insurance policy to be furnished by ~~successful bidder~~the Program Manager shall include, by endorsement to the policy, a statement that a notice shall be given to ~~District~~the Owner by certified mail thirty (30) days prior to cancellation, non-renewal or ~~upon~~ any material~~s~~ change in coverage.

§ 2.7.7 The Program Manager shall provide the Owner certificates of insurance evidencing the above required insurance, prior to commencement of this ~~contract~~Agreement and thereafter with certificates evidencing renewals or replacements of said policies of insurance at ~~lease~~least fifteen (15) days prior to the expiration or cancellation of any such policies. Said notices and Certificates of Insurance shall be provided to the Owner's Purchasing Services Department.

§ 2.7.8 For non-subscribers that do not carry Workers Compensation coverage the District will on a case-by-case basis, consider contractors who provide an Occupational Accident Policy, including Employers' Indemnity coverage with a $1,000,000 limit. However, the District reserves the right to require Workers' Compensation coverage if it feels it is in the best interest of the District to do so.

ARTICLE 3 SCOPE OF PROGRAM MANAGER'S BASIC SERVICES

§ 3.1 General

§ 3.1.1 The Program Manager's Basic Services consist of those described in this Article 3. The Program Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The

Program Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs employed in connection with the construction of the projects in the Program, nor shall the Program Manager be responsible for the failure of the Owner's consultants or contractors to perform services for, or the construction of, a project in accordance with the plans, specification or other contract or legal requirements. The Program Manager shall be responsible for the Program Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Owner's consultants or contractors. The Basic Services also include the Scope of Work set forth in Exhibit "C" (Section 11 of the Owner's Request for Qualifications No. 2027-1014), which is incorporated into this Article 3; the Services described in this Article 3 and in Exhibit "C" are cumulative. The Program Manager serves as the Owner's construction manager-agent under Subchapter E, Chapter 2269, Texas Government Code, and represents the Owner in a fiduciary capacity as provided by Section 2269.204, Texas Government Code.

§ 3.1.2 The Program Manager shall periodically review the development of the design for each project in the Program and provide recommendations for systems, materials, equipment and techniques that are utilized to achieve the Design Standards established pursuant to Section 3.3.4. The Program Manager shall provide advice on construction feasibility, availability of materials and labor, and procurement and time requirements for installation and construction. If the Owner approves of recommendations, the Program Manager shall assist in negotiating or carrying out said changes with other relevant parties towards successful completion of ~~the~~each Project.

~~§~~ **§ 3.1.3** Intentionally omitted.

§ 3.1.4 Intentionally omitted.

§ 3.1.5 The Program Manager shall assist the Owner in reviewing the qualifications of, and in selecting and retaining contractors for each project in the Program.

§ 3.1.6 ~~Delete~~Intentionally omitted.

§ 3.1.7 The Program Manager will provide an on-site Program Management Team, as necessary to perform the services, with appropriate administrative support during the entirety of the Program. Membership of this team will be stable, and any proposed personnel changes must be approved in advance by the Owner. The Program Manager acknowledges that Owner is entering into this Agreement in reliance on Program Manager's special and unique abilities with respect to performing the Services. The Program Manager warrants that it will at all times conduct its activities and perform the Services ~~(1)~~ in accordance with the provisions of this Agreement and in a timely, diligent, skillful, competent and professional manner, consistent with the consulting professional standards of accountability and performance applicable to projects similar to the Facilities, as performed by skilled professional consultants headquartered and operating in the State of Texas who have substantial experience in performing the Services for projects similar to the scope of work and with regard to the size and complexity of the Facilities.

§ 3.1.8 Program Manager shall, as directed by Owner, make presentations and answer questions from project stakeholders. Program Manager shall design, ~~established~~establish, and maintain a McAllen ISD Capital Improvement Program website for informing the public on Program-specific progress/status. Owner shall approve the design and information before it is made available to the public. The website shall comply with the web accessibility requirements applicable to the Owner under Title II of the Americans with Disabilities Act (28 C.F.R. Part 35, Subpart H). The website, its domain and its content are the property of the Owner and shall be transferred to the Owner, at no additional cost, upon completion of the Program or termination of this Agreement. Any social media accounts the Program Manager maintains for community outreach under Exhibit "C" shall be established in the Owner's name with credentials held by the Owner, shall carry only content approved by the Owner, and shall be archived as public records of the Owner.

§ 3.1.9 Program Manager shall put in place a system of monthly updates and reporting to the Owner to keep Owner informed of Program status issues requiring attention.

§ 3.1.10 The Program Manager, as a part of its daily responsibilities, will be responsible for budget and fiscal oversight of the 2026 Bond Program, which includes, but is not limited to, the following:

i. Budget – The Program Manager will establish, organize, and/or manage the overall program budget and each project budget. ~~Project~~The Program Manager will establish reports tracking budget including all budget transfers and budget amendments.

ii. Cash Flow – The Program Manager will provide quarterly cash flow reports to help Owner understand and prepare for cash needed for upcoming projects.

iii. Procurement – The Program Manager shall play a lead role, under the direction of the Owner's Purchasing Services Department, in the 2026 Bond procurement process including advertisements, ~~CSP, design build (etc.)~~competitive sealed proposals, design-build, construction manager-at-risk and the other methods authorized by Section 44.031, Texas Education Code, and Chapter 2269, Texas Government Code, bid and proposal openings, evaluations and negotiations, in accordance with applicable law and Board policy. All contract awards remain subject to approval by the Owner's Board of Trustees or its designee as required by law and Board policy.

iv. Permits – The Program Manager shall assist the district, design, and construction teams in achieving necessary permits.

v. Contracts/Purchase Orders/Change Orders/Additional Services – The Program Manager will be responsible for gathering all necessary documents needed to execute contracts and issue purchase orders, change orders, and professional additional services.

vi. Program and Project Contingencies – The Program Manager shall be responsible for managing and tracking all program and project contingencies. The Program Manager will also be responsible for submitting all required documentation needed to access program contingency.

vii. Pay Applications/Invoices – The Program Manager shall develop a protocol, working with 2026 Bond Vendors, to review and submit monthly pay applications and invoices for payment processing. The Program Manager will also develop a system to track vendor payments, so invoices are submitted for payment in the correct fiscal year.

viii. Community Engagement and Outreach – The Program Manager shall develop a process for updating the public and community of the progress of the program, the process will be reviewed and approved by the ~~owner~~Owner.

ix. Closeout – The Program Manager shall organize all information essential to complete closeouts for applicable projects, including preparing items to be submitted to Board for closeout approval.

x. Financial Reporting and Reconciliations – The Program Manager will be responsible for developing and generating financial reports or reconciliations, needed by McAllen ISD Staff, other district personnel and external entities related to the 2026 Bond Program. Report or reconciliations will include, but not limited to:

a. Monthly Project Reports

b. Bond Advisory Committee Reports (BAC)

c. Contingency Reports if applicable

d. Change Order Reports

e. Additional Services Reports

§ 3.1.11 Program Manager shall, at all times, represent~~, protect, and defend Owner~~ and protect the Owner's interests in all ~~intersections~~interactions with construction contractors, suppliers, and other third-party contractors or ~~program managers~~consultants.

§ 3.2 Program Management Plan

§ 3.2.1 In order to ascertain the requirements of the Program, the Program Manager shall review with the Owner the Program information and Initial Information along with any other information to be furnished by the Owner:

(List additional information to be furnished by the Owner.)

§ 3.2.2 The Program Manager shall develop and document a Program Management Plan (PMP) reflecting the scope and related requirements of the Program and submit the Program Management Plan to the Owner for approval. The Program Management Plan shall include a description of, and requirements pertaining to, the following:

.1 Program management approach and organization, including executive, management and team staffing plan and responsibilities;

.2 Program planning and development activities, including strategic planning, prioritizing, and defining scope, schedule and budget of the projects in the Program;

.3 Program management controls, including scope, budget/cost, schedule, and quality management plan;

.4 Procurement strategies and procedures, including strategy for procurement of design services and construction; procedures for pre-purchase of material, systems, and equipment; ~~evaluating and approving substitutions; and affirmative action or diversity plan;~~and evaluating and approving substitutions;

.5 Authorization processes and procedures, including administrative approval processes and responsibilities, and key documentation for: professional services and preconstruction services; processes and procedures for project construction procurement, such as award, contracting, notice to proceed, change orders, payment certification; and project closeout;

.6 Program communication procedures, including systems, meetings, reporting, investigation, and records;

.7 Development of design process guidelines, including assessment, prioritization, project scope definition, design development, coordination, and permit process;

.8 Development of construction process guidelines, including preconstruction and construction administration services, construction phase processes and procedures, program coordination, change order management, commissioning, and project closeout procedures; and

.9 Project acceptance and turnover guidelines relating to contract completion and closeout management, including record documentation, manuals and warranties.

§ 3.2.3 The Program Manager shall obtain the Owner's approval of the initial Program Management Plan, and any subsequent revisions to the Program Management Plan. If needed, the Program Manager shall meet with the Owner to discuss the Program Management Plan and any necessary revisions every six months, or at intervals set forth below:

(Insert the milestones or intervals for Program Management Plan updates, if other than every six months.)

PMP exhibits to be updated every six months.

§ 3.3 Information Management and Standards

§ 3.3.1 Program Management Information System. The Program Manager shall implement and, for the duration of the Program, maintain and upgrade as necessary a web-based Program Management Information System to be used to maintain Program updates, Program Schedules, and other information, reports and documentation as agreed by the Owner and the Program Manager. Activities under the Program will be scheduled and documented through the Program Management Information System. The Program Management Information System shall organize information by project, activity, or relevant categories, as determined by the Program Manager and Owner. The Program Manager shall collect information pertaining to the Program, and update the Program Management Information System on a regular basis unless otherwise agreed. The Program Management Information System shall contain, at a minimum, current status on contracts, budget, schedule and quality on a Program and project basis. The Program Manager acknowledges that Program data in the Program Management Information System constitutes public information of the Owner subject to Chapter 552, Texas Government Code, and to the Owner's records retention obligations under Chapter 203, Local

Government Code, and shall maintain and make such data available to the Owner in a manner that allows the Owner to comply with those laws.

§ 3.3.2 The Owner shall have access to all information in the Program Management Information System. Other Program and project participants shall have access to specific information only as approved by the Owner. Upon the completion of each project in the Program, upon the Owner's request at any time, and upon expiration or termination of this Agreement, the Program Manager shall preserve the documentation and information contained in the Program Management Information System and provide a copy to the Owner in a non-proprietary, machine-readable format.

§ 3.3.3 The Program Manager shall develop protocols and standards for the exchange and use of information in digital form to be integrated into the Program Management Information System. The Program Manager shall provide information to the Owner and the Owner's consultants and contractors, as required for the duration of the Program, regarding the use of the Program Management Information System.

§ 3.3.4 Design Standards. The Program Manager shall assist the Owner, and Owner's Design Manager, if any, in developing and periodically updating Design Standards for the Owner's approval. The Design Standards shall provide a functional, aesthetic, and quality framework for the projects in the Program and shall include the following: planning criteria (including area, volume, equipment, finish, technical services and other relevant functional requirements for typical spaces); specifications and performance requirements (including sustainable design criteria) for materials, systems, components and assemblies organized by classification system as agreed upon with the Owner; drawing, building information modeling, and documentation standards (including requirements for interim and final contract document deliverables); typical design details of selected conditions; and, procurement, contracting and general requirements. The Design Standards shall incorporate any existing Owner design standards.

§ 3.3.5 Prior to the start of the design of each project, the Program Manager shall make the Owner-approved Design Standards available to the Owner's design consultants.

§ 3.3.6 Program Report. On a monthly basis, or as set forth below, the Program Manager shall prepare a Program Report. The Program Report shall include a summary update of Program and project status, an updated Program Schedule, actual and anticipated costs related to the Program, cost and payment reports for each consultant and construction contract, approved change orders, and any claims pertaining to the Program Manager, Owner, and the Owner's other consultants and contractors.

(If the Program Report is required at intervals other than monthly, set forth such intervals below.)

§ 3.4 Program Budget Control

§ 3.4.1 If the Owner has not established a Program Budget, the Program Manager and the Owner shall collaborate to prepare a preliminary Program Budget, which shall include the costs for the Program Manager's services, the costs of the services of the Owner's other consultants, the costs for design and construction of each project in the Program, and additional details necessary for the Owner to prepare a complete Program Budget. The Owner shall review and approve in writing the preliminary Program Budget. The Program Manager shall provide monthly reports on the Program Budget, or at intervals otherwise agreed to by the Owner and Program Manager below.

(If the Program Manager is required to provide Program Budget reports at intervals other than monthly, set forth such intervals below.)

§ 3.4.2 The Program Manager shall develop and implement a system of budget and cost controls to assist the Owner in the management of Program and project costs. The Program Manager shall submit to the Owner projections of costs for the Program and for each project in the Program.

§ 3.4.3 Intentionally omitted.

§ 3.4.4 The Program Manager shall share information regarding the Program Budget with the Owner's consultants as authorized by the Owner or this Agreement.

§ 3.4.5 The Program Manager shall assist in identifying Program-wide procurement and cost saving opportunities.

§ 3.4.6 The Program Manager shall report cost impacts to the Program Budget of proposed contracts, change orders, and proposed contract amendments from the Owner and the Owner's consultants and contractors.

§ 3.5 Program Schedule Control

§ 3.5.1 The Program Manager shall prepare a Program Schedule showing priorities, sequences, durations, and responsible parties for major design, pricing, construction and Owner activities; establishing the overall duration of the Program; and identifying critical milestone dates. The Program Manager shall update and expand the level of detail and status of the Program Schedule as the Program progresses. The Program Schedule shall also incorporate or identify

.1 project specific milestones and design and construction schedules, including dates of commencement and completion;

.2 components that need to be procured by the Owner and dates for such procurement; and

.3 the Owner's occupancy deadlines and any portions of the Program having occupancy priority.

§ 3.5.2 The Program Manager shall provide recommendations for project sequencing and phasing to meet overall Program objectives.

§ 3.5.3 The Program Manager shall provide recommendations on the milestone dates and durations in the design and construction schedules as they are developed for each project in the Program.

§ 3.5.4 The Program Manager shall monitor, and report to the Owner on the progress of, the Program and each project in the Program. Reports shall include observed deviations from the Program Schedule or key milestones of the individual project schedules that may impact substantial completion or final completion. The Program Manager shall include the reports in the Program Management Information System. The Program Manager shall consult with the Owner and the Owner's consultants and contractors to develop recovery plans when the schedules or objectives are not being met.

§ 3.6 Program Quality Control and Design Review

§ 3.6.1 The Program Manager shall establish and distribute through the Program Management Information System, quality control guidelines that define the obligations of the Program Manager, Owner, and the Owner's consultants and contractors.

§ 3.6.2 The Program Manager shall periodically review the development of the design for each project in the Program for conformance with the Program requirements and Design Standards. The Program Manager shall provide a list of the observed deviations from the Design Standards and discuss resolution of the observed deviations with the Owner and, as appropriate, the Owner's consultants and contractors.

§ 3.6.3 The Program Manager shall confirm that each contractor~~has~~ has prepared a safety program and project specific quality control plan.

§ 3.6.4 The Program Manager shall advise the Owner of observations it makes regarding deficiencies in the performance of the Owner's consultants and contractors.

§ 3.7 Other Services

§ 3.7.1 ~~Upon the Owner's written request, the Program Manager shall provide reasonable assistance in the areas of community and public relations, in order to enhance and maintain public awareness in furtherance of the interests of the Program and the Owner..~~The Program Manager shall provide, as Basic Services, the Board and community communications services described in Exhibit "C," including a marketing and communications plan approved by the Owner, the website described in Section 3.1.8, community events, social media outreach, and regular progress reports to the Owner's Board of Trustees, in order to enhance and maintain public awareness in furtherance of the interests of the Program and the Owner.

§ 3.7.2 The Program Manager shall schedule and conduct meetings with the necessary Program participants to coordinate the progress of the Program. The Program Manager shall also prepare minutes of such meetings and include them, as appropriate, in the Program Management Information System.

§ 3.7.3 The Program Manager shall develop a strategy, procedure, and schedule to assist the Owner in obtaining the required reviews and approvals of authorities having jurisdiction over each project in the Program.

§ 3.7.4 The Program Manager shall assist the Owner in developing and implementing protocols for the review and processing of changes or proposed changes in the scope of design or construction for projects in the Program, and the corresponding contracts for design and construction.

§ 3.7.5 The Program Manager shall assist the Owner in developing and implementing protocols for the review and processing of applications for payment for the Program and the projects in the Program.

§ 3.7.6 The Program Manager shall assist the Owner in selecting the dispute resolution procedures to be included in the various agreements between the Owner or the Program Manager and consultants and contractors for disputes arising out of the Program.

§ 3.7.7 ~~Upon the written request of the Owner, the~~The Program Manager shall evaluate, and provide input to the Owner on, and as directed by the Owner shall negotiate the resolution of, claims arising out of the Program as provided in Exhibit "C".

§ 3.7.8 The Program Manager shall assist the Owner in establishing a procedure for tracking and submission of records, warranties, guarantees, and documents pertaining to systems verification and project close-out, for projects in the Program.

§ 3.8 Project Phase Responsibilities

Program Manager will provide services for all phases of each Project as required by this Agreement. Included, but not limited to, Program Manager's responsibilities ~~or~~for each phase of each project are as follows:

§ 3.8.1 Organization and Implementation Planning

1. In conjunction with the Owner, develop a Design/Engineering review phase procedure and report formats.
2. Implement and maintain document control and record-keeping systems.
3. Review program schedules as they are developed. Develop and maintain a comprehensive Master Program Schedule to include all organization, design, preconstruction, construction, and post-construction services. The Master Schedule will be continually updated to add and track sub-tasks to be performed by ~~Program Managers~~the Program Manager and contractors.
4. Intentionally omitted.
5. Program Schedule:

    a. ~~If design delays, construction delays, or other delays beyond the control of the Program Manager cause the period to extend beyond this duration, the obligations of the Program Manager after this date will be identified in a separate Addendum.~~The Program Manager's obligations continue through final completion, closeout and final acceptance of all Projects as provided in Section 1.2.7.2. No additional compensation is due by reason of the duration of the Program, including any design delays, construction delays, or other delays beyond the control of the Program Manager, except as provided in Section 10.2 for added Projects or Additional Services.

§ 3.8.2 Design/Engineering Review:

1. Review, in detail, all Drawings and specifications to ensure compliance with Owner design standards.

2. Maintain a detailed Master Program Budget to address all projected costs. The Master ~~Project~~Program budget is intended to capture all costs of each Project and serve as the reporting tool and enable cost control of each Project costs. The Program Manager will maintain data on all approved budget changes, commitments, expenditures to date, and remaining budget amounts in a format consistent with Owner requirements to ensure projects stay within the allocated budgets.

3. Provide oversight of the design teams, as directed by Owner, including coordination of interfaces with Owner personnel. The nature of this oversight is to make sure that the budget, schedule, and document coordination and quality are achieved; and that necessary integration with Contractor processes occur in a high-value manner. If requested by Owner, assist in negotiations of any proposed design services contracts.

§ 3.8.3 Contract Procurement

1. In collaboration with the Owner, counsel for the Owner, and Project Architects, propose procurement strategy and assist with process. Assist the Owner/Architect in preparing and placing notices and advertisements to solicit responses on each Project.

2. Participate in pre-bid/proposal and pre-construction meetings where the Commissioning process requirements are reviewed, to assist the entire team, and consult with the Commissioning provider.

3. Assist with the selection of ~~General Contractors, and all additional Program Manager required for Project implementations, including but not limited to the development of CSPs, CMARs, design build, etc analysis of proposals~~general contractors, construction managers-at-risk, design-builders and other contractors required for Project implementation, including but not limited to the development of competitive sealed proposals and other solicitation documents, analysis of proposals, managing the interview process and development of recommendations for selection in accordance with applicable law, Board policy, and Owner guidelines.

4. Assist the Architect in the delivery of documents and addenda to the interested parties and attend pre-submission conferences. Work with the Architect to provide to the Owner a cost estimate of each addendum.

§ 3.8.4 Construction

1. Provide a full-time~~,~~ on-site Program Management ~~team on-site as necessary~~Team, staffed in accordance with the staffing plan approved by the Owner under Section 3.2.2.1, to perform the services to administer contracts. Act as ~~an~~the independent agent and representative of the Owner, with authority only to the extent provided in Section 3.1.1, and establish and implement coordination procedures among Owner, Architects, Contractors, and ~~Program Managers~~other consultants.

2. ~~Ensure Contractor completes~~Monitor and verify the Contractor's completion of all permitting requirements~~,~~ in a timely manner, and report any deficiencies to the Owner.

3. Monitor pay applications, submittals, costs, and receipts to ensure compliance of such with the Contract Documents and Owner standards: provide updates to Owner ~~if needed~~monthly and as otherwise requested by the Owner. On CMAR projects this includes review of all documentation of CMAR's costs on each Application for Payment.

4. For each Project, conduct pre-construction meetings with the Architect, Construction Contractor, and all other key members of the Project delivery team. Establish lines of communication and construction administration procedures such as for the processing of submittals, shop drawings, Requests for Information, Change Requests, etc. Prepare a Project procedures manual relative to handling all Project documentation in concert with the Owner's current forms and processes.

5. Monitor requests for information to ensure timely responses by the Contractor. Identify potential liabilities in the requests for information which could develop into future requests for change orders.

6. Review all applications for payment submitted and provide recommendations for revisions and/or payment. This includes detailed cost review for any Construction Manager at Risk project.

§ 3.8.5 Occupancy/Post Occupancy

1. Assist the Architect in performing interim and final inspections and in monitoring all corrective work. Assist the Architect in developing an appropriate punch list of outstanding items to be corrected at the time of Substantial Completion. Monitor completion of the punch list items by the Contractor.
2. Coordinate such items as furniture and equipment (delivery, assembly, and installation), systems testing, training sessions, etc. Participate in regular move-in team coordination meetings and ensure that all deadlines are met.
3. Ensure submission of the operations and maintenance manuals for each Project and obtain a confirmation from the architect that closeouts documents meet specified requirements.
4. Work with Commissioning Services provider.
5. Verify that all warranties have been received and are properly executed by Owner. Coordinate warranty completion.

§ 3.8.6 Required Deliverables from Program Manager will include, but not limited to, the following:

1. Master Program Schedule;
2. Master Program Budget;
3. Internet Project Status reporting site;
4. Monthly and Periodic Executive Status Reports (for Board of Trustees, including budget allocation vs. remaining balance, project timeline, and overall project progress);
5. Meeting ~~Agendas will be chaired for Owner/PM related meetings.~~agendas and minutes for Owner/Program Manager meetings, which the Program Manager will chair;
6. Manage Owner/Architect, Construction Contractor and other contracts and documents;
7. Construction Close-out Documents Checklist;
8. Move-in/Move-out and Relocation Coordination Checklist. Equipment Operations and maintenance Manuals: Management, checklist and coordination to ensure all closeout documents are received from the Contractor and A/E;
9. Program schedule with updated milestones~~.~~;
10. Cost Verification/Cost Estimating; and cost verification overview and review estimates and CO estimates~~. Separate detailed estimates (independent estimates) will be an add service; and12. Cost Review~~;
11. Detailed cost estimates at the phases of design and construction required by Exhibit "C," which are Basic Services; and
12. Cost Review.

~~ADDITIONAL SERVICES~~ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1~~.~~ Additional Services listed below are not included in Basic Services but may be required for the Program. The Program Manager shall provide the listed Additional Services only if specifically designated in the table below as the Program Manager's responsibility, and the Owner shall compensate the Program Manager as provided in Section 10.3.

(Designate the Additional Services the Program Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached

exhibit. If in an exhibit, identify the exhibit. AIA Contract Document numbers are cited, where applicable, to provide a basis for the proposed scope of services, but may need to be revised to be applicable in the Program Management context.)

Services	Responsibility *(Program Manager, Owner or not provided)*	Location of Service Description *Section 4.2 below or in an exhibit attached to this document and identified below*
§ 4.1.1 Community communications not included in Section 3.7.1	Program Manager (Basic Services)	Exhibit "C"
§ 4.1.2 Capital campaign support		
§ 4.1.3 Project Specific Construction Management (C132™–2009)		
§ 4.1.4 Assistance with sustainability certifications		
§ 4.1.5 Community outreach	Program Manager (Basic Services)	Exhibit "C"
§ 4.1.6 Design Management Services (B171™–2013)		
§ **4.1.7** Existing facilities analysis		
§ 4.1.8 Site Selection Analysis (B203™–2007)		
§ 4.1.9 Economic analysis		
§ 4.1.10 Project Programming (B202™–2009)		
§ 4.1.11 Master planning		
§ 4.1.12 Early procurement of materials and equipment		
§ 4.1.13 FF&E procurement coordination	Program Manager (Basic Services)	Exhibit "C"
§ 4.1.14 Detailed cost estimating	Program Manager (Basic Services)	Exhibit "C"
§ 4.1.15 Life cycle analysis		
§ 4.1.16 Move management		
§ 4.1.17 Coordination of hazardous material testing or abatement		
§ 4.1.18 Other project specific services:		
§ 4.1.19 Other Program specific services:		

*The Term "Basic Service" will have the same meaning as in Article 3 and shall be provided by the Program Manager at no additional cost to the Owner. Land acquisitions are not included in the scope of this ~~agreement~~Agreement. ~~The Program Manager agrees to assist with FF&E procurement and Coordination upon mutually agreed-upon scope at the time the service is requested.~~Coordination of FF&E procurement, occupancy and technology (Section 4.1.13), detailed cost estimating (Section 4.1.14), and community communications and outreach (Sections 4.1.1 and 4.1.5) are Basic Services under Exhibit "C."

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Program Manager's responsibility, if not further described in an exhibit attached to this document.

Basic and ~~additional services~~Additional Services are identified in ~~section~~Section 4.1.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Program Manager, any Additional Services

provided in accordance with this Section 4.3 shall entitle the Program Manager to compensation pursuant to Section 10.4.

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§ 4.3.1 Each time that Program Manager is requested to perform services which Program Manager deems to be Additional Services, and prior to performing such Additional Services, Program Manager shall complete and forward to Owner for acceptance by Owner, an Additional Services Requisition, the basis upon which Program Manager has determined that the requested services are Additional Services, and which shall set forth the maximum amount of fees and reimbursable expenses for which Program Manager is prepared to perform such Additional Services (as defined in this Agreement), together with a proposed schedule for the performances of such Additional Services. The Program Manager shall not proceed to provide the following services until the Program Manager receives the Owner's written authorization:

.1 Deleted

.2 Deleted

.3 Deleted

.4 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except ~~where the Program Manager is party thereto;~~(a) where the Program Manager is a party thereto, (b) where the proceeding concerns the Program Manager's own services or work product, or (c) for the Program Manager's participation in the meet and confer and mediation processes under Article 7, claims evaluation under Section 3.7.7, and testimony and document production as a fact witness, all of which are Basic Services;

.5 Deleted

.6 ~~Services required by deficiencies in the performance or default of Owner's consultants or contractors.~~Deleted

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 The Owner shall provide and update information regarding requirements for, and limitations on, the Program in a timely manner, including the information in Article 1; other objectives, schedule constraints and criteria, and site requirements; and any other information either described in Article 5 or required for the Program Manager to perform its services.

§ 5.2 The Owner shall collaborate with the Program Manager to establish and periodically update the Program Budget including (1) the Program Manager's costs, (2) design and construction~~s~~ costs, (3) the Owner's other costs, and (4) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Program Budget, the Owner shall promptly notify the Program Manager, and in consultation with Program Manager and the Owner's other consultants and contractors, agree to corresponding changes in project scopes, features or quality.~~.~~

§ 5.3 The Owner shall retain all contractors and consultants necessary to carry out the Program except for those consultants retained by the Program Manager as listed in Section 1.3.2. The Owner shall provide the Program Manager with a copy of all executed agreements between the Owner and its consultants and contractors, and any modifications to those agreements. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided, and require that its contractors maintain commercial general liability insurance and other liability insurance as appropriate to the services or work provided.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Program. The Owner shall render decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Program Manager's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the sites included within the Program, and written legal descriptions of those sites. The surveys

and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to an appropriate benchmark at each project location.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to 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.

§ 5.7 The Owner shall furnish tests, inspections, and reports required by law or the Program, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance, financing, and accounting services, including auditing services, that may be reasonably necessary at any time for the Program to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide, and shall require that its consultants and contractors provide, prompt written notice to the Program Manager if they become aware of any fault or defect in the Program, including errors, omissions, or inconsistencies in any documents produced by or services provided by the Program Manager.

§ 5.11 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Program Manager's consultants through the Program Manager about matters arising out of or relating to the Program. The Owner shall communicate with its own forces, consultants, and contractors, and coordinate its own internal information and communications that are necessary for the Program. The Owner shall notify the Program Manager of any such communication that affects the Program. The Owner shall promptly notify the Program Manager of any direct communications that may affect the Program Manager's services.

§ 5.12 The Owner shall provide the Program Manager access to the project sites and other facilities under the Owner's control and associated with the Program. The Owner shall obligate its contractors to provide the Program Manager access to the project sites wherever work is in preparation or progress.

§ 5.13 For each project in the Program, the Owner shall purchase and maintain or require its contractors to purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial contract sum, plus the value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire project at the site on a replacement cost basis without optional deductibles. ~~These policies shall cover reasonable compensation for Program Manager's services and expenses required as a result of such insured loss.~~

§ 5.15 The Owner ~~shall~~will, to the extent available, provide office space, electrical, heat, air conditioning, ~~phone lines,~~ adequate telecommunication service (Wi-Fi and hardwired connections at adequate speeds), ~~server space, copier, fax machine, projectors, office furniture,~~ and parking spaces for the Program Manager's on-site Program Management Team to perform under this Agreement. The Program Manager shall furnish, at its own expense, all telephones, computers, servers, copiers, printers, projectors, office furniture and other equipment and supplies its personnel require.

ARTICLE 6 COPYRIGHTS AND LICENSES

§ 6.1 Intentionally omitted.

§ 6.2 The Program Manager and Owner warrant that in transmitting any information, including Instruments of Service, ~~,~~the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use in the Program.

§ 6.3 The Owner shall have exclusive ownership of all data in the Program Management Information System and the Program Management Plan developed or contributed by the Program Manager or the Program Manager's consultants and contractors. Ownership of the data in the Program Management Information System and the Program Management Plan does not include ownership of any proprietary software developed and owned by the Program Manager and used in connection with the collection, manipulation, or publication of the data in the Program Management Information System and the Program Management Plan. ~~Unless the Owner pays the licensing fee described in Section 10.7, the Owner's right to use any such proprietary software shall terminate at the time of termination of this Agreement.~~ Upon expiration or termination of this Agreement for any reason, and at any other time upon the Owner's request, the Program Manager shall, at no additional cost to the Owner, deliver to the Owner a complete copy of all data in the Program Management Information System and the Program Management Plan in a non-proprietary, machine-readable format (such as PDF, Microsoft Office and CSV files) that does not require the Program Manager's proprietary software to access or use. The Program Manager shall take all steps reasonably necessary to allow the Owner to exercise the Owner's rights to own and utilize the data in the Program Management Information System and the ~~Project~~Program Management Plan after termination of the Owner's rights to use any proprietary software. The Program Manager shall include provisions consistent with the provisions in this Section 6.3 in the Program Manager's agreements with the Program Manager's consultants. ~~If the Program Manager rightfully terminates this Agreement for cause as provided in Section 8.4, the Program Manager's obligations under, and the Owner's rights to further use of proprietary software granted in, this Section 6.3 shall terminate.~~ Ownership of data obtained from or compiled, developed or contributed by the Owner's consultants or contractors will be controlled by the terms of the Owner's agreements with those consultants or contractors.

ARTICLE 7 CLAIMS AND DISPUTES

§ 7.1 General

§ 7.1.1 The Owner and Program Manager shall commence all claims and causes of action whether in contract, tort, or otherwise, against the other and arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution ~~method~~ selected in this 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 on the project out of which the claim arises. The Owner and Program Manager waive all claims and causes of action not commenced in accordance with this Section 7.1.1.

§ 7.1.2 To the extent damages are covered by property insurance, the Owner and Program Manager waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Owner or the Program Manager, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 7.1.3 The Program Manager shall defend, indemnify and hold ~~the Owner and the Owner's officers and employees~~ harmless the Owner and the Owner's Board of Trustees, officers, employees and agents from and against claims, damages, losses, judgments and expenses~~and judgments~~ arising from claims by third parties, including reasonable attorneys' fees ~~and expenses recoverable under applicable law~~and costs of defense, but only to the extent they are caused by the negligent acts or omissions, willful misconduct, or breach of this Agreement of the Program Manager, its employees, ~~and~~ its consultants, and anyone for whose acts they may be liable, in the performance of services under this Agreement. The Program Manager's ~~duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage~~obligations under this Section 7.1.3 are not limited by the amount or availability of insurance.

§ 7.1.4 The Program Manager ~~and owner waive~~waives consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This ~~mutual~~ waiver is applicable, without limitation, to all consequential damages due to ~~either party's~~the Owner's termination of this Agreement, except as specifically provided in Section 8.7. This waiver does not limit the Program Manager's obligations under Section 7.1.3 or the Owner's remedies for the Program Manager's breach of this Agreement.

§ 7.2 Meet and Confer

§ 7.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to a meet and confer session as a condition precedent to mediation.

§ 7.2.2 The Owner and the Program Manager shall endeavor to resolve claims, disputes, and other matters in question during the meet and confer session. The meet and confer session shall be attended by the Owner and Program Manager or their authorized representatives who shall have the authority to bind the parties, subject, in the case of the Owner, to any approval of the Owner's Board of Trustees required by law or Board policy. The meet and confer session shall take place within thirty (30) days after a request by either party, unless the parties mutually agree otherwise. Prior to the meet and confer session, the parties shall exchange relevant information that will assist in resolving the claim, dispute or controversy.

§ 7.2.3 If the parties reach a mutually acceptable resolution, they shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to mediation in accordance with Section 7.3.

§ 7.3 Mediation

§ 7.3.1 Any claim, dispute or other matter in question arising out of or related to this Agreement not resolved by the meet and confer session shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 7.3.2 Unless the parties mutually agree otherwise, the mediation shall be conducted in Hidalgo County, Texas by a mediator mutually selected by the parties or, if the parties cannot agree on a mediator within fifteen (15) days after a request for mediation, 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 Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. ~~If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

§ 7.3.3 The Parties shall share the mediator's fee and any filing fees equally. Agreements reached at mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof, subject to approval by the Owner's Board of Trustees where required by law or Board policy.

§ 7.3.4 If the parties do not resolve a dispute through mediation pursuant to this Section 7.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Program Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

~~[ ] Arbitration pursuant to Section 7.4 of this Agreement~~

[x] Litigation in a court of competent jurisdiction in Hidalgo County, Texas.

~~[ ] Other: *(Specify)*~~

§ 7.4 ~~Arbitration~~Intentionally omitted.

ARTICLE 8 TERMINATION OR SUSPENSION

§ 8.1 Intentionally omitted.

§ 8.2 If the Owner fails to make undisputed payments when due under Section 10.8.2 to the Program Manager, the Program Manager may, upon thirty days' written notice to the Owner, suspend performance of services under this Agreement. In the event of a suspension of services pursuant to this subparagraph, the Program Manager shall have no liability to the Owner for delay or damage caused the Owner because of such

suspension of services. If the Owner suspends the Program for a reason other than the fault of the Program Manager, the Program Manager shall be compensated for undisputed and conforming services performed prior to notice of such suspension. The ~~Program Manager's fees for the remaining services and the~~ time schedules shall be equitably adjusted. The Program Manager's fees for the remaining services shall be adjusted only if the suspension exceeds ninety (90) consecutive days, only to the extent of the Program Manager's demonstrated increase in the direct cost of performing the remaining services, and only by written amendment in accordance with Section 10.2.

§ 8.3 If the Owner suspends the Program for more than ninety (90) consecutive days for reasons other than the fault of the Program Manager, the Program Manager may terminate this Agreement by giving not less than seven days' written notice. The Program Manager shall not be entitled to any Reimbursable Expenses upon such termination, but shall be entitled to compensation for undisputed work actually performed up until the date of notice. Notwithstanding anything contained herein to the contrary, Owner may suspend this Program by reason of the filing of an election contest relating to the bond referendum until final conclusion of said election contest litigation, or by reason of the timing of the sale or delivery of the bonds authorized at the bond election, and Program Manager shall not have the right to terminate this Agreement by reason of such suspension.

§ 8.4 ~~Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.~~The Owner may terminate this Agreement immediately upon written notice if (1) any conduct of the Program Manager jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or regular functions of the Owner; (2) the Program Manager fails to provide evidence of the insurance required by this Agreement; or (3) the Program Manager fails to immediately bar any individual from performing Services who does not meet the qualifications required by this Agreement or who commits a material breach of this Agreement. The Owner may terminate this Agreement for any other material breach by the Program Manager upon not less than thirty (30) days' written notice. The Program Manager may terminate this Agreement upon not less than thirty (30) days' written notice if the Owner fails substantially to perform in accordance with the terms of this Agreement through no fault of the Program Manager and does not cure the failure within that period.

§ 8.5 The Owner may terminate this Agreement upon not less than ~~thity~~thirty (30) days' written notice to the Program Manager for the Owner's convenience and without cause.

§ 8.6 In the event of termination not the fault of the Program Manager, the Program Manager shall be compensated for undisputed services actually performed prior to termination, together with Reimbursable Expenses then due, however, Program Manager must satisfy the other conditions precedent to payment described in this Agreement. In no event shall Program Manager be entitled to any other cancellation costs, including but not limited to special overhead, anticipated profits, or to any direct, indirect, incidental or consequential damages.

§ 8.7 If a court finds that Owner's termination of Program Manager was improper or wrongful, such termination shall be converted to a termination for convenience and Program Manager's damages and rights of recovery shall be governed thereby.

§ 8.8 In the event of termination of this Agreement, the Owner's rights to use information and materials provided by the Program Manager are set forth in Article 6. Moreover, all drawings, plans, specifications, renderings and models, etc., prepared by the A/E are the property of Owner, subject to the terms and conditions of the agreement between the Owner and the A/E. They are not to be used by any person or entity other than the Owner unless expressly authorized by the Owner~~,~~. The Owner shall have the right to use ~~to use~~ the ideas and designs therein contained for the ~~competition~~completion of the services described by this Agreement, and for the completion of the Program and all Projects or otherwise.

§ 8.9 Termination of this Agreement shall not relieve Program Manager or Owner of liability for violations of this Agreement, any act or omission, or negligence of Program Manager or Owner, and the provisions of indemnity, warranty, liability, waivers, or assurances made in this Agreement, along with any other provisions

related to liabilities and obligations of Program Manager or Owner that by their terms would extend past the termination date.

§ 8.10 In addition to the other requirements of this Agreement, as of the date of suspension or termination of this Agreement, Program Manager shall furnish to Owner all statements, accounts, reports and other materials as are required hereunder or as have been prepared by Program Manager in connection with Program Manager's responsibilities hereunder.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the jurisdiction identified below. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 7.4.~~

(Identify the jurisdiction whose laws will govern this Agreement.)

This Agreement and any and all claims, disputes, and matters of controversy concerning this Agreement shall be governed, construed and interpreted by the law of the State of Texas, without regard for any of its conflict of law provisions. In the event litigation is filed, the parties agree that the exclusive and mandatory venue for any such litigation shall be in a court of competent jurisdiction located in Hidalgo County, Texas. As a material consideration of the making of this Agreement, this agreement and the modifications to this Agreement shall not be construed against said maker of said Agreement and modifications. No provision of this Agreement shall waive any immunity or defense by the Owner.

§ 9.2 The Owner and Program Manager, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Program Manager shall assign this Agreement without the written consent of the other~~, except that the Owner may assign this Agreement to a lender providing financing for the Program if the lender agrees to assume the Owner's rights and obligations under this Agreement or as otherwise required by the laws applicable to the Owner.~~. Any assignment or subcontracting by the Program Manager is further subject to Section 11.8.

§ 9.3 If the Owner requests the Program Manager to execute certificates, the proposed language of such certificates shall be submitted to the Program Manager for review at least 14 days prior to the requested dates of execution. ~~If the Owner requests the Program Manager to execute consents reasonably required to facilitate assignment to a lender, the Program Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Program Manager for review at least 14 days prior to execution.~~ The Program Manager shall not be required to execute certificates ~~or consents~~ that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 9.4 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Program Manager.

§ 9.5 Unless otherwise required in this Agreement, the Program Manager shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the project sites. The Program Manager shall review the Owner's Asbestos Management Plan for each Facility before performing Services at that Facility.

§ 9.6 ~~The Program Manager shall have the right to include photographs of the of projects in the Program among the Program Manager's promotional and professional materials. The Program Manager shall be given reasonable access to the projects to take photographs. However, the Program Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Program Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Program Manager in the Owner's promotional materials for the Program.~~The Program Manager shall not use contract award information, sales values or volumes, photographs of the Projects, or the Owner's name as a customer in sales brochures or other promotions, including press releases, without the Owner's prior written consent. Photographs the Program Manager takes to document construction progress under Exhibit "C" are the property of the Owner and shall not depict any student.

§ 9.7 Subject to Section 9.7.1, iIf the Program Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 9.7.1.

§ 9.7.1 Subject to the Texas Public Information actChapter 552, Texas Government Code (the Texas Public Information Act), if the Program Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Party receiving such information may also disclose it to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Program, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 9.7.

§ 9.8 Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.Intentionally omitted. Notices are governed by Section 11.9.

§ 9.9 The Owner agrees not to solicit or hire the Program Manager's employees who are involved with the Program prior to one year after completion of the Program. If the Owner hires a Program Manager's employee involved with the Program prior to one year after completion of the Program, the Owner agrees to pay the Program Manager an amount as set forth below.Intentionally omitted.

(Insert stipulated sum or method of calculation for the amount to be paid to the Program Manager.)

ARTICLE 10 COMPENSATION

§ 10.1 For the Program Manager's Basic Services described under Article 3, the Owner shall compensate the Program Manager as follows:

(Insert amount of, or basis for, compensation, including stipulated sums, hourly or monthly billing rates, direct salary expense plus multiple, or monthly fee.)

In full consideration of Program Manager's Services rendered during the term of this Agreement and of Owner's rights hereunder, Owner will pay Program Manager as described in the attached AddendaExhibit "B" (Compensation and Payment Schedule).

The basicBasic Services compensation fee shall be invoiced no more than monthly, in arrears for Services performed, as described in the Payment Schedule included in the attached AddendumExhibit "B".

At the completion of the contract time, total payment will equal the Basic Services compensation described in the attached Addenda, or as modified by subsequent amendments.The total compensation for Basic Services shall not exceed the amount stated in Exhibit "B," as modified only by written amendment approved by the Owner's Board of Trustees.

§ 10.2 The fee, as outlined in the attached Addenda, is fixed regardless of any decrease in the budget for or actual cost of the work of the Projects.stated in Exhibit "B," is a fixed fee for the Basic Services for the Projects listed in Exhibit "A" and does not increase by reason of any increase in the Program Budget or in the actual cost of the work of the Projects. If the Owner deletes a Project from Exhibit "A," materially reduces the scope of a Project, or does not proceed with a Project, the fee shall be equitably reduced. The compensation may be adjusted by agreement of the parties on the scope of work and feewritten amendment approved by the Owner's Board of Trustees if additional projectsProjects are added to the scope of servicesExhibit "A" or if Additional Services described in Article 4 are requestedauthorized in writing by the Owner.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*Hourly billing rates for Additional Services are set forth in Exhibit "B."

§ 10.3 For Additional Services designated in Section 4.1, the Owner shall compensate the Program Manager as follows:

(Insert amount of, or basis for, compensation, If necessary, list specific services to which particular methods of compensation apply..)

~~By negotiated agreement of the parties.~~At the hourly billing rates set forth in Exhibit "B," or on a lump sum basis agreed in writing under Section 4.3.1, in either case not to exceed the amount authorized in writing by the Owner.

§ 10.4 For Additional Services that may arise during the course of the Program, including those under Section 4.3, the Owner shall compensate the Program Manager as follows:

(Insert amount of, or basis for, compensation.)

~~By negotiated agreement of the parties.~~At the hourly billing rates set forth in Exhibit "B," or on a lump sum basis agreed in writing under Section 4.3.1, in either case not to exceed the amount authorized in writing by the Owner.

~~)~~

§ 10.5 Compensation for Additional Services of the Program Manager's consultants when not included in Sections 10.3 and 10.4 shall be the amount invoiced to the Program Manager plus percent (%), or as otherwise stated below:

§ 10.6 Compensation for Reimbursable Expenses

§ 10.6.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include only the following expenses incurred by the Program Manager and the Program Manager's consultants directly related to the Program, to the extent approved in advance in writing by the Owner~~, as follows~~:

.1 Fees paid for securing approval of authorities having jurisdiction over the projects;

.2 Fees paid for testing, surveys or other data obtained at the request of the Owner;

.3 Printing, reproductions, plots, and standard form documents requested by the Owner, other than those required for the Program Manager's own use;

.4 Professional photography and presentation materials requested by the Owner~~;~~.

§ 10.6.2 For Reimbursable Expenses the compensation shall be the actual expenses incurred by the Program Manager and the Program Manager's consultants ~~plus percent (%) of the expenses incurred~~at cost, without markup. Each Reimbursable Expense submitted shall only be considered by the Owner if accompanied by a receipt.

§ 10.7 ~~Compensation for Use of Program Manager's Proprietary Software~~Intentionally omitted.

~~If the Owner terminates the Program Manager for its convenience, or the Program Manager terminates this Agreement under Section 8.3, or upon completion of the Program Manager's services under this Agreement, the Owner shall pay a licensing fee, as compensation for the Owner's continued use of the Program Manager's proprietary software developed and owned by the Program Manager in accordance with Section 6.3, as follows:~~

§ 10.8 Payments to the Program Manager

§ 10.8.1 ~~An initial payment of ($) shall be made upon execution of this Agreement and is the minimum payment under this Agreement.~~Intentionally omitted.

§ 10.8.2 Unless otherwise agreed, payments for services shall be made monthly in arrears for Services performed, as per the billing schedule ~~attached~~in Exhibit "B." ~~Payments are due and payable upon presentation of the Program Manager's invoice. Amounts unpaid (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Program Manager.~~ Each invoice shall reference the Owner's purchase order number and describe the Services performed during the billing period. Payments are due, and become overdue, as provided by Chapter 2251, Texas Government Code (the Texas Prompt Payment Act). Overdue amounts bear interest

only at the rate and in the manner provided by Chapter 2251, Texas Government Code. The Owner may withhold payment of disputed amounts as provided by Section 2251.042, Texas Government Code.

~~*(Insert rate of monthly or annual interest agreed upon.)*~~

~~%~~

§ 10.8.4 Records of Reimbursable Expenses, expenses pertaining to Supplemental Services, Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

§ 10.8.5 All Program files pertaining to the Projects, with the exception of Program Manager's business, financial, and personnel records unrelated to the Program, are to be open and available to Owner for review at any time during normal working hours with a reasonable amount of notice. The Program Manager shall maintain complete and accurate records supporting all invoices, Reimbursable Expenses and Additional Services for not less than four (4) years after final payment under this Agreement, and the Owner and its auditors may inspect, copy and audit those records during that period.

ARTICLE 11 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

11.1 The Program Manager shall at all times enforce strict discipline and good order among its employees and other persons carrying out the Services and shall not employ any unfit persons or persons not skilled in the task assigned to them while located at or on the District's Facilities. The District may demand the dismissal of any person or persons employed by the Program Manager in, about or on the Facilities, who engages in misconduct himself or be incompetent or negligent in the proper performance of his or their duties, or neglects or refuses to comply with the directions of the District and such persons or persons shall not be employed again thereon without the written consent of the District.

(a) The Program Manager~~,~~, its employees, and any subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, tobacco~~,~~ products, illegal drugs or controlled substances while on the Facilities, nor may such workers be intoxicated, or under the influence of alcohol or drugs on the Facilities.

(b) The Program Manager's personnel shall possess driving records reflecting reasonable care and judgment. If the Program Manager's personnel do not possess the applicable driving records then such personnel may not drive on or at the District's Facilities. The benchmark for failure to meet this standard shall be:

1. Any upheld suspension or revocation of license within the past three years; or

2. Any conviction for driving under the influence of intoxicants (DWI), without a time limit.

The Program Manager shall provide results of motor vehicle record checks.

(c) The Program Manager's personnel assigned to perform Services shall be demonstrably free from addiction to, or use of, illicit drugs, as determined by a ten-panel urinalysis drug screening. Testing shall be accomplished at clinically supervised independent collection sites, certified by the Substance Abuse and Mental Health Services Administration (formerly National Institute of Drug Abuse).

(d) The Program Manager's personnel assigned to perform Services should present a professional appearance that reflects good personal grooming habits.

(e) Personnel assigned to perform Services shall possess satisfactory public relations skills, sufficient to permit them to interact positively with District employees, visitors, and the general public. The use of profanity at or on Facilities will not be tolerated.

(f) All persons present at any of the Facilities are required to possess and display on their person an identification badge. The Program Manager is required to provide, at its own expense, an identification badge for all employees working at any of the Facilities, i.e. Program Manager's and subcontractor's personnel, and ensure they are prominently displayed at all times while present at any Facility. A color photo identification badge, furnished by the Program Manager, must include a recent facial color photograph, the individual's full name and the name of the employer. The photo identification badge must not be smaller than a Texas issued driver's license. A duplicate copy of each color photo ID shall be submitted to the District for its records.

(g) All persons present at any of the Facilities shall be required to sign in and out on the sign-in sheet designated by the Facility.

11.2 This Agreement and all conditions and provisions hereof are for the sole and exclusive benefit of the parties hereto and their respective successors and assigns and are not intended for the benefit of any other person. In particular, nothing in this Agreement, express or implied, is intended to or shall confer upon any person, other than the parties hereto, any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement and shall be construed to give any testing company, vendor or his or her respective heirs, assigns or beneficiaries any legal or equitable right, remedy or claim under or in respect to this Agreement or any provision contained herein. Any entities or individuals mentioned herein, or in any of the attachments hereto, are listed for convenience and understanding of this Agreement and said entities or individuals shall not be considered third party beneficiaries under this Agreement.

11.3 It is understood and agreed that the relationship of the Program Manager to District shall be that of independent contractor. Unless expressly identified ~~with~~in this Agreement (including Sections 3.1.1 and 3.8.4.1), nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: (a) make the Program Manager the agent, servant or employee of the District; or (b) create any partnership, joint venture or other association between District and the Program Manager.

11.4 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

11.5 Pursuant to Texas Education Code Section 44.034, the Program Manager must give advance written notice to the District if the Program Manager or an owner or operator of the Program Manager has been convicted of a felony. The District may terminate this Agreement if the District determines that the Program Manager failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.

11.6 Criminal History Background

a) Pursuant to Texas Education Code ~~Chapter 22~~Section 22.0834 and Chapter 22A, the Program Manager shall obtain all criminal history information regarding its "covered employees", as defined below. If the Program Manager is required by ~~Chapter 22~~Section 22.0834 to obtain the information from the Fingerprint-based Applicant Clearinghouse of Texas, then the Program Manager will also subscribe to that person's criminal history record information. Before beginning any Services, the Program Manager will provide written certification to the District that the Program Manager has complied with the statutory requirements as of that date, together with a list of the names of all of its employees and any subcontractor's employees who will perform Services, and will provide written notice of any new such employees immediately after employment. Upon request by District, the Program Manager will provide, in writing, updated certifications and the names and any other requested information regarding covered employees, so that the District may obtain criminal history information on the covered employees. The Program Manager shall assume all expenses associated with obtaining criminal history record information. The Program Manager shall immediately remove from District property, and from any location where students are present, any employee or agent who has been convicted of a felony or a misdemeanor involving moral turpitude.

(b) The Program Manager will not assign any "covered employee" with a "disqualifying criminal history", as those terms are defined below, to perform any of the Services. If the Program Manager receives information that a covered employee has a reported disqualifying criminal history, then the Program Manager will immediately remove the covered employee from performing any of the Services and notify the District in writing within three business days. If the District objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then the Program Manager agrees to discontinue using that covered employee to provide Services. If the Program Manager has taken precautions or imposed conditions to ensure that the employees of the Program Manager and any Sub-Consultant will not become covered employees, the Program Manager will ensure that these precautions or conditions continue throughout the time the Services are provided.

(c) For the purposes of this Section, "covered employees" means employees, agents or subcontractors of the Program Manager or any of the Program Manager's consultants who has or will have continuing duties related to the Services to be performed on the Facilities and has or will have direct contact with District's students. The District will decide what constitutes direct contact with District's students. "Disqualifying criminal history" means any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: a felony offense under Texas Penal Code Title 5 Offenses Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

(d) The Program Manager shall comply, and shall cause its consultants and subcontractors to comply, with Chapter 22A, Texas Education Code. Before any covered employee provides Services, the Program Manager shall cause that person to submit, on the form adopted by the Texas Education Agency, the consent for release of employment records and the pre-service affidavit required by Section 22A.055, Texas Education Code. The Program Manager acknowledges that the District is required by Section 22A.151, Texas Education Code, to refuse to accept services from any person listed on the Do Not Hire Registry, and the Program Manager shall not assign, and shall immediately remove from the Services, any person listed on that registry.

11.7 The failure of District or the Program Manager to notify the other of any Default or under this Agreement shall not be deemed a waiver by such party of any rights granted hereunder or otherwise.

11.8 The obligations of District and the Program Manager contained herein shall bind or inure to the benefit District and the Program Manager and their respective successors, assigns and legal representatives. The Program Manager shall not assign this Agreement in whole or in part or subcontract its services as a whole or in material part without the prior written consent of the Board of Trustees of the District, nor shall the Program Manager assign any moneys due or to become due to it hereunder, without the prior written consent of District, which consent shall be granted or denied by District in its sole and absolute discretion (except that such approval shall not be unreasonably withheld with respect to a proposed assignment only of moneys due or to become due to the Program Manager under this Agreement). The consultants listed in Section 1.3.2 are approved. The Program Manager shall perform the Services as a single firm and not as a joint venture.

11.9 All notices, demands, requests or other communications provided for or permitted to be given pursuant to this Agreement must be in writing and shall be effective (i) when personally delivered or sent by Email (with hard copy to follow) to the recipient at the recipient's address set forth below; or (ii) one (~~1~~ 1) business day after deposit with a nationally recognized overnight courier or delivery service, addressed to the recipient as set forth below, or (iii) upon receipt or refusal to accept receipt when deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested. By giving to the other party at least thirty (30) days prior written notice hereof, each party shall have the right from time to time, and at any time, during the term of this Agreement, to change its respective address.

If to the Owner: McAllen Independent School District, Attn: Superintendent, 2000 N. 23rd Street, McAllen, Texas 78501, Email: [insert], with a copy to the Owner's Legal Counsel at the same address.

If to the Program Manager: [Insert name, address and email].

~~Should either party employ an attorney or attorneys to enforce any of the provisions hereof, or to protect its interest in any matter arising under this Agreement, or to recover damages for the breach hereof, the non-prevailing party in any final judgment agrees to pay to the other party all reasonable costs, charges, and expenses, including attorney's fees, expended or incurred in connection therewith at both the trial and appellate levels.~~

11.10 In case any one or more provisions set forth in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, any such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been incorporated herein.

11.11 Intentionally omitted.

11.12 This Agreement is not intended, and shall not be deemed or construed, to confer any rights, powers or privileges on any person, firm, partnership, corporation or other entity not a party hereto except as may be expressly provided herein to the contrary.

11.13 This Agreement may be executed in any number of original copies, each of which shall be an original for all purposes. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same document.

11.14 This Agreement shall be deemed performable in Hidalgo County, Texas, and shall be governed by the laws of the State of Texas.

11.15 ~~Any and all rights, benefits, representations, warranties, covenants and agreements which benefit District or the Program Manager hereunder, and all obligations of District and the Program Manager hereunder, shall survive the termination or expiration of this Agreement and continue in full force and effect.~~All rights, obligations, representations, warranties, covenants and agreements of District or the Program Manager under this Agreement that by their nature are intended to survive, including without limitation Sections 3.3.2, 6.3, 7.1.3, 8.6 through 8.10, 9.7, 10.8.5, 11.6, 11.17, 11.19 and 11.20, shall survive the termination or expiration of this Agreement and continue in full force and effect.

11.16 Any delays in or failure of performance by the Program Manager or District, other than the payment of money, shall not constitute default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the reasonable control of District or the Program Manager~~-~~, as the case may be, including but not limited to, acts of God or the public enemy; compliance with any order or request of any governmental authority; fires, floods, explosions, accidents, riots, strikes or other concerted acts of workmen (other than those of the Program Manager's own employees or consultants), whether direct or indirect; or any causes, whether or not of the same class or kind as those specifically named above, which are not within the reasonable control of District or the Program Manager respectively. In the event that any event of force majeure as herein defined occurs, the Program Manager or District shall be entitled to a reasonable extension of time for performance of its services under this Agreement. An event of force majeure does not entitle the Program Manager to additional compensation.

11.17 The Program Manager acknowledges that District is a political subdivision of the State of Texas, and, as such, may enjoy immunities from ~~the pursuit~~suit and/or liability under the Constitution and the laws of the State of Texas. By entering into this Agreement, District does not waive any of its immunities from suit and/or liability ~~excess~~except as specifically authorized by law.

11.18 Statutory Verifications and Certifications. To the extent Chapters 2271, 2274 and 2276, Texas Government Code, apply to this Agreement, the Program Manager verifies that it: (a) does not boycott Israel and will not boycott Israel during the term of this Agreement; (b) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and will not discriminate

during the term of this Agreement against a firearm entity or firearm trade association; and (c) does not boycott energy companies and will not boycott energy companies during the term of this Agreement. The Program Manager represents that it is not identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153, Texas Government Code. The Program Manager shall complete and file a Certificate of Interested Parties (Texas Ethics Commission Form 1295) in accordance with Section 2252.908, Texas Government Code, and a Conflict of Interest Questionnaire (Form CIQ) to the extent required by Chapter 176, Texas Local Government Code, before this Agreement is presented to the Owner's Board of Trustees for approval.

11.19 Contracting Information. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter. In accordance with Section 552.372(a), Texas Government Code, the Program Manager shall (1) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to the Owner for the duration of this Agreement; (2) promptly provide to the Owner any contracting information related to this Agreement that is in the custody or possession of the Program Manager on request of the Owner; and (3) on completion of this Agreement, either (A) provide at no cost to the Owner all contracting information related to this Agreement that is in the custody or possession of the Program Manager, or (B) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to the Owner.

11.20 Non-Appropriation of Funds. The District intends to pay the Program Manager all amounts due under this Agreement for the full term if funds are legally available. The Program Manager's compensation is payable from the proceeds of the bonds authorized at the 2026 bond election and other funds lawfully available to the District for the Program. In the event no funds or insufficient funds are appropriated and budgeted for the Services, and funds are otherwise unavailable by any means whatsoever, in any fiscal period in which payments for the Services are due, the District shall, not less than sixty (60) days before the end of that fiscal period, notify the Program Manager in writing of that occurrence, and this Agreement shall terminate on the last day of the fiscal period for which funds were appropriated, without penalty, liability or expense to the District of any kind, except as to (i) payments for Services performed for which funds have been appropriated and budgeted or are otherwise available, and (ii) the District's other obligations under this Agreement accruing or arising before that termination.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Program Manager and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Program Manager and, on behalf of the Owner, approved by the Owner's Board of Trustees or its designee to the extent required by law or Board policy.

§ 12.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document C171™–2024, Standard Form Agreement Between Owner and Program Manager

.2 Intentionally omitted.

.3 Exhibits:

(Clearly identify any exhibits incorporated into this Agreement.)

Exhibit "A" – Projects and Program Budget

Exhibit "B" – Compensation and Payment Schedule, including hourly billing rates for Additional Services

Exhibit "C" – Scope of Work (Section 11 of the Owner's Request for Qualifications No. 2027-1014, Specifications and Scope of Work, Revised)

.4 Other documents:

(List other documents, if any, forming part of the Agreement.)

The Owner's Request for Qualifications No. 2027-1014 (Bond Project Management Services), including the Specifications and Scope of Work (Revised) and the General Terms and Conditions, and the Program Manager's Statement of Qualifications in response to it, are incorporated into this Agreement. In the event of a conflict, the order of precedence is: this Agreement; Exhibit "C"; the other Exhibits; the Specifications and Scope of Work; the General Terms and Conditions; and the Program Manager's response. Nothing in the General Terms and Conditions or the response grants the Program Manager a right to terminate this Agreement for convenience or otherwise enlarges the Program Manager's rights under this Agreement.

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

OWNER *(Signature)*	**PROGRAM MANAGER** *(Signature)*
(Printed name and title)	*(Printed name and title)*